VIRGINIA MILITARY INSTITUTE
Lexington, Virginia

GENERAL ORDER)
NUMBER 5) 16 July 2015

VMI Freedom of Information Requests Policy

1. Overview: The Executive Assistant to the Superintendent is designated as the Virginia Military Institute's Freedom of Information Act (FOIA) Officer responsible for coordinating the release of requested records with the office receiving the request. The Executive Assistant to the Superintendent will ensure responses to FOIA requests are in accordance with the provisions of the Virginia Freedom of Information Act.

2. Responsible Official: All third party requests for access to public records must be forwarded to the Executive Assistant to the Superintendent immediately upon receipt, with information regarding the likely location and volume of the records requested, for determination of appropriate action. All requests must be handled expeditiously by individuals receiving them, as there are timelines that must be adhered to as a matter of law.

3. **Definition of a Request**: A Freedom of Information Request may be initiated in writing, by telephone, electronically, or verbally in person. A request for public records need not mention or reference the Freedom of Information Act in order to trigger the Institute's obligation to respond pursuant to its terms.

4. The Executive Assistant to the Superintendent will determine when and if a response to a FOIA request is required, whether records subject to an exception will be withheld, and under what circumstances fees will be charged to the requester. When necessary, the Executive Assistant will consult with the Institute's representative in the Office of the Attorney General, Commonwealth of Virginia.

5. All records of FOIA requests, responses to the requesting party, and documentation of information and records gathered and provided will be kept in the Office of the Executive Assistant to the Superintendent for three years.

6. Attached is the information that will be posted on VMI's website regarding VMI's responsibility to respond to requests under the Virginia Freedom of Information Act.

FOR THE SUPERINTENDENT:

James P. Inman
Colonel, US Army (Ret.)
Chief of Staff

OPR: EA to Superintendent
DIST: E

The Rights of Requesters and the Responsibilities of the Virginia Military Institute under the Virginia Freedom of Information Act

The Virginia Freedom of Information Act (FOIA), located § 2.2-3700 et. seq. of the Code of Virginia, guarantees citizens of the Commonwealth and representatives of the media access to public records held by public bodies, public officials, and public employees.

A public record is any writing or recording -- regardless of whether it is a paper record, an electronic file, an audio or video recording, or any other format -- that is prepared or owned by, or in the possession of a public body or its officers, employees or agents in the transaction of public business. All public records are presumed to be open, and may only be withheld if a specific, statutory exemption applies.

The policy of FOIA states that the purpose of FOIA is to promote an increased awareness by all persons of governmental activities. In furthering this policy, FOIA requires that the law be interpreted liberally, in favor of access, and that any exemption allowing public records to be withheld must be interpreted narrowly.

Your FOIA Rights

- Citizens of the Commonwealth of Virginia have the right to request to inspect or receive copies of public records, or both.
- They have the right to request that any charges for the requested records be estimated in advance.
- If you believe that your FOIA rights have been violated, you may file a petition in district or circuit court to compel compliance with FOIA.

Making a Request for records from the Virginia Military Institute

- You may request records by U.S. Mail, fax, e-mail, in person, or over the phone. FOIA does not require that your request be in writing, nor do you need to specifically state that you are requesting records under FOIA.
    - From a practical perspective, it may be helpful to both you and the person receiving your request to put your request in writing. This allows you to create a record of your request. It also gives us a clear statement of what records you are requesting, so that there is no misunderstanding over a verbal request.
- Your request must identify the records you are seeking with "reasonable specificity." This is a common-sense standard. It does not refer to or limit the volume or number of records that you are requesting; instead, it requires that you be specific enough so that we can identify and locate the records that are responsive to your request.
- Your request must ask for existing records or documents. FOIA gives you a right to inspect or copy records; it does not apply to a situation where you are asking general questions about the work of VMI nor does it require VMI to create a record that does not exist.

- You may choose to receive electronic records in any format used by VMI in the regular course of business. Whenever possible, VMI prefers to provide information in a printed (hard copy) format.
    - For example, if you are requesting records maintained in an Excel database, you may elect to receive those records electronically, via e-mail or on a computer disk, or to receive a printed copy of those records.
- In order to respond to your request, it may be necessary for staff to discuss your request with you to ensure that we understand what records you are seeking. If we have questions about your request, please cooperate with staff's efforts to clarify the type of records requested, the scope of your request or to work out a reasonable agreement concerning a request for a large volume of records.
- The reason behind your request for public records is irrelevant. Although you are not required to disclose the reason for your request, you must provide VMI with your name and legal address if asked to do so.

To request records from VMI, you may direct your request to Lt Col Sean P. Harrington. He can be reached at 201 Smith Hall, Lexington, VA 24450; by phone at (540) 464-7206; by fax at (540) 464-7660; or by email at harringtonsp@vmi.edu. You may also contact him with questions you have concerning requesting records from VMI. In addition, the Freedom of Information Advisory Council is available to answer any questions you may have about FOIA. The Council may be contacted by e-mail at foiacouncil@dls.virginia.gov, or by phone at (804) 225-3056 or [toll free] (866) 448-4100.

1. **VMI's Responsibilities in Responding to Your Request**
   VMI must respond to your request within five working days after receiving it. "Day One" is considered the day after your request is received. The five-day period does not include weekends or holidays.
2. FOIA requires that VMI make one of the following responses to your request within the five-day time period:
    - We provide you with the records that you have requested in their entirety.
    - We withhold all of the records that you have requested, because all of the records are subject to a specific statutory exemption. If all of the records are being withheld, we must send you a response in writing. That writing must identify the volume and subject matter of the records being withheld, and state the specific section of the Code of Virginia that allows us to withhold the records.
    - We provide some of the records that you have requested, but withhold other records. We cannot withhold an entire record if only a portion of it is subject to an exemption. In that instance, we may redact the portion of the record that may be withheld, and must provide you with the remainder of the record. We must provide you with a written response stating the specific section of the Code of Virginia that allows portions of the requested records to be withheld.
    - If it is practically impossible for VMI to identify and gather the records that respond to your request within the five-day period, we must respond by stating that in writing and explaining the conditions that make the response impossible. This response allows VMI seven additional working days to respond, making our

response due to you 12 working days from receipt of your request, unless you agree to permit us additional time.

- If you make a request for a very large number of records, and we feel that we cannot provide the records to you within 12 days without disrupting our other organizational responsibilities, we may petition the court for additional time to respond to your request. However, FOIA requires that we make a reasonable effort to reach an agreement with you concerning the production or the records before we go to court to ask for more time.

Costs

- You may have to pay for the records that you request from VMI. FOIA allows us to charge for the actual costs of responding to your request. This would include items like staff time spent searching for the requested records, copying costs, or any other costs directly related to supplying the requested records. It cannot include general overhead costs.
- If we estimate that it will cost more than $200 to respond to your request, we may require you to pay a deposit, not to exceed the amount of the estimate, before proceeding with your request. The five days that we have to respond to your request does not include the time between when we ask for a deposit and when you respond.
- You may request that we estimate in advance the charges for supplying the records that you have requested. This will allow you to know about any costs upfront, or give you the opportunity to modify your request in an attempt to lower the estimated costs.
- If you owe us money from a previous FOIA request that has remained unpaid for more than 30 days, VMI may require payment of the past-due bill before it will respond to your new FOIA request.

Commonly used exemptions

The Code of Virginia allows any public body to withhold certain records from public disclosure. VMI commonly withholds records subject to the following exemptions:

- Scholastic records (§ 2.2-3705.4(1) of the Code of Virginia), or work product compiled for use by the Superintendent in an administrative investigation (§ 2.2-3705.7(2) of the Code of Virginia)
- Personnel records (§ 2.2-3705.1(1) of the Code of Virginia)
- Records subject to attorney-client privilege (§ 2.2-3705.1 (2) of the Code of Virginia), or attorney work product (§ 2.2-3705.1 (3) of the Code of Virginia)
- Medical records (§ 2.2-3705.5(1) of the Code of Virginia)
- Vendor proprietary information (§ 2.2-3705.1 (6) of the Code of Virginia)
- Records relating to the negotiation and award of a contract, prior to a contract being awarded (§ 2.2-3705.1 (12) of the Code of Virginia)