

SENATE BILL NO. \_\_\_\_\_ HOUSE BILL NO. \_\_\_\_\_

1 A BILL to amend and reenact §§ 2.2-3704 and 2.2-3704.1 of the Code of Virginia, relating to the  
2 Virginia Freedom of Information Act; requirements to publish a database index and a statement  
3 of rights and responsibilities.

4 **Be it enacted by the General Assembly of Virginia:**

5 **1. That §§ 2.2-3704 and 2.2-3704.1 of the Code of Virginia are amended and reenacted as follows:**

6 § 2.2-3704. Public records to be open to inspection; procedure for requesting records and  
7 responding to request; charges.

8 A. Except as otherwise specifically provided by law, all public records shall be open to  
9 inspection and copying by any citizens of the Commonwealth during the regular office hours of the  
10 custodian of such records. Access to such records shall not be denied to citizens of the Commonwealth,  
11 representatives of newspapers and magazines with circulation in the Commonwealth, and  
12 representatives of radio and television stations broadcasting in or into the Commonwealth. The  
13 custodian may require the requester to provide his name and legal address. The custodian of such  
14 records shall take all necessary precautions for their preservation and safekeeping.

15 B. A request for public records shall identify the requested records with reasonable specificity.  
16 The request need not make reference to this chapter in order to invoke the provisions of this chapter or  
17 to impose the time limits for response by a public body. Any public body that is subject to this chapter  
18 and that is the custodian of the requested records shall promptly, but in all cases within five working  
19 days of receiving a request, provide the requested records to the requester or make one of the following  
20 responses in writing:

21 1. The requested records are being entirely withheld because their release is prohibited by law or  
22 the custodian has exercised his discretion to withhold the records in accordance with this chapter. Such  
23 response shall identify with reasonable particularity the volume and subject matter of withheld records,

24 and cite, as to each category of withheld records, the specific Code section that authorizes the  
25 withholding of the records.

26 2. The requested records are being provided in part and are being withheld in part because the  
27 release of part of the records is prohibited by law or the custodian has exercised his discretion to  
28 withhold a portion of the records in accordance with this chapter. Such response shall identify with  
29 reasonable particularity the subject matter of withheld portions, and cite, as to each category of withheld  
30 records, the specific Code section that authorizes the withholding of the records. When a portion of a  
31 requested record is withheld, the public body may delete or excise only that portion of the record to  
32 which an exemption applies and shall release the remainder of the record.

33 3. The requested records could not be found or do not exist. However, if the public body that  
34 received the request knows that another public body has the requested records, the response shall include  
35 contact information for the other public body.

36 4. It is not practically possible to provide the requested records or to determine whether they are  
37 available within the five-work-day period. Such response shall specify the conditions that make a  
38 response impossible. If the response is made within five working days, the public body shall have an  
39 additional seven work days in which to provide one of the four preceding responses.

40 C. Any public body may petition the appropriate court for additional time to respond to a request  
41 for records when the request is for an extraordinary volume of records or requires an extraordinarily  
42 lengthy search, and a response by the public body within the time required by this chapter will prevent  
43 the public body from meeting its operational responsibilities. Before proceeding with the petition,  
44 however, the public body shall make reasonable efforts to reach an agreement with the requester  
45 concerning the production of the records requested.

46 D. Subject to the provisions of subsections G and J, no public body shall be required to create a  
47 new record if the record does not already exist. However, a public body may abstract or summarize  
48 information under such terms and conditions as agreed between the requester and the public body.

49 E. Failure to respond to a request for records shall be deemed a denial of the request and shall  
50 constitute a violation of this chapter.

51 F. A public body may make reasonable charges not to exceed its actual cost incurred in  
52 accessing, duplicating, supplying, or searching for the requested records. No public body shall impose  
53 any extraneous, intermediary or surplus fees or expenses to recoup the general costs associated with  
54 creating or maintaining records or transacting the general business of the public body. Any duplicating  
55 fee charged by a public body shall not exceed the actual cost of duplication. The public body may also  
56 make a reasonable charge for the cost incurred in supplying records produced from a geographic  
57 information system at the request of anyone other than the owner of the land that is the subject of the  
58 request. However, such charges shall not exceed the actual cost to the public body in supplying such  
59 records, except that the public body may charge, on a pro rata per acre basis, for the cost of creating  
60 topographical maps developed by the public body, for such maps or portions thereof, which encompass  
61 a contiguous area greater than 50 acres. All charges for the supplying of requested records shall be  
62 estimated in advance at the request of the citizen.

63 G. Public records maintained by a public body in an electronic data processing system, computer  
64 database, or any other structured collection of data shall be made available to a requester at a reasonable  
65 cost, not to exceed the actual cost in accordance with subsection F. When electronic or other databases  
66 are combined or contain exempt and nonexempt records, the public body may provide access to the  
67 exempt records if not otherwise prohibited by law, but shall provide access to the nonexempt records as  
68 provided by this chapter.

69 Public bodies shall produce nonexempt records maintained in an electronic database in any  
70 tangible medium identified by the requester, including, where the public body has the capability, the  
71 option of posting the records on a website or delivering the records through an electronic mail address  
72 provided by the requester, if that medium is used by the public body in the regular course of business.  
73 No public body shall be required to produce records from an electronic database in a format not  
74 regularly used by the public body. However, the public body shall make reasonable efforts to provide  
75 records in any format under such terms and conditions as agreed between the requester and public body,  
76 including the payment of reasonable costs. The excision of exempt fields of information from a database

77 or the conversion of data from one available format to another shall not be deemed the creation,  
78 preparation or compilation of a new public record.

79 H. In any case where a public body determines in advance that charges for producing the  
80 requested records are likely to exceed \$200, the public body may, before continuing to process the  
81 request, require the requester to agree to payment of a deposit not to exceed the amount of the advance  
82 determination. The deposit shall be credited toward the final cost of supplying the requested records.  
83 The period within which the public body shall respond under this section shall be tolled for the amount  
84 of time that elapses between notice of the advance determination and the response of the requester.

85 I. Before processing a request for records, a public body may require the requester to pay any  
86 amounts owed to the public body for previous requests for records that remain unpaid 30 days or more  
87 after billing.

88 ~~J. Every public body of state government shall compile, and annually update, an index of  
89 computer databases that contains at a minimum those databases created by them on or after July 1, 1997.  
90 "Computer database" means a structured collection of data or records residing in a computer. Such index  
91 shall be a public record and shall include, at a minimum, the following information with respect to each  
92 database listed therein: a list of data fields, a description of the format or record layout, the date last  
93 updated, a list of any data fields to which public access is restricted, a description of each format in  
94 which the database can be copied or reproduced using the public body's computer facilities, and a  
95 schedule of fees for the production of copies in each available form. The form, context, language, and  
96 guidelines for the indices and the databases to be indexed shall be developed by the Virginia Information  
97 Technologies Agency in consultation with the Librarian of Virginia and the State Archivist. The public  
98 body shall not be required to disclose its software security, including passwords.~~

99 § 2.2-3704.1. Posting of notice of rights and responsibilities by state public bodies; assistance by  
100 the Freedom of Information Advisory Council.

101 A. All state public bodies created in the executive branch of state government and subject to the  
102 provisions of this chapter shall make available the following information to the public upon request and  
103 shall post such information on the Internet:

104 1. A plain English explanation of the rights of a requester under this chapter, the procedures to  
105 obtain public records from the public body, and the responsibilities of the public body in complying with  
106 this chapter. For purposes of this subdivision "plain English" means written in nontechnical, readily  
107 understandable language using words of common everyday usage and avoiding legal terms and phrases  
108 or other terms and words of art whose usage or special meaning primarily is limited to a particular field  
109 or profession;

110 2. Contact information for the person designated by the public body to (i) assist a requester in  
111 making a request for records or (ii) respond to requests for public records; ~~and~~

112 3. A general description, summary, list, or index of the types of public records maintained by  
113 such state public body;

114 4. A general description, summary, list, or index of any exemptions in law that permit or require  
115 such public records to be withheld from release; and

116 5. Any policy the public body has concerning the type of public records it routinely withholds  
117 from release as permitted by this chapter or other law.

118 B. The Freedom of Information Advisory Council, created pursuant to § 30-178, shall assist in  
119 the development and implementation of the provisions of subsection A, upon request.

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