

 <b>HAMPTON ROADS TRANSIT</b>	<b>NUMBER</b> <b>MC-103</b>	<b>EFF. DATE</b> <b>8/25/2015</b>
	<b>POLICY AND PROCEDURES MANUAL</b>	
<b>RESPONSIBLE DEPARTMENT</b> <b>Marketing and Communications</b>	<b>SUPERSEDED</b> <b>N/A</b>	
<b>TITLE</b> <b>Freedom of Information Act Policy &amp; Procedures</b>		<b>KEY SUBJECT:</b> <b>Freedom of Information Act</b>
<b>APPLIES TO</b> <b>All Hampton Roads Transit Employees</b>	<b>APPROVAL(S)</b> <b>Harrell/Cavasos/Holden</b>	

## Marketing and Communications

### Freedom of Information Act Policy & Procedures

<b>SOURCE / NETWORK PATH</b> <b>J:\Marketing Shared Photos\Marketing and Communications Policies</b>
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TITLE <b>Freedom of Information Act Policy &amp; Procedures</b>	NUMBER <b>MC-103</b>	DATE <b>8-25-2015</b>	Page <b>2</b>
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### **Purpose**

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.

The purpose 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.

### **Definition**

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 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 and may only be withheld if a specific, statutory exemption applies.

### **Policy Statement**

It is the policy of Hampton Roads Transit to embrace the spirit of the Virginia Freedom of Information Act to grant access to public records held by the agency to all citizens.

### **Procedures**

Citizens have the right to request to inspect copy or receive copies of public records, or both. Except as otherwise specifically provided by law, all public records shall be open to inspection and copying by any citizen of the Commonwealth during the regular office hours. Access to such records shall not be denied to citizens of the Commonwealth, representatives of newspapers and magazines with circulation in the Commonwealth, and representatives of radio and television stations broadcasting in or into the Commonwealth.

1. The custodian may require the requester to provide his name and legal address. The custodian of such records shall take all necessary precautions for their preservation and safekeeping. They have the right to request that any charges for the requested records be estimated in advance.
2. Requests for information under FOIA are to be made to Tom Holden, 509 E. 18<sup>th</sup> Street, Norfolk, VA, 23504, or [tholden@hrtransit.org](mailto:tholden@hrtransit.org).
3. Citizens may request records by U.S. Mail, fax, e-mail, in person, or over the phone.
4. FOIA does not require that a request be in writing, nor does an individual need to specifically state that a records request under FOIA. From a practical perspective, it is helpful that requests be placed in writing. This allows citizens to create a record of the request. It also gives HRT a clear statement of what records are being sought, so that there is no misunderstanding over a verbal request. HRT cannot refuse to respond to a FOIA request if it is not in writing.

TITLE <b>Freedom of Information Act Policy &amp; Procedures</b>	NUMBER <b>MC-103</b>	DATE <b>8-25-2015</b>	Page <b>3</b>
--	-------------------------	--------------------------	------------------

5. Citizens must identify the records being sought with "reasonable specificity." This is a common-sense standard. It does not refer to or limit the volume or number of records being sought; instead, it requires that the public be specific enough so that HRT can identify and locate the records.
6. All requests must concern existing records or documents. FOIA grants a right to inspect or copy records; it does not apply to a situation where individuals are asking general questions about the work of HRT, nor does it require HRT to create a record that does not exist. HRT, however, may abstract or summarize information under such terms and conditions as agreed between the requester and HRT.
7. The public may choose to receive electronic records in any format used by HRT in the regular course of business.
8. HRT regularly maintains video recordings of activities in and around light rail, bus, ferry and building operations on HRT property. The public has a right to view these recordings. HRT records and maintains the video requested, however, on Safety Vision Software. This proprietary software preserves the integrity of the electronic data and video. HRT will make this video available for your inspection at HRT facilities upon request. Please contact HRT to schedule a time to view the requested video.
9. Making a FOIA request is not an adversarial process, but HRT may need to discuss a request with a citizen to ensure that it understands what records are being sought.

### **Costs**

On occasion, individuals may have to pay for the records sought from HRT. FOIA allows HRT to charge for the actual costs of responding to FOIA requests. This would include items such as staff time spent searching for the requested records, copying costs or any other costs directly related to supplying the requested records. It cannot include general overhead costs or costs relative to alternative formatting for persons with disabilities.

- If HRT estimates that it will cost more than \$200 to respond to a request, HRT may require an individual to pay a deposit, not to exceed the amount of the estimate, before proceeding. The five days that HRT has to respond to a request does not include the time between when HRT asks for a deposit and when it receives a response.
- An individual may request that we estimate in advance the charges for supplying the records. This will allow an individual to know about any costs upfront, or give the opportunity to modify a request in an attempt to lower the estimated costs.
- HRT may impose reasonable charges not to exceed the actual cost incurred in accessing, duplicating, supplying, or searching for the requested records. But HRT may not impose any extraneous, intermediary or surplus fees or expenses to recoup the general costs associated with creating or maintaining records or transacting its general business.

TITLE <b>Freedom of Information Act Policy &amp; Procedures</b>	NUMBER <b>MC-103</b>	DATE <b>8-25-2015</b>	Page <b>4</b>
--	-------------------------	--------------------------	------------------

- Any duplicating fee charged by HRT shall not exceed the actual cost of duplication
- If an individual owes HRT money from a previous FOIA request that has remained unpaid for more than 30 days, HRT may require payment of the past-due bill before responding to the latest FOIA.

### **Exclusions**

The following records are excluded from the provisions release under the Virginia Freedom of Information Act, but may be disclosed by the custodian in his/her discretion, except where such disclosure is prohibited by law:

1. Personnel records containing information concerning identifiable individuals, except that access shall not be denied to the person who is the subject thereof.
2. Any person who is the subject of any personnel record and who is 18 years of age or older may waive, in writing, the protections afforded by this subdivision. If the protections are so waived, the public body shall open such records for inspection and copying.
3. Written advice of legal counsel to state, regional or local public bodies or the officers or employees of such public bodies, and any other records protected by the attorney-client privilege.
4. Legal memoranda and other work product compiled specifically for use in litigation or for use in an active administrative investigation concerning a matter that is properly the subject of a closed meeting under § 2.2-3711.4.
5. Any test or examination used, administered or prepared by any public body for purposes of evaluation of (i) any student or any student's performance, (ii) any employee or employment seeker's qualifications or aptitude for employment, retention, or promotion, or (iii) qualifications for any license or certificate issued by a public body. As used in this subdivision, "test or examination" shall include (a) any scoring key for any such test or examination and (b) any other document that would jeopardize the security of the test or examination. Nothing contained in this subdivision shall prohibit the release of test scores or results as provided by law, or limit access to individual records as provided by law. However, the subject of such employment tests shall be entitled to review and inspect all records relative to his performance on such employment tests.
6. Records recorded in or compiled exclusively for use in closed meetings lawfully held pursuant to § 2.2-3711. However, no record that is otherwise open to inspection under this chapter shall be deemed exempt by virtue of the fact that it has been reviewed or discussed in a closed meeting.
7. Vendor proprietary information software that may be in the official records of a public body. For the purpose of this subdivision, "vendor proprietary software" means computer programs acquired from a vendor for purposes of processing data for agencies or political subdivisions of the Commonwealth. Computer

TITLE <b>Freedom of Information Act Policy &amp; Procedures</b>	NUMBER <b>MC-103</b>	DATE <b>8-25-2015</b>	Page <b>5</b>
--	-------------------------	--------------------------	------------------

software developed by or for a state agency, state-supported institution of higher education or political subdivision of the Commonwealth.

8. Appraisals and cost estimates of real property subject to a proposed purchase, sale or lease, prior to the completion of such purchase, sale or lease.
9. Records concerning reserves established in specific claims administered by the Department of the Treasury through its Division of Risk Management as provided in Article 5 (§ 2.2-1832 et seq.) of Chapter 18 of this title, or by any county, city, or town; and investigative notes, correspondence and information furnished in confidence with respect to an investigation of a claim or a potential claim against a public body's insurance policy or self-insurance plan. However, nothing in this subdivision shall prohibit the disclosure of information taken from inactive reports upon expiration of the period of limitations for the filing of a civil suit.
10. Personal information, as defined in § 2.2-3801, including electronic mail addresses, furnished to a public body for the purpose of receiving electronic mail from the public body, provided that the electronic mail recipient has requested that the public body not disclose such information. However, access shall not be denied to the person who is the subject of the record.
11. Communications and materials required to be kept confidential pursuant to § 2.2-4119 of the Virginia Administrative Dispute Resolution Act (§ 2.2-4115 et seq.).
12. Records relating to the negotiation and award of a specific contract where competition or bargaining is involved and where the release of such records would adversely affect the bargaining position or negotiating strategy of the public body. Such records shall not be withheld after the public body has made a decision to award or not to award the contract. In the case of procurement transactions conducted pursuant to the Virginia Public Procurement Act (§ 2.2-4300 et seq.), the provisions of this subdivision shall not apply, and any release of records relating to such transactions shall be governed by the Virginia Public Procurement Act.
13. Those portions of records that contain account numbers or routing information for any credit card, debit card, or other account with a financial institution of any person or public body. However, access shall not be denied to the person who is the subject of the record. For the purposes of this subdivision, "financial institution" means any organization authorized to do business under state or federal laws relating to financial institutions, including, without limitation, banks and trust companies, savings banks, savings and loan companies or associations, and credit unions.
14. Any documents, including correspondence, prepared by or for the President and/or the Chief Executive Officer of HRT for his/her personal or deliberative use in accordance with Virginia Code sec. 2.2-3705.7

**Exclusions relating to safety and security**

The following records are excluded from the provisions of the FOIA law but may be disclosed by the custodian in his/her discretion, except where such disclosure is prohibited by law:

TITLE <b>Freedom of Information Act Policy &amp; Procedures</b>	NUMBER <b>MC-103</b>	DATE <b>8-25-2015</b>	Page <b>6</b>
--	-------------------------	--------------------------	------------------

1. Information relating to the safety or environmental soundness of any building shall not be exempt from disclosure. Those portions of engineering and construction drawings and plans that reveal critical structural components, security equipment and systems, ventilation systems, fire protection equipment, mandatory building emergency equipment or systems, elevators, electrical systems, telecommunications equipment and systems, and other utility equipment and systems submitted for the purpose of complying with the Uniform Statewide Building Code (§ 36-97 et seq.) or the Statewide Fire Prevention Code (§ 27-94 et seq.), the disclosure of which would jeopardize the safety or security of HRT offices or its occupants in the event of terrorism or other threat to public safety, to the extent that the owner or lessee of HRT property, equipment or system in writing (i) invokes the protections of this paragraph; (ii) identifies the drawings, plans, or other materials to be protected; and (iii) states the reasons why protection is necessary.
2. Nothing in this subdivision shall prevent the disclosure of information relating to any building in connection with an inquiry into the performance of that building after it has been subjected to fire, explosion, natural disaster or other catastrophic event.
3. Documentation or other information that describes the design, function, operation or access control features of any security system, whether manual or automated, which is used to control access to, or use of any automated data processing or telecommunications system.
4. Plans and information to prevent or respond to terrorist activity, the disclosure of which would jeopardize the safety of any person, including (i) critical infrastructure sector or structural components; (ii) vulnerability assessments, operational, procedural, transportation, and tactical planning or training manuals, and staff meeting minutes or other records; and (iii) engineering or architectural records, or records containing information derived from such records, to the extent such records reveal the location or operation of security equipment and systems, elevators, ventilation, fire protection, emergency, electrical, telecommunications or utility equipment and systems of any public building, structure or information storage facility, or telecommunications or utility equipment or systems.
5. Information that would disclose the security aspects of a system safety program plan adopted pursuant to 49 C.F.R. Part 659 by the Commonwealth's designated Rail Fixed Guideway Systems Safety Oversight agency; and information in the possession of such agency, the release of which would jeopardize the success of an ongoing investigation of a rail accident or other incident threatening railway safety.
6. Engineering and architectural drawings, operational, procedural, tactical planning or training manuals, or staff meeting minutes or other records, the disclosure of which would reveal surveillance techniques, personnel deployments, alarm or security systems or technologies, or operational and transportation plans or protocols, to the extent such disclosure would jeopardize the security of any

<b>TITLE</b> <b>Freedom of Information Act Policy &amp; Procedures</b>	<b>NUMBER</b> <b>MC-103</b>	<b>DATE</b> <b>8-25-2015</b>	<b>Page</b> <b>7</b>
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governmental facility, building or structure or the safety of persons using such facility, building or structure.

7. Nothing in this subdivision shall be construed to prohibit the Auditor of Public Accounts or the Joint 13 Legislative Audit and Review Commission from reporting internal control deficiencies discovered during the course of an audit.

TITLE Freedom of Information Act Policy & Procedures	NUMBER MC-103	DATE 8-25-2015	Page 8
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### APPROVALS

The individuals below, submitting and signing this Freedom of Information Act Policy and Procedures Manual verify that it was prepared in accordance with the requirements set forth by the Virginia Freedom of Information Act § 2.2-3700 et seq. of the Code of Virginia; that they are authorized representatives of the Transportation District Commission of Hampton Roads; that their signatures attest that all items and conditions contained in this manual are understood, accepted and approved; and that they are committed to following the policies and procedures contained herein.

**APPROVED BY:**

  
 \_\_\_\_\_  
 William E. Harrell, President/CEO, Hampton Roads Transit

8/28/15  
 \_\_\_\_\_  
 Date

**RECOMMENDED BY:**

  
 \_\_\_\_\_  
 Gene Cavazos, Director of Marketing and Communications,  
 Hampton Roads Transit

8/25/15  
 \_\_\_\_\_  
 Date

  
 \_\_\_\_\_  
 Tom Holden, Media Relations Specialist, Hampton Roads Transit

8/26/15  
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 Date



TITLE <b>Freedom of Information Act Policy &amp; Procedures</b>	NUMBER <b>MC-103</b>	DATE <b>8-25-2015</b>	Page <b>9</b>
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### Revision/Review History

REVISION	DATE	SECTION	DESCRIPTION	AUTHORITY
0	8/25/2015		Original	Cavazos

SOURCE / NETWORK PATH J:\Marketing Shared Photos\Marketing and Communications Policies
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