

SENATE BILL NO. _____ HOUSE BILL NO. _____

1 A BILL to amend and reenact §§ 2.2-3703 and 2.2-3704 of the Code of Virginia, relating to the
2 Freedom of Information Act; responding to requests for records.

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

4 **1. That §§ 2.2-3703 and 2.2-3704 of the Code of Virginia are amended and reenacted as follows:**

5 § 2.2-3703. Public bodies and records to which chapter inapplicable; voter registration and
6 election records; access by persons incarcerated in a state, local, or federal correctional facility.

7 A. ~~The Except as provided in subsection B of § 2.2-3704, the~~ provisions of this chapter shall not
8 apply to:

9 1. The Virginia Parole Board, except that (i) information from the Virginia Parole Board
10 providing the number of inmates considered by such Board for discretionary parole, the number of
11 inmates granted or denied parole, and the number of parolees returned to the custody of the Department
12 of Corrections solely as a result of a determination by such Board of a violation of parole shall be open
13 to inspection and available for release, on a monthly basis, as provided by § 2.2-3704 and (ii) all records
14 concerning the finances of the Virginia Parole Board shall be public records and subject to the
15 provisions of this chapter. The information required by clause (i) shall be furnished by offense, sex, race,
16 age of the inmate, and the locality in which the conviction was obtained, upon the request of the party
17 seeking the information;

18 2. Petit juries and grand juries;

19 3. Family assessment and planning teams established pursuant to § 2.2-5207; and

20 4. The Virginia State Crime Commission.

21 B. Public access to voter registration and election records shall be governed by the provisions of
22 Title 24.2 and this chapter. The provisions of Title 24.2 shall be controlling in the event of any conflict.

23 C. No provision of this chapter or Chapter 21 (§ 30-178 et seq.) of Title 30 shall be construed to
24 afford any rights to any person incarcerated in a state, local or federal correctional facility, whether or

25 not such facility is (i) located in the Commonwealth or (ii) operated pursuant to the Corrections Private
26 Management Act (§ 53.1-261 et seq.). However, this subsection shall not be construed to prevent an
27 incarcerated person from exercising his constitutionally protected rights, including, but not limited to,
28 his rights to call for evidence in his favor in a criminal prosecution.

29 § 2.2-3704. Public records to be open to inspection; procedure for requesting records and
30 responding to request; charges.

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

38 B. A request for public records shall identify the requested records with reasonable specificity.
39 The request need not make reference to this chapter in order to invoke the provisions of this chapter or
40 to impose the time limits for response by a public body. ~~Any A public body that is subject to this chapter~~
41 ~~and that is the custodian of the requested records~~ shall promptly, but in all cases within five working
42 days of receiving a request, make the requested records available or make one of the following
43 responses in writing:

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

50 ~~3.2.~~ The requested records will be provided in part and withheld in part because the release of
51 part of the records is prohibited by law or the custodian has exercised his discretion to withhold a

52 portion of the records in accordance with this chapter. Such response shall (i) ~~be in writing, (ii)~~ identify
53 with reasonable particularity the subject matter of withheld portions; and ~~(iii)~~(ii) cite, as to each category
54 of withheld records, the specific Code section that authorizes the withholding of the records. When a
55 portion of a requested record is withheld, the public body may delete or excise only that portion of the
56 record to which an exemption applies and shall release the remainder of the record.

57 3. The requested records cannot be provided because the public body is not the custodian of the
58 requested records or the requested records could not be found in the possession of the public body after
59 diligent search. In its response, the public body shall certify that (i) it is not the custodian of the records
60 and is not in possession of the records or (ii) the requested records could not be found in the possession
61 of the public body after diligent search. If the requested records are known to be in the possession of
62 another public body, the response shall include the name, and primary mailing address and telephone
63 number of such public body.

64 4. The public body is not subject to the provisions of this chapter. Such response shall cite the
65 specific Code section that exempts the public body from this chapter.

66 5. It is not practically possible to provide the requested records or to determine whether they are
67 available within the five-work-day period. Such response shall be in writing and specify the conditions
68 that make a response impossible. If the response is made within five working days, the public body shall
69 have an additional seven work days in which to provide one of the ~~three preceding~~ responses specified
70 in subdivision 1 through 3.

71 C. Any public body may petition the appropriate court for additional time to respond to a request
72 for records when the request is for an extraordinary volume of records or would require an
73 extraordinarily lengthy search, and a response by the public body within the time required by this
74 chapter will prevent the public body from meeting its operational responsibilities. Before proceeding
75 with the petition, however, the public body shall make reasonable efforts to reach an agreement with the
76 requester concerning the production of the records requested.

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

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

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

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

100 Public bodies shall produce nonexempt records maintained in an electronic database in any
101 tangible medium identified by the requester, including, where the public body has the capability, the
102 option of posting the records on a website or delivering the records through an electronic mail address
103 provided by the requester, if that medium is used by the public body in the regular course of business.

104 No public body shall be required to produce records from an electronic database in a format not
105 regularly used by the public body. However, the public body shall make reasonable efforts to provide
106 records in any format under such terms and conditions as agreed between the requester and public body,
107 including the payment of reasonable costs. The excision of exempt fields of information from a database
108 or the conversion of data from one available format to another shall not be deemed the creation,
109 preparation or compilation of a new public record.

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

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

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

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