



★ VIRGINIA ★
DEPARTMENT *of* ELECTIONS

Official ELECT Advisory

DATE: July 7, 2022

SUBJECT: Guidance Regarding Common FOIA Requests

WHY THIS IS NEEDED: FOIA requests that are the same or similar in form have been sent to multiple localities. Some GRs have requested ELECT's guidance in responding to these requests.

The following are examples of the requests:

Request 1 - I request information regarding drop boxes for the November 2020 Election in the State of Virginia under the Virginia Open Records Law Va. Code Ann. Secs. 2.2-3700 to 2.2-3714. Specifically, I request information respectfully to be provided via electronic copies of each of the following documents, files, or images, as soon as they become available.

1. Copies of any video captured during the absentee ballot voting period for the November 2020 General Election, beginning when the boxes were opened at the start of early voting through the November Election until drop box security footage stopped recording; and
2. Copies of any and all chain of custody documents that are used when collecting absentee ballots from drop boxes.
3. Provide copies of the following documents pertaining to the printing company responsible for printing the "Official paper ballots" for the November elections for 2020, 2021 and 2022 elections.
 - a. Initial request for proposal
 - b. Responding Companies
 - c. Statement of work
 - d. Paper speculations
 - e. Printing Contract/Agreements
 - f. Purchase Order
 - g. Requisition paperwork
 - h. Shipping Documents
 - i. Receiving Documents

Request 2 - Does the county have contracts with SCYTL, DemTech Electronic Pollbooks, or the iVote system? I also request copies of those contracts.

HOW THIS AFFECTS YOU:

ELECT is not the custodian of the types of records sought in the request. These records are generally under the custody of localities. If you receive a similar request to those shown above, we want to ensure you are aware of the applicability of FOIA and election law to the requested records.

ACTION ITEMS: Consider the following guidance related to the above-described requests when reviewing similar requests:

Video surveillance footage: §24.2-707.1 requires ELECT to set the standards for the establishment and operation of drop-off locations, including necessary security requirements. These standards were originally provided in the attached advisory distributed on September 4, 2020, and the updated standards may be found in 7 A.7.5.1 of the GREB Handbook "[Supplement to Chapter 7 Absentee Voting and Chapter 16 Candidate Processing](#)".

Pursuant to 7A.7.5.1 of the GREB, video surveillance footage must be retained for 30 days following the deadline to certify the election, or until the conclusion of any election contest, whichever is later; except where there is a potential violation of law where the surveillance could be used as evidence. As a reminder, you are not required to produce records you do not have under FOIA. Since the required retention period has passed, you may no longer have these records from the 2020 November General Election. If another agency is the custodian of these records, such as local law enforcement, you are only required to redirect the requester to the appropriate custodian. Any available footage should be reviewed prior to release and redacted if necessary.

Chain of custody documents: Chain of custody documents are subject to disclosure under FOIA and you may provide them to the requester. However, sensitive personal information must be redacted.

Records related to ballot printing: For requests for records relating to the printing of "official paper ballots," to the extent there are responsive records, they are generally subject to disclosure under FOIA. Sensitive personal information should be redacted. Also, keep in mind that FOIA does not require public bodies to answer questions or otherwise create new records.

Third-party vendor contracts: To the extent that contracts with third-party vendors (such as those listed above) exist, they are generally subject to FOIA. Sensitive personal information should be redacted. Additionally, please be aware that the FOIA contains various provisions regarding the redaction of proprietary information. Please consult with your legal counsel in determining information that should be redacted.

You may reach out to your ERS Representative for any additional questions. ELECT strongly recommends you consult with your local attorney for specific questions related to these issues, particularly around the redacting or withholding of records.


CONTACT: For technical matters:

Submit questions via JIRA ticket to the System Support Team

For all other matters:

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ADVISORY NUMBER:

 **COMM-309** - Guidance Regarding A Potential FOIA Request

CLOSED