

SENATE BILL NO. _____ HOUSE BILL NO. _____

1 A BILL to amend and reenact § 2.2-3704 of the Code of Virginia, relating to the Freedom of
2 Information Act; responding to requests for records.

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

4 **1. That § 2.2-3704 of the Code of Virginia is amended and reenacted as follows:**

5 § 2.2-3704. Public records to be open to inspection; procedure for requesting records and
6 responding to request; charges.

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

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

- 19 1. The requested records will be provided to the requester.
- 20 2. The requested records will be entirely withheld because their release is prohibited by law or
- 21 the custodian has exercised his discretion to withhold the records in accordance with this chapter. Such
- 22 response shall (i) be in writing, (ii) identify with reasonable particularity the volume and subject matter
- 23 of withheld records, and (iii) cite, as to each category of withheld records, the specific Code section that
- 24 authorizes the withholding of the records.

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

32 4. The requested records cannot be provided because the public body is not the custodian of the
33 requested records, the requested records do not exist, or such records cannot be found after diligent
34 search. The public body shall respond in writing and certify that (i) it is not the custodian of the records
35 and is not in possession of the records, (ii) the requested records do not exist, or (iii) the requested
36 records cannot be found after diligent search.

37 4.5. It is not practically possible to provide the requested records or to determine whether they
38 are available within the five-work-day period. Such response shall be in writing and specify the
39 conditions that make a response impossible. If the response is made within five working days, the public
40 body shall have an additional seven work days in which to provide one of the three preceding responses.

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

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