

Loudoun County School Board Proposal Regarding Section 2.2-3704C
October 2, 2015

Proposal:

The Loudoun County School Board proposes that Section 2.2-3704C be amended to add clarifying language to clearly allow a court of competent jurisdiction to exercise discretion in fashioning appropriate relief when a public body is at risk of being unable to meet the time deadlines in VFOIA, even with the 7-day extension.

Current Language:

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

Proposed Language:

“C. Any public body may petition the appropriate court for relief including, but not limited to, additional time to respond to a request for records, providing a schedule for pending and future requests to allow the public body to complete previous VFOIAs with reasonable diligence or authorizing a work plan in which the public body would work on the request(s) for a specified number of hours per week when the request is for an extraordinary volume of records or requires an extraordinarily lengthy search, and a response by the public body within the time required by this chapter will prevent the public body from meeting its operational responsibilities. The court may, in its reasonable discretion, order such relief it deems appropriate to the circumstances. Before proceeding with the petition, however, the public body shall make reasonable efforts to reach an agreement with the requester concerning the production of the records requested.”

Questions and Answers:

1. Why is this change needed?

ANSWER:

- a. Typically, school boards, as do many local and state-level agencies, have minimal central office staffs to address the wide range of issues that come up on a day-to-day basis. Loudoun County Public Schools is no different. While admittedly rare, when a requester incrementally submits 83 VFOIA requests over a 10-month period in such a fashion, number and sequence, whether intentionally or unintentionally, so as to cause a bottleneck in the administrative processing of the requests, the public body should be able to ask a court to order any relief it deems appropriate to the circumstances in its discretion.
- b. For example, in the case mentioned above in which 83 requests were filed, the submissions just for the months of March and April 2015 are as follows:

- i. March 5—1 VFOIA filed
- ii. March 7—1 VFOIA filed
- iii. March 9—1 VFOIA filed
- iv. March 10—4 VFOIAs filed
- v. March 11—1 VFOIA filed
- vi. March 13—1 VFOIA filed
- vii. March 17—2 VFOIAs filed
- viii. March 18—1 VFOIA filed
- ix. March 19—16 VFOIAs filed
- x. March 22—1 VFOIA filed
- xi. March 26—1 VFOIA filed
- xii. March 31—1 VFOIA filed
- xiii. April 2—1 VFOIA filed
- xiv. April 5—1 VFOIA filed
- xv. April 9—1 VFOIA filed
- xvi. April 10—3 VFOIAs filed
- xvii. April 11—4 VFOIAs filed
- xviii. April 14—2 VFOIAs filed
- xix. April 16—2 VFOIA filed
- xx. April 24—13 VFOIAs filed
- xxi. April 29—12 VFOIAs were filed by another individual and the requests were identical to 12 of the VFOIAs filed by the original requester.

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Contemporaneous with the submission of these VFOIAs, the original requester sued us under VFOIA on April 3, 2015, June 16, 2015, and June 25, 2015 and has not won a single case. In addition, he was sanctioned for filing an excessive number of witness subpoenas.

2. What is likely to happen if the change is not approved?

ANSWER: This kind of misuse of the system results in multiple negative outcomes:

- 1) The public body cannot get its other work done and operations are impacted;
- 2) VFOIAs requests of other persons may be at risk for not being timely processed;
and,
- 3) Inefficient and wasteful operations occur in the defense of lawsuits having no merit and in the processing of VFOIA requests for which the cost estimate is never paid.