



Date: November 26, 2019
To: Virginia Freedom of Information Act Advisory Council (FOIA Council)
From: Virginia Press Association (VPA)
Re: Please OPPOSE “tolling” bill draft (LD 20100558)

The Virginia Press Association (VPA) closely followed the FOIA charges and tolling issue that was discussed at the last meeting of the Phishing Study Subcommittee on October 8, 2019. At that meeting, staff presented for the first time three bill drafts for subcommittee members to consider as options for addressing the issue. After discussion, the subcommittee voted to recommend the third presented draft (LD 20100558), which introduces new language stipulating that the time period shall be tolled for the amount of time that elapses between notice of the cost estimate and *receipt of payment* (versus simply response or agreement to pay) from the requester. In regard to advance deposits when an estimate exceeds \$200, the bill also amends current language to say that actual payment is required, versus only the requester’s agreement to pay, which represents a shift from a long-standing policy that low-cost, routine requests should be treated differently from those that are more time-consuming or voluminous.

The VPA strongly opposes requiring full pre-payment of an estimate for fulfilling FOIA requests, and as such we oppose LD 20100558. The original concern that sparked the tolling issue was not the question of payment but rather simply when, not how, tolling should stop and begin when a cost estimate or deposit request is given to the requestor. Requiring full pre-payment is an overreach and could lead to unnecessary burdens or unintended consequences.

For example, an overestimation would likely be a deterrent or barrier to the requestor, even if the final cost is ultimately less than the initial overestimation. In an effort to not underestimate costs, government offices may inappropriately pad estimates, which could deter requests. If the final cost is different from the pre-paid cost estimate, the government office fulfilling the FOIA request would now be in the position of having to reconcile the cost difference with the requestor.

We also believe that FOIA, and the public information it protects and makes open to the public, is not like any other government service. Similar to how public meetings of the government are free and open in order to guarantee public access and transparency, public records should remain as unencumbered as possible. We understand that reasonable costs must be recovered by the government, but requiring pre-payment of an estimate for public records is generally not reasonable or practical for an open government. As taxpayers, Virginia residents should not be subject to an upfront charge for its own information – public records – that are at the heart of FOIA.

VPA believes a legislative clarification that a simple response or agreement to pay is sufficient to address the issue at hand. As such, we support the first presented bill draft (LD 20100544). We also acknowledge there may be scenarios in which requiring a deposit is reasonable and appropriate. We look forward to further discussing this issue with the FOIA Council and stakeholders.

Please contact VPA lobbyists Mark Hickman (mark@commonwealthstrategy.net) or Aimee Seibert (aimee@commonwealthstrategy.net) with any questions.

Thank you.