

## **Virginia Freedom of Information Act (“VFOIA”) Complaint Template**

This template is for student journalists seeking to compel a Virginia public body to turn over records requested under the Virginia Freedom of Information Act. The template provides a general outline for petitions for mandamus or injunctive relief filed in circuit court, with areas for editing in brackets. The primary remedies for an aggrieved party under the VFOIA are a writ of mandamus or an injunction. Va. Code Ann. § 2.2-3713(A). While there is no provision for an administrative appeal, informal appeals to a public body’s chief executive officer or attorney are encouraged.

VIRGINIA:

IN THE CIRCUIT COURT OF [COUNTY NAME]

[ PLAINTIFF’S NAME,]	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. [CASE NUMBER]
	)	
[VIRGINIA PUBLIC BODY,] and	)	
[NAME OF ANY OFFICER, EMPLOYEE,	)	
OR MEMBER OF THE PUBLIC BODY,]	)	
Defendant[s].	)	

**PETITION FOR INJUNCTION OR WRIT OF MANDAMUS**

Preliminary Statement

This is a lawsuit seeking to enforce the right to inspect public records pursuant to the Virginia Freedom of Information Act (“VFOIA”), Va. Code Ann. § 2.2-3700 *et seq.* As required by the VFOIA , Plaintiff, [Student’s Name], a Virginia student journalist, requested public records from Defendant, [Virginia Agency], relevant to [description of issue]. [Describe issue’s importance]. Through [his/her] reporting, [Mr./Ms.] [Student’s last name] seeks to inform the public about [description of events that caused the issue]. Pursuant to Virginia Code § 2.2-3704, [Mr./Ms.] [Student’s Last Name] requested [identify specific items]. Regrettably, Defendant[s] has/have met [Mr./Ms.] [Student’s Last Name] requests for records with obstruction and delay. [#] months have passed since [Mr./Ms.] [Student’s Last Name] first requested the public records and Defendant continues without lawful justification to withhold such records that are subject to timely production under the VFOIA. As such, Defendant has violated the VFOIA and this Court’s intervention is required. [Because the individual Defendant’s violations is willful and knowing, the Court should also enter a civil penalty against the individual Defendant.]

## **JURISDICTION AND VENUE**

1. This Court has jurisdiction under Virginia Code § 17.1-513 and the VFOIA, Virginia Code § 2.2-3713(A). Pursuant to Virginia Code § 2.2-3713(A), venue lies in [County name] because the [Virginia Agency] is a [choose *one* of the following:] [local public body elected or appointed to serve in [County] and Plaintiff's rights and privileges were denied in such County] *or* [regional public body whose principal business office is located in [County]] *or* [board, bureau, commission, authority, district, institution, or agency of the state government and the aggrieved Plaintiff is a resident of [County]].

## **PARTIES**

2. Plaintiff, [Student Name], is a resident of [Name] County, Virginia. [Student Last Name] is a student journalist, and was [title] of the student newspaper at [college or university], [newspaper name], during most of the events at issue in this lawsuit. Plaintiff is a resident of [Name] County [*and/or*] Plaintiff's rights and privileges were denied in [Name] County.

3. Defendant [agency] is the [description of agency's role, including why it maintains the relevant data]. The [Virginia Agency] is the legal custodian of the requested public records at issue in this lawsuit. Defendant [maintains its principal business office at [address]] OR [is a local public body elected/appointed to serve in [Name] County].

4. [if individual officer, employee, or member of agency is sued] Defendant [individual's name] is the [description of individual's status as an officer, employee, or member of the agency] and is responsible for the [Virginia Agency's name]'s violation of VFOIA by [general description of the individual's role in the agency's conduct at issue]. Defendant is a legal resident of [Name] County, Virginia, and is amenable to service of process in [Name] County.

## FACTUAL ALLEGATIONS

5. Defendant [Virginia Agency] is a public body of the Commonwealth of Virginia, and is therefore governed by the disclosure requirements of the Virginia Freedom of Information Act, Va. Code. Ann. § 2.2-3700 *et seq.*

6. [Name] is the [title, such as officer title, employee title, or member of agency] at [Virginia Agency]. As the custodian of the public records for Defendant, [Agency employee last name] is designated to receive and respond to public record requests on behalf of Defendant, pursuant to the VFOIA, Va. Code Ann. § 2.2-3704.

7. On [date], Plaintiff submitted a written request to [Agency employee name], requesting disclosure of certain public records concerning [description of issue].

8. Plaintiff's request identified the requested public records with reasonable specificity, pursuant to Virginia Code § 2.2-3704(B). (A copy of Plaintiff's request is attached to this Complaint as Attachment [letter]).

9. Plaintiff received a response from [Agency employee last name] by [electronic] mail dated [date] stating that the public records [would not or would only partially] be produced because certain records were exempt from production, pursuant to Virginia Code § 2.2-3704(B)(1) – (4). [List which exemptions claimed under Va. Code Ann. § 2.2-3704(B)(1) – (4) by Virginia Agency]. OR [Defendant's failure to respond to Plaintiff's request for the records within five working days of receiving the request constitutes a denial of the request under Va. Code Ann. § 2.2-3704(B) and (E).]

[Use additional space to detail any further communication on this issue in chronological order. ]

10. [If records were partially produced] It was not until [date], nearly [#] months after Plaintiff's initial request for public records that Defendant provided the first batch of documents.

Defendant's initial production represented only a partial response to the [#] enumerated requests in Plaintiff's original VFOIA request letter.

[Note any further production of documents on later dates.]

11. When Plaintiff received the first batch of requested public records, Plaintiff sent [#] follow-up emails to Defendant asking when [he/she] could expect to receive the remaining requested records, but [he/she] received no response.

12. [If Plaintiff visited Virginia Agency] Plaintiff visited Defendant during regular office hours on [date] seeking access to the remaining requested public records, but was told that no additional requested documents would be made available.

13. Defendant's production remains incomplete and does not encompass all non-exempt records in Defendant's custody or control that are subject to the VFOIA. In particular, Plaintiff knows, or believes based on the best available information, that Defendant possesses documents responsive to items [#]'s from the original request letter] that they have yet to produce.

14. In general, Defendant [and any individual Defendants] failed to follow the procedures of the VFOIA and did not make reasonable efforts to reach an agreement with Plaintiff concerning the production of the records requested.

15. The above-alleged facts are supported by the attached affidavit of Plaintiff, showing good cause for this Complaint as required by Va. Code Ann. § 2.2-3713(A).

### **COUNT I**

(Violation of the Virginia Freedom of Information Act – [Virginia Agency])

16. Plaintiff incorporates paragraphs 1-15 herein by reference.

17. The Virginia Freedom of Information Act, Va. Code Ann. § 2.2-3700(B), “ensures the people of the Commonwealth ready access to public records in the custody of a public body or its officers and employees . . . .”

18. The VFOIA, Va. Code Ann. § 2.2-3704(A), provides that “all public records shall be open to inspection and copying by any citizens of the Commonwealth during the regular office hours of the custodian of such records,” unless such public record is subject to a statutory exemption.

19. Under the VFOIA, the custodian of the requested public records must respond to the request “within five working days of receiving a request” by providing the requested records or by detailing in writing why such records are exempt from public disclosure or otherwise are not being provided within the five-day period. Va. Code Ann. § 2.2-3704(B).

20. [Describe the delay in receiving a denial or in receiving access to documents if applicable. For example, Defendant did not produce the first document responsive to Plaintiff’s [date] request until [#] days from the date of the request.]

21. The VFOIA authorizes a public body to “make reasonable charges not to exceed its actual cost incurred in accessing, duplicating, supplying, or searching for the requested records.” Va. Code Ann. § 2.2-3704(F). The VFOIA applies this same requirement to public records maintained in an electronic data processing system, computer database, or any other structured collection of data. Va. Code Ann. § 2.2-3704(G).

22. [Describe how the agency charged more than the actual costs of producing the requested documents. For example:] Defendant charged Plaintiff [amount] to produce [his/her] requested documents. The actual costs associated with producing such documents is approximately [amount].

23. In refusing to timely produce data, Defendant relied on [stated exemption(s)]. This claimed exemption, however, is not applicable to the requested documents because [reason; see if the Defendant’s position fails to meet the precise exclusions and exemptions at §§ 2.2-3703, 2.2-3704(B)(1)-(3), and 2.2-3705.1 to 3705.7].

24. Defendant violated the VFOIA by denying Plaintiff access to the requested records despite the records not being subject to any statutory exclusions or exemptions, in violation of Va. Code Ann. § 2.2-3714. [If not already discussed in the prior paragraph, state generally that the exclusions and exemptions at §§ 2.2-3703, 2.2-3704(B)(1)-(3), and 2.2-3705.1 to 3705.7 are inapplicable to the facts here.]

25. By its refusal to timely comply with the VFOIA, by its reliance on fictitious authorizations to withhold documents, by its assessment of charges beyond actual costs, by its continuing refusal to provide documents responsive to [#] of Plaintiff’s [#] requests, and by its production of only a partial subset of the documents in their custody responsive to the remaining [#] requests, Defendant has violated the Virginia Freedom of Information Act, Va. Code Ann. § 2.2-3700 *et seq.*, and thereby caused Plaintiff to obtain legal counsel to obtain the desired relief.

26. [If Virginia Agency failed to respond] The VFOIA provides that a “failure to respond to a request for records shall be deemed a denial of the request and shall constitute a violation .” Va. Code Ann. § 2.2-3704(E).

27. [If Virginia Agency failed to respond within five working days of receiving the Student’s request] By failing to respond to Plaintiff’s requests for public records within five working days of receiving the request, Defendant violated the VFOIA. Va. Code Ann. § 2.2-3704(B) and (E).

28. [If there was any other failure by the agency to follow the VFOIA's procedures]  
The failure of Defendant to follow the procedures established by VFOIA is presumed to be a violation of VFOIA. Va. Code Ann. § 2.2-3713(E).

### **COUNT II**

(Violation of the Virginia Freedom of Information Act -- [list the name of any officer, employee, or member of the Virginia Agency in his/her individual capacity])

29. Plaintiff incorporates paragraphs # 1 - 28 herein by reference.

30. [Using the same format as above, describe how the individual officer, employee, or member of the agency violated the VFOIA.]

31. By his/her refusal to timely comply with the VFOIA, by his/her reliance on fictitious authorizations to withhold documents, by his/her assessment of charges beyond actual costs, by his/her continuing refusal to provide documents responsive to [#] of Plaintiff's [#] requests, and by his/her production of only a partial subset of the documents in his/her custody responsive to the remaining [#] requests, Defendant has violated the Virginia Freedom of Information Act, Va. Code Ann. § 2.2-3700 *et seq.*, and thereby caused Plaintiff to obtain legal counsel to obtain the desired relief. In addition, Defendant's violation of the VFOIA was willfully and knowingly made. [Add any details that would support an inference that the individual Defendants knew they were violating the statute.]

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that this Court:

1. Assume jurisdiction over this action;



2. Expedite these proceedings and hear the matter within seven days pursuant to Va. Code Ann. § 2.2-3713(C);

3. Enter an injunction directing Defendant to comply fully and without further delay with the Virginia Freedom of Information Act and to furnish Plaintiff all non-exempt public documents meeting the description in [his/her] requests;

4. Enter an injunction directing that, because Defendant's delay in complying with its obligations under the VFOIA was without substantial justification, Defendant must waive all fees associated with Plaintiff's requests;

5. Issue a writ of mandamus to compel Defendant to perform the ministerial duty imposed upon it by VFOIA to produce the requested records;

6. Enter judgment in Plaintiff's favor for nominal damages;

7. Award Plaintiff reasonable costs and attorneys' fees, as authorized by Va. Code Ann. § 2.2-3713(D);

8. Enter a civil penalty against the individual Defendant[s] for willfully and knowingly violating the VFOIA, pursuant to Va. Code Ann. § 2.2-3714; and

9. Order such additional relief as the Court may deem just and proper.

DATED this the \_\_\_\_ day of [month], [year].

Respectfully submitted,

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Plaintiff's Lawyer, Esq.  
(Virginia Bar No. [#])

Lawyer's Firm  
Street Address  
City, State Zip  
Phone  
Email

[Attach affidavit required by Va. Code Ann. § 2.2-3713(A). Attach as exhibits to that affidavit any key documents, such as the Student's written request for records, and the agency's response or subsequent communications.]