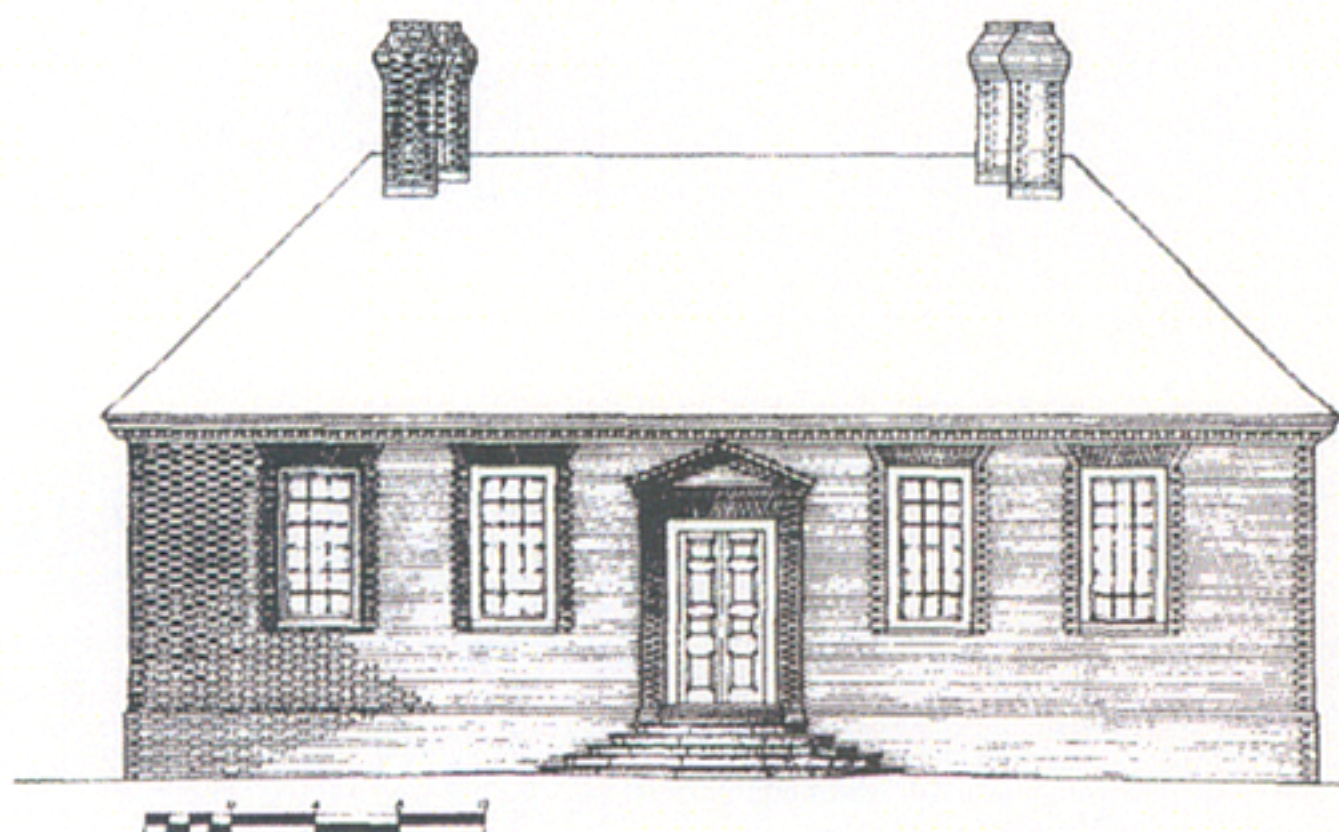


A GUIDE TO THE
*Virginia Public
Records Act*



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Frequently Asked Questions

YOUR RESPONSIBILITIES FOR PUBLIC RECORDS

Government executives create and maintain public records as part of their official responsibilities. These materials may be in paper, electronic, or other formats. This pamphlet will assist you from the outset of your state service in:

- Identifying public records that must be incorporated into agency files and maintained under the control of the Commonwealth
- Distinguishing public records from extra or convenience copies of records
- Identifying personal files that contain information not used to conduct agency business and that may be removed at your discretion
- Maintaining personal files separate from public records under the control of the agency

As specified in the *Code of Virginia* (§ 42.1-88), any custodian of public records shall, at the expiration of his term of office, appointment, or employment, deliver to his successor—or, if there be none, to the Library of Virginia—all books, writings, letters, documents, public records, or other information kept or received in the transaction of official business. Any person who shall refuse or neglect to deliver public records for a period of ten days after a request is made in writing by the successor or the Librarian of Virginia shall be guilty of a Class 3 misdemeanor.

WHAT ARE PUBLIC RECORDS?

Public records are recorded information documenting a transaction or activity by or with any public officer, agency, or employee of state government or its political subdivisions. Regardless of physical form or characteristics, the recorded information is a public record if it is produced, collected, received, or retained in pursuance of law or in connection with the transaction of public business.

Frequently Asked Questions

The medium on which such information is recorded may be, but is not limited to, paper; film; tapes; Mylar; linen; silk; vellum; or magnetic, optical, or solid state devices that can store electronic signals. The general types of records may be, but are not limited to, books, papers, letters, documents, printouts, photographs, films, tapes, microfiche, microfilm, photostats, sound recordings, maps, drawings, or any representations held in computer memory.

Each agency or locality is responsible for determining whether the materials it creates meet this definition of a public record. Agencies must create and maintain records containing a full accounting of their organization, functions, policies, and activities. Agency records must also contain the information needed to protect the rights of the government and of the citizens of Virginia directly affected by government activities.

Paper records may be originals or copies, such as file copies of outgoing correspondence or copies forwarded for action. Multiple copies of the same document may each be a record if each serves a separate administrative purpose and if they are kept in separate filing or recordkeeping systems. Extra copies, such as distribution copies, stock copies, and copies maintained for convenience or reference, are not public records. If electronically created records are maintained in paper recordkeeping systems, the information necessary for a complete record must be printed. Contact your agency's records officer for further guidance.

Many factors contribute to the determination that documentary materials are public records. If the answer to any of the following questions is "yes," the document is a public record.

- Did the agency require creation or submission and maintenance of the document?
- Was the document used to conduct or facilitate agency business?
- If the document is a draft or preliminary document created for background or a similar purpose, does it contain unique information that explains formulation of significant program policies and decisions?

Frequently Asked Questions

- Was the document distributed to other offices or agencies for formal approval or clearance?
- Is the document part of an electronic information system used to conduct government business?

WHAT DOCUMENTARY MATERIALS ARE NOT PUBLIC RECORDS?

The Virginia Public Records Act (§ 42.1-76) definition of records *excludes* three specific types of materials: reference books and exhibition materials made or acquired and preserved solely for reference or exhibition purposes, extra copies of documents preserved only for convenience or reference, and stocks of publications.

ARE PRELIMINARY DRAFTS AND WORKING PAPERS PUBLIC RECORDS?

Drafts and working papers should be filed and maintained as part of the agency's records if they explain how the agency formulated and executed significant program policies, decisions, actions, or responsibilities, or contain unique information such as annotations or comments.

WHAT ARE PERSONAL FILES?

The term personal files refers to documentary materials that are either unrelated to the conduct of agency business (e.g., files relating to political activities, personal and family matters, or non-governmentally related social or civic activities) or indirectly related to agency business but outside the scope of the definition of public records (i.e., not used to conduct government business, except at the gubernatorial and secretariat level).