

RIGHTS AND RESPONSIBILITIES

The Rights of Requestors and the Responsibilities of New Kent County Public Schools under the Virginia Freedom of Information Act

The Virginia Freedom of Information Act (FOIA), located at § 2.2-3700 et seq. of the Code of Virginia, guarantees citizens of the Commonwealth and representatives of the media access to public records held by public bodies, public officials and public employees.

A public record is any writing or recording – regardless of whether it is a paper record, an electronic file, an audio or video recording or record in any other format – that is prepared or owned by, or in the possession of a public body or its officers, employees or agents in the transaction of public business. All public records are presumed to be open to the public and may only be withheld if a specific statutory exemption applies.

The policy of FOIA is to promote an increased awareness by all persons of governmental activities. In furthering this policy, FOIA requires that the law be interpreted liberally, in favor of access, and that any exemption allowing public records to be withheld must be interpreted narrowly.

FOIA Rights

- A citizen of the Commonwealth has the right to request to inspect or receive copies of public records, or both.
- A citizen of the Commonwealth has the right to request that any charges for the requested records be estimated in advance.
- If a citizen of the Commonwealth believes that their FOIA rights have been violated, the citizen may file a petition in district or circuit court to compel compliance with FOIA. Alternatively, they may contact the FOIA Council for a nonbinding advisory opinion.

Making a Request for Records from New Kent County Public Schools

- A citizen of the Commonwealth may request records by U.S. Mail, fax, e-mail, in person or over the phone. FOIA does not require that a request be in writing, nor that it specifically state that records are being requested under FOIA.
- As a practical matter, it may be helpful to both the requestor and the person receiving the request to put the request in writing. This creates a record of the request. It also gives us a clear statement of what records are requested, so that there is no misunderstanding over a verbal request. However, we cannot refuse to respond to a FOIA request if it is not put in writing.
- A request must identify the records sought with “reasonable specificity.” This is a common-sense standard. It does not refer to or limit the volume or number of records requested; instead, it requires the requestor to be specific enough so that we can identify and locate the records that are requested.
- A request must ask for existing records or documents. FOIA creates a right to inspect or copy records; it does not apply to general questions about the work of New Kent County Public Schools, nor does it require New Kent County Public Schools to create a record that does not exist.

- A requestor may choose to receive electronic records in any format used by New Kent County Public Schools in the regular course of business. For example, if requested records are maintained in an Excel file, the requestor you may elect to receive those records electronically, via e-mail or on a computer disk or to receive a printed copy of those records.
- If we have questions about a request, please cooperate with staff's efforts to clarify the type of records sought, or to attempt to reach a reasonable agreement about a response to a large request. Making a FOIA request is not an adversarial process, but we may need to discuss a request to ensure that we understand what records are being sought.

To request records from New Kent County Public Schools, direct your request to New Kent County Public Schools' designated Freedom of Information Act Officer (FOIA Officer) who is responsible for serving as a point of contact for members of the public who wish to request public records. The New Kent County Public Schools FOIA Officer is:

Mila Hall
(804) 966-9649 or nkcpsinfo@nkcps.k12.va.us

In addition, the FOIA Advisory Council is available to answer questions about FOIA. The Council may be contacted by e-mail at foiacouncil@dls.virginia.gov or by phone at (804) 225-3056 or 1-866-448-4100.

New Kent County Public Schools' Responsibilities in Responding to Your Request

New Kent County Public Schools must respond to a request within five working days of receiving it. "Day One" is considered the day after the request is received. The 5-day period does not include weekends or holidays.

The reason behind a request for public records from New Kent County Public Schools is irrelevant and a requestor does not have to state why they want the records before we respond to the request. FOIA does, however, allow New Kent County Public Schools to require a requestor to provide their name and legal address.

FOIA requires that New Kent County Public Schools make one of the following responses to a request within the 5-day time period:

1. We provide the records requested in their entirety.
2. We withhold all of the records requested, because all of the records are subject to a specific statutory exemption or exemptions. If all of the records are being withheld, we must send a response in writing. That writing must identify the volume and subject matter of the records withheld and state the specific section(s) of the Code of Virginia that allows us to withhold the records.
3. We provide some of the records requested, but withhold other records. We cannot withhold an entire record if only a portion of it is subject to an exemption. In that instance, we may redact the portion of the record that may be withheld, and must provide the remainder of the record.

We must provide the requestor a written response stating the specific section(s) of the Code of Virginia that allows portions of the requested records to be withheld.

4. We inform the requestor in writing that the requested records cannot be found or do not exist (we do not have the records requested). However, if we know that another public body has the requested records, we must include contact information for the other public body in our response.
5. If it is practically impossible for New Kent County Public Schools to respond to the request within the 5-day period, we must state this in writing, explaining the conditions that make the response impossible. This will allow us 7 additional working days to respond to the request, giving us a total of 12 working days to respond to the request.

If a request is made for a very large number of records and we feel that we cannot provide the records within 12 working days without disrupting our other organizational responsibilities, we may petition the court for additional time to respond to the request. However, FOIA requires that we make a reasonable effort to reach an agreement with the requestor concerning the production of the records before we go to court to ask for more time.

Costs

New Kent County Public Schools may make reasonable charges not to exceed its actual cost incurred in accessing, duplicating, supplying or searching for the requested records. New Kent County Public Schools will not impose any extraneous, intermediary or surplus fees or expenses to recoup the general costs associated with creating or maintaining records or transacting the general business of the schools. Any duplicating fee charged by New Kent County Public Schools will not exceed the actual cost of duplication. All charges for the supplying of requested records shall be estimated in advance at the request of the requestor as set forth in subsection Va. Code § 2.2-3704.F.

The requestor may have to pay for the records requested from the New Kent County Public Schools. FOIA allows us to charge for the actual costs of responding to FOIA requests. This includes items like staff time spent searching for the requested records, copying costs or any other costs directly related to supplying the requested records. It does not include general overhead costs.

If we estimate that it will cost more than \$200 to respond to a request, we may require the requestor to pay a deposit, not to exceed the amount of the estimate, before proceeding with the request. The five days that we have to respond to the request does not include the time between when we ask for a deposit and when the requestor responds.

A requestor may request that we estimate in advance the charges for supplying the records requested. This will allow the requestor to know about any costs upfront, or give the requestor the opportunity to modify the request in an attempt to lower the estimated costs.

If a requestor owes us money from a previous FOIA request that has remained unpaid for more than 30 days, New Kent County Public Schools may require payment of the past-due bill before it will respond to a new FOIA request.

Types of Records

The following is a general description of the types of records held by New Kent County Public Schools:

- Personnel records concerning employees and officials of New Kent County Public Schools
- Scholastic records
- Business and finance records
- Operational records involving support departments such as Technology, Transportation, Facilities, Food Services, etc.
- Agendas, minutes and other records of the meetings of the School Board and committees appointed by the School Board (which are also available on the New Kent County Public Schools website at newkentschools.org)
- Records of contracts to which New Kent County Public Schools is a party

Commonly Used Exemptions

The Code of Virginia allows any public body to withhold certain records from public disclosure. New Kent County Public Schools commonly withholds records subject to the following exemptions:

- Personnel records (§ 2.2-3705.1 (1) of the Code of Virginia)
- Records subject to attorney-client privilege (§ 2.2-3705.1 (2)) or attorney work product (§ 2.2-3705.1 (3))
- Vendor proprietary information (§ 2.2-3705.1 (6))
- Records relating to the negotiation and award of a contract, prior to a contract being awarded (§ 2.2-3705.1 (12))
- Records related to critical incident response (§ 2.2-3705.2 (14))
- Scholastic records (§ 2.2-3705.4(1) and 20 U.S.C. § 1232g)

Policy Regarding the Use of Exemptions

The general policy of New Kent County Public Schools is to invoke the personnel records exemption in those instances where it applies in order to protect the privacy of employees and officials of New Kent County Public Schools.

The general policy of New Kent County Public Schools is to invoke the contract negotiations exemption whenever it applies in order to protect New Kent County Public Schools bargaining position and negotiating strategy.

The general policy of New Kent County Public Schools is to invoke the scholastic records exemption in those instances where it applies in order to protect the privacy of students and comply with other state and federal laws governing the privacy of student records.