

From: **Swieringa, Kelsey** <swieringak@portsmouthva.gov>
Date: Tue, Apr 27, 2021 at 4:22 PM
Subject: HB2000 Written Comment for 4/28 Meeting
To: foiacouncil@dls.virginia.gov <foiacouncil@dls.virginia.gov>

Dear FOIA Council,

My name is Kelsey Swieringa, and I am an Assistant City Attorney for the City of Portsmouth. One of my practice areas is FOIA; I help ensure the City properly responds to all FOIA requests. While I think HB2000 has some good ideas to make FOIA more accessible, in its current iteration it is overly burdensome on local government and may create unintended problems.

My first concern is the administrative difficulty of tracking how many FOIA requests each individual submits in a 31-day period. As you are aware, individuals may submit a FOIA request to any city representative. These requests are sometimes made orally in-person or over the phone. If a department can handle the request themselves (e.g., the Planning department providing records related to a rezoning), they typically do. FOIA does not require requesters to submit through a centralized system; it will be very difficult to track this information with FOIA law as written.

My second and primary concern is the volume of non-chargeable searches the bill requires. Although HB2000 states that every hour over two may be charged in a single search, it is easy to reword a single request that would require eight hours of response time into four requests that will require two hours; therefore, this effectively provides eight free hours of searches per person per month. We have found that requesters frequently ask for extremely broad searches when they are actually only looking for a small subset. When we tell them how long it will take to run the search (and that there is a cost involved), we are usually able to work with them to narrow their search to what they actually want. Without an incentive to narrow these unintentionally broad searches, City staff will waste their time (and the City's money) processing documents that are not of interest to the requester. Additionally, this bill would offer media and other entities virtually unlimited no-charge searches. Because FOIA requests are by an *individual*, any entity or media outlet would have 8 hours of free searches a month *per employee*.

I am not at all opposed to providing some amount of non-chargeable search time to requesters; in fact, we typically do not charge if a request takes less than an hour to process. But eight hours a month could easily overburden smaller localities who lack the resources to process the extra influx.

I am also unsure how a local government entity could comply with the requirement to post a written policy on how much it charges for accessing and searching for responsive records. FOIA states that a public entity may charge the hourly rate of the lowest-paid person who can most economically perform the search. That means the hourly rate will vary depending on what documents are being requested. If the request can be performed by administrative staff, perhaps it could be completed at a \$15/hour rate. Another search may require an attorney to process due to substantial amounts of attorney-client privilege, which would be much more than \$15/hour. Whenever we charge, we always share with the requester the hourly rate and estimated time associated with that request prior to processing.

Finally, I wanted to remind the Council that we are not allowed to ask the purpose of the request and must treat all requests the same. We frequently get requests that are clearly for commercial purposes; the requester is either looking for data to sell to the public, or is collecting email lists (usually of our own employees) to spam with advertisements for their personal business. Under HB2000, these requesters would also obtain 8 hours of non-chargeable response time every month.

Thank you for your time and consideration,

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