

SENATE BILL NO. _____ HOUSE BILL NO. _____

1 A BILL to amend and reenact § 2.2-3704 of the Code of Virginia, relating to the Virginia Freedom of
2 Information Act; procedure for requesting and responding to requests for public 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; transfer of records for storage, etc.**

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, representatives of newspapers and
9 magazines with circulation in the Commonwealth, and representatives of radio and television stations
10 broadcasting in or into the Commonwealth during the regular office hours of the custodian of such
11 records. Access to such records shall ~~not be denied to citizens of the Commonwealth, representatives of~~
12 ~~newspapers and magazines with circulation in the Commonwealth, and representatives of radio and~~
13 ~~television stations broadcasting in or into the Commonwealth~~ be provided by the custodian in
14 accordance with the provisions of this chapter by inspection or providing copies of the requested
15 records, at the option of the requester. The custodian may require the requester to provide his name and
16 legal address. The custodian of such records shall take all necessary precautions for their preservation
17 and safekeeping.

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

24 1. The requested records are being entirely withheld. Such response shall identify with
25 reasonable particularity the volume and subject matter of withheld records, and cite, as to each category

26 | of withheld records, the specific Code section or other provision of law that authorizes the withholding
27 | of the records.

28 | 2. The requested records are being provided in part and are being withheld in part. Such response
29 | shall identify with reasonable particularity the subject matter of withheld portions, and cite, as to each
30 | category of withheld records, the specific Code section or other provision of law that authorizes the
31 | withholding of the records.

32 | 3. The requested records could not be found or do not exist. However, if the public body that
33 | received the request knows that another public body has the requested records, the response shall include
34 | contact information for the other public body.

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

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

45 | D. Subject to the provisions of subsection G, no public body shall be required to create a new
46 | record if the record does not already exist. However, a public body may abstract or summarize
47 | information under such terms and conditions as agreed between the requester and the public body.

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

50 | F. A public body may make reasonable charges not to exceed its actual cost incurred in
51 | accessing, duplicating, supplying, or searching for the requested records. No public body shall impose
52 | any extraneous, intermediary, or surplus fees or expenses to recoup the general costs associated with

53 creating or maintaining records or transacting the general business of the public body. Any duplicating
54 fee charged by a public body shall not exceed the actual cost of duplication. The public body may also
55 make a reasonable charge for the cost incurred in supplying records produced from a geographic
56 information system at the request of anyone other than the owner of the land that is the subject of the
57 request. However, such charges shall not exceed the actual cost to the public body in supplying such
58 records, except that the public body may charge, on a pro rata per acre basis, for the cost of creating
59 topographical maps developed by the public body, for such maps or portions thereof, which encompass
60 a contiguous area greater than 50 acres.

61 All charges for the supplying of requested records shall be estimated in advance at the request of
62 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. In the event a public body has transferred possession of public records to any entity, including
89 but not limited to any other public body, for storage, maintenance, or archiving, the public body
90 initiating the transfer of such records shall remain the custodian of such records for purposes of
91 responding to requests for public records made pursuant to this chapter and shall be responsible for
92 retrieving and supplying such public records to the requester. In the event a public body has transferred
93 public records for storage, maintenance, or archiving and such transferring public body is no longer in
94 existence, any public body that is a successor to the transferring public body shall be deemed the
95 custodian of such records. In the event no successor entity exists, the entity in possession of the public
96 records shall be deemed the custodian of the records for purposes of compliance with this chapter, and
97 shall retrieve and supply such records to the requester. Nothing in this subsection shall be construed to
98 apply to records transferred to the Library of Virginia for permanent archiving pursuant to the duties
99 imposed by the Virginia Public Records Act (§ 42.1-76 et seq.). In accordance with § 42.1-79, the
100 Library of Virginia shall be the custodian of such permanently archived records and shall be responsible
101 for responding to requests for such records made pursuant to this chapter.

102 **2. That the provisions of this act are declaratory of existing law.**

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