FREEDOM OF INFORMATION ACT (FOIA)

POLICY NUMBER: CEMS-028

PURPOSE:

The City of Winchester is committed to openness and transparency in government. The Virginia Freedom of Information Act (FOIA) (Code of Virginia § 2.2-3700 et seq.) provides the public and the media with access to public records and meetings. Because many City records may be subject to FOIA, all employees must understand and follow this policy.

POLICY:

1. Public Records that are generally available under FOIA include, but are not limited to:
   - City Council meeting minutes and records
   - City ordinances, resolutions, and contracts
   - Financial records, including budgets, invoices, revenues, expenditures, and the Capital Improvement Program
   - Names, dates of employment, and salaries of public employees earning more than $10,000 annually
   - Factual information contained in reports, memoranda, letters, and emails that are not related to personnel matters or litigation
   - Records of formal actions taken by City Council
   - Completed project files

   Certain records may be exempt from disclosure under Virginia law. Questions about whether a record is exempt should be directed to the City's FOIA Officer.

   The City is not required to create a new record or provide records in a format it does not normally use. However, creating reports from existing databases or converting records from one available format to another is not considered creating a new record.

2. FOIA Requests: A FOIA request may be made verbally or in writing. A requester is not required to reference FOIA or cite the law for a request to be considered a FOIA request.

   Any employee who receives a request for public records must treat it as a potential FOIA request and immediately forward it to the City's FOIA Officer.

   Employees who are uncertain whether a request falls under FOIA must consult their supervisor or the FOIA Officer without delay.

3. Employee Responsibilities:
   - Promptly forward all requests for public records to the FOIA Officer
   - Help locate records when requested
   - Preserve records related to a pending FOIA requests
   - Meet deadlines established by the FOIA Officer
   - Do not respond directly to a FOIA request unless authorized
   - Do not promise records will be released or withheld
   - Do not delay forwarding a FOIA request

The City is generally required to respond to FOIA requests within five business days. Timely action by employees is necessary to ensure compliance with the law.

4. Violations: Employees or officials who knowingly violate FOIA may be personally liable under Virginia law.

   A court may impose:
   - A civil penalty of up to $1,000 for a first violation
   - A civil penalty of up to $2,500 for a second or subsequent violation

   These penalties are the responsibility of the individual and cannot be paid with public funds. In addition, the City may be required to pay the requester's attorney fees and court costs.

5. Fees and Cost Recovery: Virginia law allows the City to recover the actual costs incurred in responding to FOIA requests. The purpose of these charges is to reimburse the City for expenses associated with fulfilling requests and not to generate revenue. The City will work cooperatively with requesters whenever practical to clarify or narrow requests and reduce costs. The City may charge for:

   Copy Charges:
   - Letter-size (8.5" x 11"): $0.10 per page
   - Legal-size (8.5" x 14"): $0.20 per page
   - Tabloid-size (11" x 17"): $0.20 per page for black and white copies and $0.40 per page for color copies
   - 24" x 36" plotter copies:
     - $6.00 black and white
     - $15.00 color
   - 36" x 48" plotter copies:
     - $8.00 black and white
     - $30.00 color
   - USB drive: $20.00 each

   Staff Time:
   - The City may charge for staff time spent searching for, reviewing, redacting, preparing, and copying records.
   - The hourly rate used for estimates and billing must be based on the actual hourly wage of the lowest-paid qualified employee available to perform the work. For estimating purposes, the City will use an average hourly rate as established by the City Manager, or designee, and will be posted on the City’s website.

   Mailing Costs:
   - Actual mailing costs may be charged when records are mailed to a requester.

   Fee Waivers:
   - Requests requiring less than 15 minutes of staff time to process; or
   - Requests with a total cost of $25 or less
   - The waiver applies to one request from the same person or organization per month
   - Former foster children who have aged out of foster care
   - Foster children who have not achieved permanency

Cost Estimates: Prior to conducting a search for records, the City notify the requester in writing that the City may make reasonable charges not to exceed its actual cost incurred in accessing, duplicating, supplying, or searching for requested records and inquire of the requester whether he/she would like to request a cost estimate in advance of the supplying of the requested records. The City will provide the requester with a cost estimate if requested. The period within which the City shall respond will be tolled for the amount of time that elapses between notice of the cost estimate and the response of the requester. If the City receives no response from the requester within 30 days of sending the cost estimate, the request shall be deemed to be withdrawn. Any costs incurred by the City in estimating the cost of supplying the requested records shall be applied toward the overall charges to be paid by the requester for the supplying of such requested records. For requests estimated at more than $200, staff will:

1. Prepare a cost estimate
2. Provide the estimate before work begins
3. Allow the requester to narrow the request.
4. Require advance payment before work continues
5. Treat the request as withdrawn if no response is received within 30 days
6. Resume processing the request after payment is received
7. Notify the requester promptyly if actual costs are expected to exceed the estimate

The time between providing the estimate and receiving the requester's response will not count toward the City's FOIA response deadline, as permitted by law.

The City must maintain records of the actual costs incurred in responding to each request. Any deposit paid by the requester must be credited toward the final cost. Upon completion of the request, the City must provide either:

- A refund for any overpayment; or
- An invoice for any remaining balance due
- Unpaid Invoices

If a requester has an unpaid FOIA invoice that is more than 30 days past due, the City may require payment of all outstanding balances before processing any new FOIA requests from that requester.