



To: The Freedom of Information Advisory Council
From: Virginia Coalition for Open Government + Virginia Press Association
Re: HB 2000 (Roem)
Date: Tuesday, April 27, 2021

The Virginia Coalition for Open Government (VCOG) and the Virginia Press Association (VPA) write in support of a study of HB 2000, patroned by Del. Roem, and referred to the council by the House General Laws Committee.

VCOG and VPA ask that any study include stakeholders — local and state government representatives, press and access advocates, etc. — as direct participants in a workgroup supporting any study committee's work.

VCOG and VPA have observed how the cost of records requests under FOIA have steadily grown over the past decade. Though all requesters have different “break” points at which an estimate becomes too expensive, the fact is that many citizens and journalists are having to give up on their requests because they cannot afford them.

Several factors are at play, including the huge number of emails generated by even a “simple” request, the involvement of multiple professionals in the process (from IT programmers to attorneys) and wide-ranging, voluminous requests.

Last fall, VCOG surveyed fee-charging provisions in all 50 states' public records laws. The research found the laws could be sorted into four broad categories:¹

- those states like Virginia (9) that allow for charges for copies and for labor without limitations, other than “actual cost”;
- those states (22) that allow for copy charges and for labor, but with limitations, such as a cap on the hourly rate, the waiver of the first few hours/number of copies of any request and/or not allowing labor charges for attorney review;
- those states (13) that allow for copy charges only; and
- those states (6) whose law was somewhat ambiguous or dependent on the specific type of record being requested or who requested it.

¹ *It is possible that some states could fall into more than one category.*



The research makes clear that there are several different approaches to charging fees for public records, and VCOG and VPA are open to exploring multiple options and avenues. And a conversation among those most affected — how requests may be burdening local and state government on the one hand and costing too much for ordinary citizens and the press on the other — is essential.

VCOG would like to offer its research to the council to kick-start any discussion on possible alternatives and also encourages the council to authorize a work group to meet and discuss beyond the usual public comment periods of council meetings.

Thank you for the time and attention the council will give to this important issue that affects every records requester and every government response in the state.

Respectfully,

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