

**From:** Barry Hamilton [REDACTED]  
**Subject:** Re: FOIA Request - Records Relating to Executive Order 35  
**Date:** November 19, 2024 at 1:01 AM  
**To:** Governor's FOIA Office FOIA@governor.virginia.gov

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Dear Ms. Burch,

Thank you for your recent response and the itemized cost breakdown for processing my FOIA request. While I appreciate the transparency in those specific regards, I have several concerns regarding the overall handling of this request, especially considering my previous efforts to narrow its scope and minimize associated costs.

### **1. Objection to Classification as a New FOIA Request:**

I must strongly object to your treatment of my narrowed request, submitted on November 15, 2024, as a new FOIA request. Virginia Code § 2.2-3704(B) states:

*"A public body may make reasonable charges not to exceed its actual cost incurred in accessing, duplicating, supplying, or searching for the requested records."*

The statute does not authorize a public body to restart the statutory response period or reclassify a narrowed request as a new request. Narrowing the scope of a FOIA request is a standard practice intended to reduce costs and expedite the process, not to reset timelines. Treating my narrowing communication as a new request is inconsistent with the spirit of FOIA, which is designed to ensure timely access to public records.

I request that you process my FOIA request under the original timeline, reflecting the narrowed scope provided in my November 15 email.

### **2. High Costs and Violation of FOIA's Spirit:**

The quoted cost of \$2,300.94 is prohibitively high and does not align with FOIA's intent of ensuring public access to information. Even after I submitted a narrowed request on November 15, the updated cost estimate fails to reflect any meaningful reduction, despite the reduced scope and clear focus on specific individuals, terms, and documents.

In its current state, this fee structure effectively places public information beyond the reach of ordinary citizens, creating a financial barrier to transparency and accountability that is entirely contrary to FOIA's intent. FOIA exists to promote government transparency and accountability, and imposing such excessive costs undermines these principles. It discourages citizens from accessing information that is critical to public understanding and oversight, especially when it pertains to voting rights and election-related policies.

This is particularly concerning given Governor Glenn Youngkin's explicit emphasis on reducing waste and costs within Virginia's government. In his 2023 State of the Commonwealth address, he stated:

*"We must eliminate unnecessary spending and ensure that every taxpayer dollar is used efficiently to serve the people of Virginia."*

The excessive fees quoted in response to my FOIA request appear inconsistent with this commitment to efficiency and accountability. Transparency should not come at a price so steep that it effectively denies citizens access to public records.

### **3. Fee Waiver Request:**

I respectfully reiterate my request for a fee waiver under Virginia Code § 2.2-3704(F). The information I seek is in the public interest, as it pertains to the implementation of Executive Order 35 and its impact on voting rights—a fundamental cornerstone of our democracy. This information is not being requested for commercial purposes but rather to promote transparency and public understanding of election-related policies and practices.

Given the clear public interest in this matter, I urge you to waive or significantly reduce the fees associated with my request.

#### **4. Cost Breakdown and Necessity of Staff Involvement:**

- The inclusion of 20 staff members, some with minimal time allocations (e.g., Staff 5 at 0.06 hours), raises questions about the necessity of such broad involvement.
- The significant variation in hourly rates, with some staff exceeding \$100/hour, suggests potential inefficiencies or unnecessary allocation of resources.

#### **5. Narrowed Scope:**

- My email dated November 15, 2024, specified a reduced timeframe, focused on key individuals, and excluded routine or irrelevant records.
- The provided cost estimate does not appear to reflect this narrowed scope, particularly given the limited focus on specific individuals and terms related to Executive Order 35.

#### **6. A Personal Commitment to Transparency:**

I want to emphasize that I am simply a citizen of Virginia. I do not represent a political party, a special interest group, or any agenda other than the truth. I am not wealthy, nor do I have access to significant resources. My interest in this matter arises solely from my commitment to ensuring transparency and protecting the fundamental right to vote—a cornerstone of our democracy.

I am a lifelong resident of Virginia, born at Riverside Hospital in Newport News. My family first arrived in Virginia on the Eastern Shore from Scotland in the mid-1600s, and we have been a part of this Commonwealth's history for generations. I believe it is fair to say that the information I have requested is my birthright. As a native Virginian, I feel a profound sense of duty to uphold the principles that make our system fair and accountable, not only for my generation but for those to come.

#### **Next Steps:**

To ensure this request proceeds efficiently and in compliance with FOIA requirements, I ask that:

- You revisit the narrowed scope of my request and provide an updated, accurate cost estimate.
- You confirm that the involvement of all listed staff is necessary and explain their specific roles in fulfilling this request.
- You waive or reduce the fees associated with this request in recognition of the public interest and the principles of FOIA.
- You confirm that the request is being handled in good faith, as required under Virginia FOIA.

#### **Potential Escalation:**

If you continue to treat my narrowed request as a new FOIA request or fail to respond promptly to this email within a reasonable time frame (by 5PM on Friday, November 22, 2024), I will have no choice but to escalate this matter through the following channels:

- **Virginia Freedom of Information Advisory Council:** To seek an advisory opinion on the handling of this request.
- **Media Outlets:** Including WAVY-10 and the Richmond Times-Dispatch, to highlight potential obstructions in accessing public records.
- **Local Democratic Lawmakers (including but not limited to):**
  - **Don Scott:** Speaker of the House of Delegates, representing the 88th District (parts of Portsmouth).
  - **Charniele Herring:** Majority Leader of the House of Delegates, representing the 4th District (parts of Alexandria and Fairfax County).
  - **Scott Surovell:** Senate Majority Leader, representing the 36th District (parts of Fairfax, Prince William, and Stafford counties).
  - **Jeion A. Ward:** Delegate for the 87th District (parts of Hampton).
  - **C.E. "Cliff" Hayes, Jr.:** Delegate for the 91st District (Chesapeake and Suffolk) and Chair of the Hampton Roads Legislative Caucus.
  - **Phil Hernandez:** Delegate for the 94th District (parts of Norfolk).

I believe that transparency and adherence to FOIA principles are paramount. I hope we can resolve this matter promptly and amicably.

Thank you for your attention to this matter. I look forward to your prompt response.

Sincerely,

Barry Hamilton  
The Ice Machine

Williamsburg, VA 23185

On Nov 18, 2024, at 3:52 PM, Governor's FOIA Office <[FOIA@governor.virginia.gov](mailto:FOIA@governor.virginia.gov)> wrote:

Please see below the itemized cost breakdown:

Custodian	Time Estimate	Hourly Rate
Staff 1	8.66 hours	\$36.20
Staff 2	8.66 hours	\$68.95
Staff 3	0.5 hours	\$41.60
Staff 4	0.5 hours	\$36.20
Staff 5	0.06 hours	\$103.34
Staff 6	0.17 hours	\$60.61
Staff 7	0.23 hours	\$46.15
Staff 8	4.0 hours	\$73.19
Staff 9	4.0 hours	\$65.66

Staff 10	0.0 hours	\$63.14
Staff 11	0.75 hours	\$85.67
Staff 12	0.75 hours	\$59.42
Staff 13	0.75 hours	\$54.97
Staff 14	1.0 hours	\$63.14
Staff 15	1.0 hours	\$63.14
Staff 16	0.0 hours	\$25.25
Staff 17	1.0 hours	\$49.00
Staff 18	3.0 hours	\$72.92
Staff 19	4.0 hours	\$49.00
Staff 20	1.0 hours	\$28.84

Please be advised that we will treat your email of November 15<sup>th</sup> as a new FOIA request and we will respond within the statutory time frame.

Denise Burch  
FOIA Officer  
Officer of Governor Glenn Youngkin  
1111 E. Broad Street  
Richmond, VA 23219  
804-786-2211

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**From:** Barry Hamilton [REDACTED]  
**Sent:** Friday, November 15, 2024 10:13 PM  
**To:** Governor's FOIA Office <[FOIA@governor.virginia.gov](mailto:FOIA@governor.virginia.gov)>  
**Subject:** Re: FOIA Request - Records Relating to Executive Order 35

Dear Ms. Burch,  
Thank you for your response and the advance determination of \$2,300.94 for processing my FOIA request. While I understand that Virginia Code § 2.2-3704(H) allows public bodies to estimate and require fees, I would like to narrow the scope of my request to reduce costs while maintaining the focus on key information related to Executive Order 35.

### **Request for Detailed Cost Breakdown**

To ensure the charges comply with Virginia FOIA's requirement that fees reflect only the actual costs incurred in responding to a request, I respectfully ask for an **itemized breakdown** of the charges. Specifically:

1. **Search Time:** How many hours are anticipated, and at what hourly rate?
2. **Review/Redaction Time:** What portion of the costs is attributed to reviewing and redacting records, and why is this necessary?
3. **Printing/Copying Costs:** Are documents being printed unnecessarily, and can they be provided electronically to reduce costs?

## Narrowed Scope of Request

To minimize the volume of responsive records and associated costs, please limit the search and production to the following:

1. **Timeframe:**
  - January 1, 2023, through August 31, 2024.
2. **Key Individuals:**
  - Communications involving:
    - Governor Glenn Youngkin.
    - Chief of Staff of the Governor's Office.
    - Susan Beals (Commissioner of the Virginia Department of Elections).
    - Shana C. Saunders (DMV FOIA Officer).
3. **Relevant Topics and Terms:**
  - Records explicitly related to Executive Order 35, including:
    - Drafts, final versions, and revisions of EO 35.
    - Policy guidance documents for its implementation.
    - Communications mentioning terms such as:
      - "Executive Order 35"
      - "voter roll purge"
      - "non-citizen voter data"
      - "National Voter Registration Act compliance"
4. **Document Types:**
  - Emails, memos, letters, and other electronic communications (including attachments).
  - Data-sharing protocols or agreements involving the DMV and Virginia Department of Elections specific to EO 35.
5. **Exclusions:**
  - Please exclude routine administrative materials or records unrelated to Executive Order 35.
6. **Electronic Format Only:**
  - To minimize costs, please provide all responsive records in electronic format (e.g., PDFs).

## Request for Fee Reduction/Waiver

I also respectfully request that you consider a fee reduction or waiver under Virginia Code § 2.2-3704(F), as the records sought are intended to contribute to public understanding of election policies and practices, which is in the public interest and not for commercial purposes.

## Next Steps

Please provide an updated cost estimate based on this narrowed scope and confirm whether these adjustments sufficiently reduce the estimated cost of

\$2,300.94. If further refinements are necessary, I am happy to work with you to ensure my request remains reasonable.

Thank you for your attention to this matter. I look forward to your response.

Barry Hamilton

The Ice Machine

[REDACTED]  
[REDACTED]  
Williamsburg, VA 23185  
[REDACTED]  
[REDACTED]  
[REDACTED]

On Nov 15, 2024, at 3:42 PM, Governor's FOIA Office  
<[FOIA@governor.virginia.gov](mailto:FOIA@governor.virginia.gov)> wrote:

In further response to your FOIA request, please be advised that Virginia Code Section 2.2-3704.H. provides: "In any case where a public body determines in advance that charges for producing the requested records are likely to exceed \$200, the public body may, before continuing to process the request, require the requester to pay a deposit not to exceed the amount of the advance determination." In your case, the advance determination is \$2,300.94. This includes the expense of searching, printing and reviewing documents for responsiveness and potential exemptions.

If you desire us to proceed with your request, please remit a check made payable to the Treasurer of Virginia, and mail it to my attention at 1111 E. Broad Street, Richmond, VA 23219.

Denise Burch  
FOIA Officer  
Officer of Governor Glenn Youngkin  
1111 E. Broad Street  
Richmond, VA 23219  
804-786-2211

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**From:** Governor's FOIA Office <[FOIA@governor.virginia.gov](mailto:FOIA@governor.virginia.gov)>  
**Sent:** Monday, November 4, 2024 3:23 PM  
**To:** Barry Hamilton [REDACTED]  
**Subject:** RE: FOIA Request - Records Relating to Executive Order 35

Thank you for your FOIA request.

Please be advised that due to staffing issues, potential volume of records, and based upon our ongoing inquiries, we find it necessary to invoke the seven day provision of Virginia Code Section 2.2-3704B4.

Denise Burch

FOIA Officer  
Officer of Governor Glenn Youngkin  
1111 E. Broad Street  
Richmond, VA 23219  
804-786-2211

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**From:** Barry Hamilton [REDACTED]  
**Sent:** Wednesday, October 30, 2024 5:02 PM  
**To:** Governor's FOIA Office <[FOIA@governor.virginia.gov](mailto:FOIA@governor.virginia.gov)>  
**Subject:** Re: FOIA Request - Records Relating to Executive Order 35

Thank you! I'd also like to request a cost estimate when it is available.

Barry Hamilton  
The Ice Machine  
[REDACTED]  
Williamsburg, VA 23185  
[REDACTED]  
[REDACTED]  
[REDACTED]

On Oct 30, 2024, at 4:59 PM, Governor's FOIA Office  
<[FOIA@governor.virginia.gov](mailto:FOIA@governor.virginia.gov)> wrote:

This will acknowledge receipt of your FOIA request by this  
office on October 28, 2024.

Denise Burch  
Executive Assistant to the Counselor to the Governor and  
Chief Transformation Officer  
Office of Governor Glenn Youngkin  
1111 E. Broad Street  
Richmond, VA 23219  
804-663-7877

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**From:** Barry Hamilton [REDACTED]  
**Sent:** Wednesday, October 30, 2024 3:15 PM  
**To:** Governor's FOIA Office <[FOIA@governor.virginia.gov](mailto:FOIA@governor.virginia.gov)>  
**Subject:** Fwd: FOIA Request - Records Relating to Executive  
Order 35

Please acknowledge receipt of the request.

Thanks,  
Barry Hamilton  
The Ice Machine  
[REDACTED]  
Williamsburg, VA 23185  
[REDACTED]

[REDACTED]

Begin forwarded message:

**From:** Barry Hamilton

[REDACTED]

**Subject: FOIA Request - Records Relating to Executive Order 35**

**Date:** October 27, 2024 at 7:29:33 PM EDT

**To:** [FOIA@governor.virginia.gov](mailto:FOIA@governor.virginia.gov)

Dear FOIA Officer,  
Pursuant to the Virginia Freedom of Information Act, Va. Code § 2.2-3700, et seq., and to the extent applicable, the federal Freedom of Information Act, 5 U.S.C. § 552, I am requesting access to and copies of all records within the Office of the Governor regarding the planning, development, and implementation of **Executive Order 35**, signed by Governor Glenn Youngkin on August 7, 2024. This request is focused on internal discussions, policies, data sources, and procedural documents relevant to the voter roll maintenance and verification protocols under this order.

### **Requested Records for the Office of the Governor**

1. **Internal Communications:**
  - o All emails, memos, letters, and other electronic communications (including attachments) related to Executive Order 35, between Governor Glenn Youngkin, his chief of staff, counsel, policy advisors, and Cabinet Secretaries, from January 1, 2023, through the present.
  - o Communications specifically mentioning terms such as “**Voter Integrity Review Committee,**” “**Multi-Agency Data Sharing Protocols,**” “**Non-Citizen Identification Procedures.**” and



...and the  
**“National Voter Registration Act Compliance”**.

**2. Documentation on Policy and Procedure:**

- Drafts, revisions, and final versions of Executive Order 35, including any notes, comments, or analyses provided by Governor Youngkin or his advisors.
- Any procedural documents or guidelines under titles such as **“Voter List Maintenance Policies”** and **“Governor’s Directives for Non-Citizen Voter Roll Updates”**, especially those involving coordination with the Virginia Department of Elections or DMV.

**3. Impact and Legal Assessment Documents:**

- Records assessing potential risks of disenfranchisement or compliance issues under federal and state election laws, specifically related to the “Quiet Period” provisions of the National Voter Registration Act (NVRA).
- Legal reviews, memoranda, or correspondence regarding Executive Order 35’s alignment with federal law and any consultations or communications with federal agencies such as the U.S. Department of Justice regarding compliance concerns.

**Format and Delivery**

I request these records in electronic format (PDFs or other accessible electronic files), delivered via email to the following address:

**[REDACTED]**

If any part of the requested materials is withheld, please specify the statutory basis for each denial as required by Va. Code § 2.2-3704.

**Expedited Processing and Fee Waiver**

Due to the significant public interest in ensuring lawful and fair election procedures, I request expedited processing. I also seek a waiver of fees on the grounds that disclosure of this information will contribute to public understanding of government operations and election security practices.

Thank you for your assistance with this request. Please acknowledge receipt of this request and inform me if clarifications are needed. I look forward to your response within the statutory five-business-day timeframe.

Sincerely,  
Barry Hamilton  
The Ice Machine

[REDACTED]  
[REDACTED]  
Williamsburg, VA 23185  
[REDACTED]  
[REDACTED]  
[REDACTED]



