

# FOIA 101



WILLIAM & MARY  
CHARTERED 1693

# FOIA Summary

FOIA generally requires that:

1. All public records be accessible
2. All meetings of public bodies be open

# Hypothetical Email 1

July 1, 2019

To: BrendaBoV@personalemail.com

From: RebeccaReporter@Ustudentnewspaper.edu

I have some questions about what the Board is doing related to mold on campus. Can you share your thoughts?

# Recognizing a FOIA Request

- FOIA triggers a response obligation when a Virginia citizen asks for any documents or recordings
- A FOIA request does not have to be a written or reference “FOIA”
- FOIA requires the production of existing documents, but not the creation of new documents

# Hypothetical Email 2

July 1, 2019

To: BrendaBOV@personalemail.com

From: RebeccaReporter@Ustudentnewspaper.edu

Please send me all Board communications from the last month related to mold on campus.

# Responding to a FOIA Request

- Written response must be provided within five working days
- All public records must be produced unless a statutory exemption applies
- The requester must be told the type and volume of any records withheld
- Report a FOIA request immediately to the Clerk and the Rector

# Hypothetical Email 3

June 1, 2019,

To: UPresident@u.edu; BobbyBoV@personalemail.edu

From: ConcernedParent@personalemail.com

I saw the Washington Post article about a University of Maryland student with Crohn's disease who died from exposure to mold. My daughter is an incoming first year and she has Crohn's disease. You need to guarantee that she will not be exposed to mold on campus. If you are not able to make that guarantee, I will alert the parents of other incoming students through the U's social media pages.

# Identifying Public Records

- A public record is anything (letters, notes, voicemails, emails, text messages) that records information related to public business
- The content of the record not its location or the medium on which it is stored is determinative.

# Hypothetical Email 4

June 2, 2019

To: RobbieRector@u.edu

From: BobbyBoV@personalemail.com

See below from Concerned Parent. We need to schedule a conference call with the full board to discuss this matter. Are you free tomorrow?

# Meeting Limitations

- FOIA requires that the public be given notice of a Board meeting at least 3 working days in advance.
- FOIA allows members to participate via phone only after a quorum of the Board is physically assembled in one location.
- FOIA allows Board members to call in from remote locations due to illness or personal conflicts subject to Board approval. The member's location and reason for remote participation must be recorded in the minutes. Remote participation due to a personal conflict is limited to two times per member per calendar year.

# Hypothetical Email 5

June 2, 2019

To: AllBoV Members@personalemail.com;

cc: ConnieClerk@u.edu

From: RobbieRector@personal email.com

See Bobby BoV's message. This is serious. We had mold everywhere in our beach house and it made all of us sick last summer. I barely got to use my new boat! Please let me know how you think we should proceed.

# Recognizing A Meeting

- Under FOIA, a meeting occurs when 3 or more Board members gather to discuss public business
- The simultaneous exchange of emails among more than two Board members could constitute an (illegal) meeting.
- Recommendations
  - Use the telephone when possible
  - Avoid e-mail to more than one member or use BCC function
  - **Never** use REPLY ALL



# Hypothetical Email 6

June 3, 2019

To: ConnieClerk@u.edu

From: RobbieRector@workemail.edu

Thanks for the reminder on FOIA practices ☺.  
I want to schedule a closed session meeting to  
discuss the Washington Post mold article as  
soon as possible.

# Closed Meeting Procedures

- A vote of the Board must be taken to go into closed session. A quorum is required for the Board to vote.
- The specific exemption and subject for the closed meeting must be cited in the Board's motion.
- Discussion may only include matters identified in the motion to go into closed session – even if the subject would otherwise qualify for a closed discussion.
- Certification is required after each closed session.
- FOIA allows, but does not require use of closed sessions.

# Hypothetical Email 7

June 4, 2019

To: UPresident@u.edu

From: VickiViceRector@personalemail.com

This mold issue reminds me of that scare we had in historic residence hall. I want to see all of the information about all mold remediation and renovation decisions you've made over the last three years. I've added this topic to the agenda for the next Board meeting.

# Working Papers Exemption

- There is a FOIA exemption for records prepared for a university president's deliberative use. If such records are widely distributed, they lose their status as presidential working papers.
- There is no working papers exemption for Board members.
- Materials provided to the Board in connection with a meeting must be made available to the public contemporaneously.

# Consequences of Violating FOIA

- Failure to follow statutory requirements for meetings and responding to records requests could result in civil penalties for individuals and institutions ranging from \$500-\$5000.
- Altering or destroying records with the intent of not having to comply with FOIA could result in civil penalties of \$100 per record destroyed.
- Improperly certifying a closed session could result in a civil penalty up to \$1000.
- Negative publicity
- Violation of the public trust

