



Agenda Item IX. B.

Meeting Date: August 15, 2017

Department: County Administration

Topic: **Amherst County Regulation 2-2, Public Records**

Board Action: The Board is being asked to endorse a regulation.

Attachment: Amherst County Regulation 2-2, Public Records

Summary: It is the policy of Amherst County to maintain and account for its records as required by law, and to make those records as easily accessible to the public as possible or as prudent compliance with the law allows. The attached regulation directs staff in how this is to be organized and accomplished.

Recommendation: That the Board endorse Amherst County Regulation 2-2, Public Records, under the Consent Agenda.

Public Records

1. General

- 1.1. Purpose. This regulation exists to guide staff in maintaining public records in compliance with the Virginia Freedom of Information Act, the Virginia Public Records Act and other legal requirements.
- 1.2. Scope. This regulation applies to all County employees.
- 1.3. Policy. It is the policy of Amherst County to maintain and account for its records as required by law and to make those records as easily accessible to the public as possible or as prudent compliance with the law allows.

2. Freedom of Information Act

- 2.1. Policy. It is the policy of Amherst County to respond promptly to all requests for information about the County. The County is obligated under the Virginia Freedom of Information Act (FOIA) to respond to written or spoken requests to examine public records in the County's custody made by (i) Virginia citizens who are not in jail or prison, (ii) representatives of newspapers and magazines with circulation in the Commonwealth, and (iii) representatives of radio and television stations broadcasting in or into the Commonwealth.
- 2.2. Application.
 - 2.2.1. Any document or recording of any kind, used in the transaction of public business and possessed by the County, is a public record. This includes, but is not limited to, e-mail, video tapes, computer data, handwritten notes, and draft documents.
 - 2.2.2. As a general rule, all public records are open to public inspection and copying. FOIA applies to existing public records; it does not require creation of records that do not exist.
 - 2.2.3. The request for documents need not be in writing, and is not required to cite FOIA or refer to the request as a FOIA request. The requester's motive is irrelevant, and County staff should not query a requester regarding his motive.
 - 2.2.4. FOIA does not require the County to honor "standing" requests for public records that may be created in the future; instead, the County must produce any nonexempt documents in existence at the time of the request.
 - 2.2.5. A response to the request must be made within five business days of the County's receipt of the request. "Day one" is considered the day after the request is received. The five-day period does not include weekends or holidays.
 - 2.2.6. The County may require the requester to pay any amounts owed to the public body for

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previous requests for records that remain unpaid 30 days or more after billing.

- 2.2.7. The County may assess reasonable charges for actual costs incurred in accessing, duplicating, supplying or searching for requested records, including:

- Copy fees are ten cents (\$0.10) per page, a page is a double sided copy, plus Staff Time Fee, if any.
- An electronic copy of unlimited pages, will not be charged a per page fee, but may be subject to a Staff Time Fee only, if any.
- A copy loaded onto a CD-Rom of unlimited pages, will not be charged a per page fee, but \$ 2.50 for the CD-Rom plus Staff Timed Fee, if any.
- Staff Time Fee (the hourly wages of the employee who has the skills necessary to research and prepare records for release). There will be no charge for the first half hour of staff time.
- Postage is calculated by the weight of the package to be mailed.

As a general rule, the County will not charge for requests that total less than \$50 in cost. If the cost is \$50 or more, the requester will be billed for the entire amount.

- 2.2.8. If the actual cost to the County to respond to a request is likely to exceed two hundred dollars (\$200.00), the County may, before continuing to process the request, require the requesting party to agree to payment of a deposit, not to exceed the amount of the advance determination. The deposit shall be credited toward the final cost of supplying the requested records. If the County requires the payment of a deposit, the time in which the agency must respond to the request stops running until the day the deposit is received.

- 2.2.9. The FOIA identifies more than 80 categories of documents that are excluded from its mandatory disclosure provisions. Exclusions include personnel records, medical and mental health records, library records of patrons, tax returns, and certain criminal records.

2.3. Procedure.

- 2.3.1. When a County department receives a FOIA request in writing, the request should be stamped to record the date of receipt. A copy of the request must be provided immediately to the FOIA Officer, if the FOIA Officer is not available, then provide request to the Public Information Officer (PIO). Oral, telephone, and email requests also need to be reduced to writing and forwarded to the FOIA Officer or PIO for recordkeeping purposes.

- 2.3.2. You can ask a requester to fill out a written form but you can't require a written form. A sample of such form is attached to this regulation as Exhibit 1. A telephone number is useful, but not required as part of a FOIA request.

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- 2.3.3. County staff should be alert to possible FOIA requests at public meetings. For meetings during normal business hours, the date of the meeting is the official date of receipt of the request. The official date of receipt for requests made at meetings outside of normal business hours will be the first business day following the meeting.
- 2.3.4. If you want the County Attorney's office to help you respond to a request, please forward, by e-mail, hand delivery or by facsimile (434-946-9370), a copy of the request to the County Attorney's Office on the date the request is received. The copy should be clearly marked as a FOIA request and should be transmitted under cover of a memorandum addressed to the County Attorney that:
 - 2.3.4.1. Identifies the attached request as a FOIA request, requests the assistance of the County Attorney in responding, and specifies the type of assistance required.
 - 2.3.4.2. Identifies the expected response (e.g., production in full of documents, production in part and withholding in part), and explains, if applicable, why documents should be withheld.
 - 2.3.4.3. Identifies the expected date of the response.
 - 2.3.4.4. Includes as an attachment copies of the requested documents, including those to be produced and those to be withheld.
- 2.3.5. The County department holding the majority of the public records that are the subject of a FOIA request is responsible for ensuring that a response is made within the statutory time periods.
 - 2.3.5.1. If the records are subject to public inspection, the records must be produced within five (5) working days.
 - 2.3.5.2. If some or all of the records are subject to exclusion under FOIA, the requester must be notified in writing of the reason for the exclusion within five (5) working days.
 - 2.3.5.3. If the records cannot be found or do not exist, the requester must be notified in writing within five (5) working days.
 - 2.3.5.4. If it is determined that it is not practically possible to produce the records within five (5) working days, and the County advises the requester of this in writing, the County is automatically entitled to an additional seven days in which to provide one of the four preceding responses.
 - 2.3.5.5. If the records requested are not clearly described, the requester should be contacted immediately to obtain specific detail that will aid in

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confining the search results to what the requester is seeking.

- 2.3.6. If a requester asks for charges to be estimated in advance, the County must provide the requester with an estimate of charges before sending the documents and assessing charges.
- 2.3.7. The FOIA Officer serves as the person who coordinates between different departments to fulfill a FOIA request and assures its completion. Many requests overlap departments and involve multiple types of records. The FOIA Officer will track the progress of record compilation to assure deadlines are met and the response to the requester is timely. The FOIA Officer will endeavor to stay in contact with the requester regarding the status of the County's response and otherwise serve as a liaison between the County staff and the requester.
- 2.3.8. For every FOIA request, a billing sheet will be prepared and kept on file by the FOIA Officer. The billing sheet can be found at Exhibit 2. The FOIA Officer will collect payment from the requester before releasing records.
- 2.3.9. Constitutional officers have appointed their own FOIA Officers. Therefore, when requests involve records from the constitutional offices, the County's FOIA Officer will immediately notify the constitutional officer's appointed FOIA Officer. The County's FOIA Officer will still retain management responsibility for the processing of the County's portion of the request.

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Exhibit 1.

(Date)

RE: Request for records under the Virginia Freedom of Information Act

Dear _____:

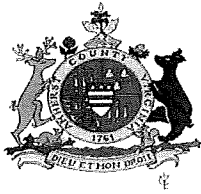
In accordance with the Virginia Freedom of Information Act (§ 2.2 -3700 et seq.) I am requesting copies of any records related to _____. I would also like to request that all charges for supplying the records I have requested be estimated in advance. I understand that if you determine that the charges are likely to exceed \$200, I am obliged to pay that amount before you continue to process my request.

If you have any questions or require additional information in order to process my request, please do not hesitate to contact me at (telephone number).

Thank you in advance for your cooperation in this matter.

Sincerely,

FOIA Billing Sheet



INVOICE NO. 201701
DATE August 23, 20__

DEPARTMENT	REQUEST #	PAYMENT TERMS	DUE DATE
		Net 30 days	

[illegible]

TOTAL

6

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- 3.1. Policy. Amherst County is committed to effectively managing its records, regardless of media type, by adhering to best practices and following a systematic and logical plan developed by the organizational units that maintain the records. The successful implementation and ongoing effectiveness of this policy is dependent upon the cooperation of each organizational unit to ensure that permanent records are preserved and nonpermanent records are destroyed in a timely and orderly manner.
- 3.2. Objectives. The policy will provide guidance for achieving the following objectives:
 - 3.2.1. Comply with the Virginia Public Records Act (VPRA), Code of Virginia § 42.1-76–§ 42.1-91, which governs the creation, maintenance, and disposition of public records;
 - 3.2.2. Develop and implement procedures, guidelines, systems, and business practices that facilitate the creation, backup, preservation, filing, storage, and disposal of records of all formats;
 - 3.2.3. Create a network of personnel throughout the County administration trained to manage records of all types;
 - 3.2.4. Reduce risks associated with unintended disclosure of sensitive information; and
 - 3.2.5. Protect essential and historical information about the County.
- 3.3. Responsibilities Under the Virginia Public Records Act (VPRA)
 - 3.3.1. Records Management Program. The County administration will implement a sound records management program in accordance with the Virginia Public Records Act (VPRA) § 42.1-76 et seq. An effective records management program will implement Library of Virginia–approved records retention and disposition schedules, document destruction of scheduled records, train employees, and create and disseminate records management procedures.
 - 3.3.2. Designated Records Officer. The County administration will designate at least one records officer to oversee the County's records management program in accordance with the Virginia Public Records Act (VPRA) § 42.1-85. The designated records officer(s) will serve as a liaison(s) to the Library of Virginia for the purposes of implementing and overseeing a records management program, and coordinating legal disposition, including destruction of obsolete records. The County administration will identify the person or persons who will serve as records officer(s) by submitting the Records Officer Designation and Responsibilities Form (RM-25) to the Library of Virginia.

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3.3.3. Delivery of Records to Successor. At the end of a records custodian's term of office, appointment, or employment, all records should be turned over to his/her successor. In the event that the County administration ceases to exist and there is no successor, all records should be transferred to the Library of Virginia per the Code of Virginia § 42.1-88.

3.4. Public Records.

3.4.1. Public Records. Public records are those that document the transaction of business by the County. The format in which the information is presented, as well as the medium on which the information is contained, have no bearing on the determination of whether the record is a public record. (Code of Virginia § 42.1-77)

3.4.2. Non-records. Public records shall not include materials made or acquired and kept solely for reference or exhibition purposes, copies of records kept only for convenience or reference, and stocks of publications. These are considered "non-records." (Code of Virginia § 42.1-77)

3.4.3. Copy of Record. The "copy of record" shall be construed to mean the "official" copy of a particular public record, with no regard as to whether it is an original, copy, or reformatted version. All work units within the County shall work with the designated records officer to establish in writing the ownership of and responsibility for copies of record.

3.4.4. Confidential Records. Public records that are restricted from disclosure by statute, court order, or legally adopted rules and regulations are considered confidential. County records that are deemed confidential are still considered to be public records even though they are not publicly available. County records management procedures will contain references to all applicable regulations and statutes affecting County records.

3.5. Roles and Responsibilities

3.5.1. Agency Head or Designee. The County Administrator or his/her designee is responsible for establishing and approving the County records management program and identifying to the Library of Virginia the person(s) to serve as the designated records officer(s).

3.5.2. Department, Division, or Section Heads. The heads of departments, agencies, and/or Constitutional officers are responsible for ensuring that procedures and programs within their areas of responsibility meet the requirements of the County's records management program relative to record identification, generation, control, maintenance, processing, storage, and disposition.

3.5.3. Agency-designated Records Officer.

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3.5.3.1. The designated records officer is responsible for the development, implementation, and ongoing coordination of the records management program to meet regulatory requirements.

3.5.3.2. Responsibilities of the records officer include:

- Developing procedures to implement the County's records management program in coordination with the Library of Virginia;
- Providing training in records management procedures and practices, including the use of appropriate forms;
- Implementing systems to meet program requirements for completeness, legibility, reproducibility, retrievability, distribution, control, security, storage, and disposition of records, regardless of format or media type;
- Advising staff members on where to access and how to use Library of Virginia–approved retention schedules;
- Coordinating and/or assisting staff in the surveying of records;
- Ensuring that essential, archival, and permanent records are identified, properly maintained, protected, and accessible for the length of time cited in an applicable retention schedule; and
- Maintaining contact and connections with County records coordinators.

3.5.4. Records Coordinators.

3.5.4.1. Records coordinators are responsible for assisting in the design, implementation, and management of the County records management program by serving as liaisons between their respective work units and the County's designated records officer.

3.5.4.2. Responsibilities of a records coordinator include:

- Being familiar with the County's internal records management policy
- Developing the unit's records management procedures and practices, consistent with this policy
- Educating staff within the organizational unit in understanding sound record management practices
- Restricting access to confidential records and information
- Coordinating the destruction of records with the records officer as provided in the applicable procedures

3.6 Records Retention and Disposition Schedules

3.6.1. Records retention and disposition schedules are created and maintained by the Library of Virginia. Retention schedules are approved sets of clearly identified, related records series that dictate the length of time a series must be kept and its required disposition.

3.6.2. All County records must be managed in accordance with the most current Library of Virginia–approved records retention and disposition schedules.

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- 3.6.3. If a new category of records is created, and no applicable series is found on an existing retention schedule, then the County's designated records officer must contact the County's assigned records analyst at the Library of Virginia so that the records may be scheduled.

3.7. Electronic Records

- 3.7.1. The County will manage its electronically stored information (ESI) consistent with the Library of Virginia–approved records retention and disposition schedules and any legal obligations that may apply. The retention schedules govern retention of electronic records in the same manner as paper records. Content, not format, drives records retention.

- 3.7.2. The destruction of electronic records must be documented through submission of the Certificate of Records Destruction (RM-3 Form).

3.8. Disposition of Public Records

There are two options for public records disposition: permanent retention or destruction. Use the records retention and disposition schedules to determine whether a series is permanent or when it should be destroyed.

3.8.1. Permanent Records.

- 3.8.1.1. A public record is considered permanent when it has been determined to have “continuing and enduring value useful to the citizens of the Commonwealth and necessary to the administrative functions of public agencies in the conduct of services and activities mandated by law.” (Code of Virginia § 42.1-77)

- 3.8.1.2. Permanent records held by the County are identified on a Library of Virginia–approved records retention and disposition schedule as having sufficient informational value to be permanently maintained by the Commonwealth. The retention schedules will identify whether a record must be maintained by the County or may be offered to the Archives at the Library of Virginia. Permanent records of the County cannot be given away, sold, or loaned to any outside person, organization, or business entity.

- 3.8.1.3. County staff or work units in possession of permanent records that may be offered to the Library of Virginia must contact the County designated records officer when the records are no longer active. The records officer will contact the Library to begin the transfer process.

- 3.8.2. Non-permanent Records. All County records that have not been deemed permanent must eventually be destroyed. The records retention and disposition schedules identify when a set of records has reached the end of its usefulness. A retention schedule may

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also state whether records must be destroyed in a certain manner. Retention schedules constitute a legal timeline for the destruction of records from which the County must not deviate unless in the midst of a legal hold.

3.9. Destruction of Public Records

3.9.0.1. All records destruction performed by the County must be done in accordance with written procedures and documented on a Certificate of Records Destruction (RM-3 Form). The RM-3 Form is required when destroying public records, in all formats, that are deemed copies of record. The original RM-3 Form must be submitted to the Library of Virginia. The County must retain a copy of the RM-3 Form for three (3) years.

3.9.0.2. County records must be destroyed in the manner identified by the appropriate series on a general or specific records retention and disposition schedule. All County records must be destroyed once the applicable retention period has expired. No records may be maintained past the end of their stated retention unless involved in current litigation, investigation, or audit. (Code of Virginia § 42.1-86.1)

3.9.0.3. County records may not be destroyed because of lack of space or funding for storage. Do not report the destruction of materials that are not public records, such as copies, personal items, and reference materials on an RM-3 Form.

3.9.1. Non-confidential Destruction. Acceptable methods of destruction for non-confidential County records include trash, recycling, or deletion of electronic records. Destruction must be done in a timely manner, construed by the Library of Virginia to be one (1) year from retention expiration.

3.9.2. Confidential Destruction. Acceptable methods of destruction for confidential County records include cross-cut shredding, pulping, incinerating, physical destruction of electronic storage media, "wiping" of electronic records with appropriate software, and degaussing of magnetic material. Destruction of confidential records containing personally identifying information must be done within six (6) months of retention expiration. (Code of Virginia § 42.1-86.1)

3.9.3. Non-record Destruction. The destruction of non-record material, confidential or otherwise, will not be reported to the Library of Virginia. If necessary, the destruction of non-records can be recorded by the County for internal purposes.

3.10. Storage, Retrieval, and Disaster Recovery

3.10.1. Storage.

3.10.1.1. All County records shall be maintained in such a way that they are identifiable and accessible for the entirety of their assigned retention period.

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3.10.1.2. All County records must be stored in areas with consistent temperatures and humidity levels. Ideal conditions are a temperature maintained in the 65–70° range and humidity maintained at 40% +/- 5%.

3.10.1.3. All County records must be:

- Protected from fire by the installation of smoke detectors, water sprinklers, and fire extinguishers
- Free of vermin and insects
- Far from water pipes

3.10.1.4. If records are of a confidential nature, they should be stored in a secure area that is locked and has controlled access for select personnel only. Strict procedures must be in place for retrieval, use, and re-filing of confidential records. Access to confidential records in electronic formats will be limited by assigning appropriate log-in credentials.

3.10.2. Retrieval. All work units must have procedures in place for the retrieval of records, their use, and re-filing.

3.10.3. Disaster Recovery. The County will have in place a Records Emergency Action Plan (REAP) that clearly communicates the procedures for records recovery in the event of a natural disaster, fire, or other catastrophic event affecting the County.

3.11 Legal Matters, Audits, and Investigations

3.11.1. Any County record that is relevant to pending or anticipated action, i.e., litigation, claim, audit, agency charge, investigation, or enforcement action, shall be retained until final resolution of the matter. In these circumstances, the work unit involved with the ongoing action will notify all other relevant organizational units and work with staff to identify and retain any records (including electronic records) and other information that could be relevant to the matter. This will include a directive that the relevant work unit's normal document destruction procedures be suspended temporarily.

3.11.2. County employees who become aware that an action, investigation, or legal proceeding has commenced or is anticipated against their department or work unit must promptly notify the manager of the affected organizational unit, as well as the agency-designated records officer, so that all records with potential relevance to the investigation or legal proceeding can be retained as necessary. After matter is closed, records should be maintained according to appropriate records series retention and disposition.

3.12. Data Privacy

All records created and maintained by the County that contain personal or other confidential information must be kept in accordance with the Government Data Collection and Dissemination Practices Act, Code of Virginia § 2.2-3800 et seq.

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4.0. Conflict of Interest Act

4.1. Financial Disclosure Documents