



Date: November 10, 2021
To: Virginia Freedom of Information Act (FOIA) Advisory Council
From: Virginia Press Association (VPA)
Re: VPA comments on HB 2196 (Mullin) and HB 2000 (Roem)

The Virginia Press Association (VPA) submits the following comments on HB 2196 (Mullin) and HB 2000 (Roem) for the FOIA Advisory Council's meeting on November 10, 2021.

HB 2196 (Mullin) Virginia Freedom of Information Act; required release of law-enforcement disciplinary records; exceptions. – SUPPORT

VPA reiterates our support for the goal of HB 2196, including the incorporation of both founded and unfounded complaints. This legislation is important for an accountable government that is open to the public and allows for the press to keep local communities informed. We also believe this legislation is in the best interest of law enforcement officers and the public they serve.

Police officers, by choice, place themselves in a position where a higher standard of transparency is required to maintain or rebuild the public trust. The powers and duties of police officers also come with the responsibility of allowing the public to determine whether there are problematic patterns in the behavior of those police officers, including disciplinary actions.

The records in question will either show that certain behavior members of the public experience during an interaction with an officer is an aberration, or a sign of a broader issue. With this information, the public, law enforcement agencies, and public bodies can then take appropriate action based on facts.

Being able to access all complaints of serious incidents, *including founded and unfounded complaints*, helps establish patterns *and* dispel negative or untrue rumors. If all serious complaints are made available to the public and press, this information will help show if the problems are with the entire department, or simply with individual officers. It will also show whether the disciplinary process is working properly.

Fact is always better than rumor. If an officer is accused of a violation but there is no access to the facts or the outcomes surrounding the violation, rumors and distrust can grow in the community concerning that officer. This bill would shine light on the process, supply facts instead of rumor and innuendo, and allow community members to clearly know how an issue was handled.

Lastly, we associate ourselves with the letter dated August 31, 2021 submitted by the Virginia Coalition on Open Government regarding HB 2196. We look forward to working with Delegate Mullin and stakeholders on opportunities to continue to improve the bill during the legislative process. We thank the FOIA Council for its previous productive, reasonable, and practical precedents in this aspect of FOIA.

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**HB 2000 (Roem) Virginia Freedom of Information Act; charges for production of public records. –
SUPPORT FURTHER STUDY**

In regard to HB 2000 (Roem), VPA has consistently supported FOIA fee reform and study of FOIA fee best practices for optimal, balanced access to public records. We thank Delegate Roem for her leadership on this matter.

VPA supports prohibiting a public body from charging a requester for any costs incurred during the first two hours spent accessing or searching for requested records. However, the current bill draft does not incorporate any of VPA's recommendations, outlined below, or VCOG's recommendations and options submitted for consideration by the Records Issues Subcommittee.

- VPA opposes limiting this prohibition to when such requester has made four or fewer individual records requests to such public body within 31 consecutive days.
- VPA believes the rate cap after the first two hours should be \$25 per hour, not \$33.

In addition, the FOIA Council should clarify in its trainings and communications that public bodies and custodians of public records cannot charge the public unless an actual expense is incurred. Specifically, electronic copies, such as e-mail, electronic images and digital photos taken or produced by the requester (not the custodian) on their own devices or time should not be charged as physical copies or custodian staff time.

Simply making public records available for inspection (versus producing copies) and electronic/digital copying by the requester (versus the custodian) should not be charged beyond an employee's time spent making the records available for inspection, consistent with the bill's provision that the first 2 hours are free of charge should the bill pass.

If the FOIA Council endorses the bill as drafted, we will engage in the legislative process during session, or we would look forward to continued study of FOIA fee reform in the FOIA Council and more collaboratively with stakeholders.

Thank you for your attention and consideration. Please contact VPA lobbyist Mark Hickman (mark@commonwealthstrategy.net) with any questions.

/VPA