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Want public information? In Virginia, good luck

Statewide survey shows officials comply with Freedom of Information Act requests about half the time

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COMING TUESDAY

Computers and the Internet create new access issues.

By Pamela Stallsmith  
Richmond Times-Dispatch

If a murder, rape or other serious crime occurs in your neighborhood, good luck trying to get information about it from Virginia's police and sheriffs. Most don't consider their crime logs or incident reports to be the public's business.

If you want to know the salary of your public high school football coach, who is paid with your tax dollars, your chances are only slightly better.

If you're interested in the cleanliness of your favorite restaurant, odds

are the local health department will give you a copy of its inspection report, though it probably will take a few days and might cost a few bucks.

This summer, newspapers across Virginia dispatched people to all 135 cities and counties to see whether - and how well - local officials comply with Virginia's Freedom of Information Act. The newspaper employees, who sought records from school boards, administrator's offices, health departments and police and sheriff's departments, were able to obtain them only 58 percent of the time.

Sheriffs and police departments were least likely to provide the requested information, a crime log or crime report. Of the 84 percent that refused requests, most said the reports contain sensitive material and are not covered by the FOIA.

The law exempts some crime information but defines as public the identities of adults arrested, the date, general location and description of a crime, the identity of the investigative officer and a description of any injuries or damaged or stolen property.

However, confusion can occur because the law does allow law enforcement agencies to withhold at least some information about ongoing criminal investigations. Without the crime record results, the rate of compliance in the survey rises to 69.3 percent.

Overall, the Freedom of Information Act outlines what records and information citizens are entitled to obtain. Local officials say they try to comply with it.

"You have some rank-and-file folks who may not be familiar with FOIA and their responsibilities under it," James D. Campbell, executive director of the Virginia Association of Counties, said when told of the survey results. "That gives me concern. A citizen coming in off the street...is going to expect the front line to know what to do. That's the way a normal person would do it. But if you make the request at a higher level, you're going to get the information."

#### HOW THE SURVEY WORKED

By Will Corbin, Daily Press, and John Denniston, Richmond Times-Dispatch

Virginia's newspapers set out this summer to determine whether the state's open-government law actually works for the state's citizens.

To do that, the newspapers borrowed liberally from a similar project published earlier this year by seven newspapers in Indiana.

The Virginia project put the Freedom of Information Act to the test at the place where it counts most, at local government offices. We sent newspaper employees - reporters, news assistants, interns - to each of Virginia's 135 cities and counties to ask for information that is public under the law. The requesters fanned out beginning Monday, Aug. 10, and had put in most of their requests by the end of the week.

We sought five different records from four agencies: two from the school board and one each from the health department, the city or county



administration and the local law enforcement agency. In cases where one office covers more than one locality - some local health departments, for example, keep their records in regional offices - we asked for the document just once.

The most troubling and controversial aspect of seeking the documents, among the editors of the project and to organizations representing local governments, was how, and whether, the newspaper employees would identify themselves.

We chose to identify ourselves merely as citizens and not volunteer an affiliation with a news organization. That, we thought, would give a more accurate picture of how an ordinary citizen might be treated. We likened the employees' mission to that of a restaurant reviewer who would never announce before a meal that he was representing a newspaper.

We instructed the data gatherers to tell no lies - no false names, no cover stories. In the course of some 600 encounters, a few of the newspaper employees were identified as such, either because of familiar bylines or identifiable telephone numbers. In a few other cases, reporters uncomfortable with not identifying themselves quickly revealed their affiliation. In one case a reporter concocted a cover story to explain his interest in a particular document.

In most cases the employees answered questions about whether they were affiliated with the media with their own questions: ``Would that make a difference?'' or ``Do I have to be a reporter to get the document?''

The project included many of the state's daily newspapers. The participating papers were the Daily Press of Newport News; the Richmond Times-Dispatch; The Roanoke Times; The Virginian-Pilot of Norfolk; The Free Lance-Star of Fredericksburg; The News & Advance of Lynchburg; The Daily Progress of Charlottesville; the Danville Register & Bee; the Manassas Journal Messenger; the Potomac News of Woodbridge; The News-Virginian of Waynesboro; the Culpeper Star-Exponent; the Herald-Courier of Bristol; and The Coalfield Progress of Norton. The Associated Press did final editing and coordinated distribution of the series.

State newspapers and the AP have collaborated several times on joint projects, including series of stories on parole reform and on higher education.

Will Corbin is editor of the Daily Press and served as chairman of the FOIA project. He can be reached at (757) 247-4713 or by e-mail at wcorbin@dailypress.com. John Denniston served as project editor. He can be reached at (804) 649-6804 or jdenniston@timesdispatch.com.

Many officials, as well as secretaries, receptionists and other office workers, appeared unfamiliar with how to handle queries. Others showed an almost gleeful disregard of the law. Many of the requesters had to return to offices several times or found themselves being routed through a maze of bureaucracy, often finally being told the information was not available.

These issues and others are being considered by a legislative subcommittee studying the 30-year-old law. The seven-member panel, led by Del.



Clifton A. ``Chip'' Woodrum, D-Roanoke, is expected to recommend changes that would make the law clearer. The proposals may come during the session of the General Assembly that will start Jan. 13.

The newspaper employees, all of whom are citizens of Virginia, sought the following documents. The percentage of how often the request produced the document is noted:

- ° A daily crime log or incident report at the sheriff's or police department, 16 percent.
- ° The total compensation of a high school football coach, 47 percent.
- ° A state-mandated report of violence and crime at local schools, 72 percent.
- ° The most recent travel voucher for the county administrator or city manager, 73 percent.
- ° The health inspector's report for a local restaurant, 88 percent.

Under the FOI law, information in the documents should be available to any state resident who asks, and no reason is needed to obtain it. The newspaper employees did not identify themselves as reporters when they asked for the records because the survey was designed to see how a community resident, not a member of the media, would fare.

Colonial Heights and Dinwiddie County refused to comply with all requests or failed to meet the legal deadline of responding within five working days. In contrast, Fairfax, Fauquier, Frederick and King and Queen counties fulfilled all inquiries.

``All I can tell you is we follow the law as close as we know how, and typically five days works,'' Dinwiddie County Administrator Marty Long said of the results.

``You want to try to be as open as possible,'' said Frederick County Administrator John R. Riley Jr. ``We think it helps us to get the message out to the folks that we serve, so we in every way try to meet the intent and the spirit of the law.''

An information quid pro quo seems to exist in some localities: In exchange for documents rightfully theirs, members of the public must abide by the demands of some officials for information about who they are, where they're from and, in one case, their race. Many of the requests were greeted with suspicion, unease and confusion.

One coach in James City County called a reporter later at home to ask why she wanted the information. In Russell County, a school employee said, ``That's public information, but I don't know if we can give it out to individuals.'' Some officials told inquirers to find what they sought in local newspapers.

An Amelia County school employee said the crime and violence report was sent to the governor, who ``embargoes'' them until they can be verified.

An officer in the Northumberland County Sheriff's Department said a citizen could not see the crime log because it's a public document. Another added, ``How would you like it if somebody came to your house and asked to see your personal records?''

In Mecklenburg, a member of the Sheriff's Department expressed surprise at

the request because no member of the public had ever asked to see the records.

Toward the end of the survey, the Virginia Municipal League and the Virginia School Boards Association sent out alerts warning their members of a sudden surge in FOIA requests and urging them to comply with the law. The school boards association called it a ``campaign under way to trip local officials,'' while the municipal league told members to ``be aware of a campaign to gather examples of failures to comply with the act.''

Some agencies are prepared for document requests. At the health department in Prince William, FOI costs are posted on the bulletin board across the counter.

Shouts and slammed doors greeted some document seekers.

A sergeant in New Kent County started yelling when asked to check the crime log for Aug. 3. He said the request was not public record, ``Not in New Kent County, not today.'' He would not let the person file an FOIA request in his office, so she wrote one in her car and then handed it in. She never received the document.

When asked if state law required release of the crime log, another dispatcher said, ``Yes, but this is Bath County.''

Some officials and public employees appeared to be helpful. In Prince William, officials said the crime report wasn't available but that the police department was working on a way to compile daily crime logs. In the meanwhile, a sergeant suggested that the inquirer listen to a police scanner to find out about crime in the county.

Although about half the school divisions eventually released the football coach's salaries, many said they felt uneasy doing so.

Many divisions provided ranges, not the specific salary as requested.

In Albemarle County, a member of the superintendent's office said a specific employee's salary was confidential and could be released only with the employee's permission.

Some typical answers recordkeepers gave when asked for public documents:

1. I can't give it to you without approval from (the county attorney, the city clerk, the sheriff, a judge, etc.).
2. Why do you want it? We only give out that information if there's a good reason.
3. That information can't be released unless the person it's about gives his permission.
4. Unless you're (a lawyer, a journalist, an insurance agent), I can't give it to you.
5. The information is in a computer, and we can't access it.



6. The information has been (shredded, filed, sent to Richmond). We don't have it anymore.
7. We have so many records, we couldn't possibly find the one you're looking for.
8. No one has ever asked for that before.
9. Fill out a form. We'll get back to you in a few days.
10. I just don't feel comfortable giving out that kind of information.

Some officials were defensive.

In Greenville County, Superintendent Philip Worrell wanted to know why the person wanted the information. When asked how to get the documents, he said the person needed a lawyer or to read the code, but it wasn't his job to tell her.

He also asked what made her think she was entitled to this information. She replied she thought it was public, and then he said she needed a written request.

Brunswick County Superintendent Dale W. Baird said coaching was a separate contract from the teaching salary and was exempt from the request since it was under \$10,000. Therefore, he said, he legally could not give it, though he did provide the coach's teaching salary. The FOI law says that for public employees who earn more than \$10,000 a year, salary, allowances and reimbursement of expenses are to be considered inclusive and are public information.

An employee in Campbell County initially said the superintendent doesn't even release that information to the Board of Supervisors during the budget process. Later, an assistant superintendent said to file an FOIA request and the person received the pay scale, but not the exact figure, within five days.

Many officials found the request for travel vouchers strange. Some city managers and county administrators explained they didn't travel much and didn't have reports.

The request angered a secretary in Isle of Wight County. She wanted to know why the person wanted the information. When told she was a concerned citizen, the secretary replied, "I am not going to give it to you."

Asked whether it was a public document, she said, "It might be, but I am not going to give it to you." She began shouting. The county administrator called the requester at home twice, but they never succeeded in speaking to each other. The requester never received the report.

In King George, County Administrator Gayle Clayton wondered about the request and repeatedly asked why someone would want it. Asked if the reason would matter, she replied, "No, it's public information, but I don't know why you'd want that." The document was provided.

Different fees appear to exist for different uses. In the city of Roanoke, a secretary in the Health Department said the restaurant

inspection records would cost \$25 if used for legal purposes.

The Louisa County Health Department had the records, but sent the citizen to the district's main office in Charlottesville, 30 miles west, to talk to the person with the authority to release them.

Madison County referred the citizen to neighboring Orange County. A nurse at the Madison County Health Department said the office doesn't give out that information and wanted to know if something had happened to the person at the restaurant.

When a Russell County health inspector asked an inquirer why she wanted the report, she said she was a concerned citizen. He asked, ``What are you concerned about?''

Pamela Stallsmith may be reached at (804) 649-6746 or at [pstallsmith@timesdispatch.com](mailto:pstallsmith@timesdispatch.com). Project editor John Denniston contributed to this report. He may be reached at (804) 649-6804 or [jdenniston@timesdispatch.com](mailto:jdenniston@timesdispatch.com)