

All - good to see everyone today and sorry to have joined the zoom link late (thanks Alan, Ashley, and Senate IT for helping me connect!) I did have the opportunity to listen to the discussion before joining. On the question of FOIA fees, I had these thoughts for the sub-committee's consideration:

1. VFOIA is intended to ensure the public's access to the workings of our government. Fees for records access have the effect of limiting access. Some of that may be inevitable, but it's always a regrettable price to pay and we ought to be thinking of how to minimize that friction where we can.
2. Require explanation of fees. Public bodies when they provide estimates for records searches ought to describe how the fees are calculated. Which employees will perform searches, how were time estimates calculated, what features of a particular employee's expertise make it impractical for a lower rate employee to perform the same records response? It may be that an attorney has to supervise, for example, paralegals in preparing a production, but in most complex document productions, attorneys, at high rates, don't prepare the production soup to nuts.
3. Cap fees for FOIA productions, but give public bodies an opportunity to seek from the court a waiver of the cap. The burden should be on the public body to get an exemption from the cap waiver.
4. If harassment by a requester is a problem, allow public bodies to seek pre-FOIA request permission from a court. The public body would have the burden to prove a habitually harassing requester has been abusive, in the same way federal courts can require judicial clearance of a court filing by litigants who regularly file frivolous pleadings.
5. FOIA transparency is both a help to requesters and a reminder that people doing the peoples' work are accountable to the people. Even if no FOIA request for a particular record is ever made, that officials know their work could be viewed by the public is a powerful reminder that their work could be viewed by the public.
6. As data proliferates, and the costs of production grow, hopefully public bodies, and those that fund public bodies, will be motivated to improve their data storage and access infrastructure.

Thanks everyone,

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