

COUNTY OF YORK

MEMORANDUM

DATE: January 13, 2023

TO: York County Board of Supervisors

FROM: Neil A. Morgan, County Administrator 

SUBJECT: Revision of the Freedom of Information Act (FOIA) Practices

Subsequent to the release of the attached FOIA report, the FOIA Committee, which is comprised of staff from Finance, Information Technology (IT), Public Affairs (PA) and County Administration, has made multiple recommendations to change the County's FOIA practices. The following is a summary of those suggested practice changes:

- New FOIA software has been identified and is in the process of being implemented. The software will allow FOIA requests and staff responses to be transmitted directly through the County's website. With the exception of email, all FOIA requests should be posted to the website and requestors can be directed to the website for downloads.
- Estimates in the past have been based on the ability to review 500 emails in an hour. Based on year-to-date experience, the committee believes that 250 emails an hour, which includes time spent on redactions, is a more accurate reflection of the effort needed to provide an appropriate response. The committee recommends adjusting the estimate to 250 emails an hour and implementing an annual review of the number of emails reviewed per hour as technology and software changes are applied and put into practice.
- FOIA charges should be based on the actual time incurred by each staff person and at that staff person's rate of pay, not to exceed the rate stated in BP94-06. Estimates should include time spent by IT, Public Affairs, and the reviewers.
- Estimates are just that, estimates. The requestor should receive the benefit of lower actual costs, but requestors should also be charged the actual cost if that cost is higher than the original estimate. The County's practice in the past has been to not exceed the original estimate, which in many cases does not reflect the true hours and actual cost of producing the request.
- Public Affairs should continue to actively manage the FOIA workload and not hesitate to use all extensions allowed by law when appropriate.
- Track all time spent by all parties involved with FOIA requests.

With the exception of the new software, I have instructed staff to make these changes effective January 16, 2023. We will provide further information on the software closer to implementation.

Bellamy/3309

Attachment

Freedom of Information Act (FOIA) Report

November 16, 2022

Background:

The Freedom of Information Act (FOIA, the Act) was enacted to ensure that citizens have ready access to public records, in the interest of maintaining transparency between the public body and the citizens the body represents. The statute attempts to balance the need for transparency with the need to keep certain records undisclosed, and provides specific exemptions to disclosure. The statute also recognizes that a government body may incur additional costs in complying with the statute, and allows for reasonable costs to be passed on to the requester. Generally, it provides that, unless specifically exempted in the statute, records be provided to a requester in a timely manner and, in the event that the government incurs costs specifically related to providing the document(s), at the minimum reasonable cost.

The County's current Board Policy 94-06 lays out the administration of the County's FOIA program and determines the time frame within which documents must be provided to the requester as well as the allowable charges that may be passed on to the requester. At the time of its most recent revision in November 2018, BP 94-06 reflected the policy recommendation of the County Administrator and created a favorable rate structure that sought to minimize the burden on citizens making FOIA requests. For instance, the policy allows for the reproduction of 5 pages or less and staff time of 15 minutes or less at no charge and limits the rate charged to the lesser of \$25 per hour or the actual hourly rate for the staff responding to the request. Other materials such as digital storage media are charged at cost.

Recently, there have been concerns about the level of effort required by staff to respond to the high number of FOIA requests that have come into the Public Affairs office. Not only are there increasingly time-consuming requests for documents, but the County often receives follow-on questions and requests for additional information not covered by the Act in the wake of our response to the original request. These additional requests often require the attention of senior staff, County Administration, and increasingly the advice and counsel of the County Attorney. The time spent responding to these inquiries is a drain on County resources, and time spent responding to such additional requests for information is not recoverable under the Act because the Act only requires producing records; it does not require a response to questions, requests for an explanation, etc.

The County has a longstanding tradition of trying to be as responsive as possible and has found that engaging these questions occasionally alleviates requests. However, the massive increases in these follow-up questions now require a significant amount of staff time. Furthermore, the impression among staff has been that the majority of these requests are generated by one person. Public Affairs and Finance staff undertook a study to attempt to quantify the impact these requests have on County staff productivity.

Study methods and results:

Finance staff used the FOIA request tracking log maintained by Public Affairs. Looking at these requests specifically and FOIA emails provided by Information Technology to

identify the various County departments and staff who were involved in responding to FOIA requests for the year beginning January 1, 2022 through the end of September (9-month sample period). These requests do not include those sent directly to York Poquoson Sheriff's Office, 911, or referred to Building Safety, primarily by lawyers, engineers, and realtors. These staff were interviewed to estimate the time each spent this year responding to FOIA requests or responding to other FOIA-related inquiries. Using this information, we then estimated the total costs that would be allowed under the Act. Finally, we compared this to the actual charges we have billed for 2022 (estimating the remaining three months).

The cost analysis is broken down into four parts:

- 1) The total cost of all staff time spent responding to FOIA requests and any secondary or follow-up questions. These costs include the salaries and benefits of any staff involved in the response, and represent the **opportunity costs** associated with responding to the requests.
- 2) The cost of all staff time spent responding directly to FOIA requests. These costs exclude time spent responding to follow-up questions or requests for information that are not covered by the Act, and represent the **actual costs** of complying with the Act.
- 3) Reasonable charges not to exceed actual cost in responding to FOIA requests. These costs are defined in the Act and include staff time spent accessing, duplicating, supplying, or searching for records, but exclude benefits and legal review, both of which are interpreted by the FOIA Advisory Council to be extraneous to the FOIA response. These are the **allowable costs** associated with FOIA compliance.
- 4) Actual charges billed and received by the County under the Act. These are the result of staff estimates for each request based on the current Board Policy, and reflect the **recovered costs** associated with compliance with the Act.

Thirteen people submitted 198 FOIA general purpose requests in the first 9 months of 2022. Of these, seven individuals submitted one request each. Three other individuals submitted two requests, one submitted three, and one other submitted ten. The remaining 172 requests, representing 87% of the total, were submitted by one person.

Based on the information collected during staff interviews, the total opportunity costs associated with responding to these requests was \$139,000. Excluding the time spent on non-FOIA questions and other costs deemed not allowable under the Act, the allowable costs associated with these requests was \$57,000. We estimate that the total recovered costs for 2022 will only be \$1,300.

It is evident from the data collected that one individual creates the greatest burden for staff. The typical FOIA requestor only makes 1-2 requests per year, and only two individuals had more than four. Given these results, the Board of Supervisors and County Administration may wish to revise the County's policy in a way that continues to be generous and responsive to the typical requester while modifying the cost structure to reflect what is allowed by the State Code so that frequent requestors are required to pay something closer to the County's actual costs.