

## HB2000

This proposed bill provides for local governments to absorb the cost of providing documents responsive to FOIA requests up to 4 times in a 31 day period, for up to 2 hours per request. It presents an invitation for individuals angry at local government for any reason to harass the local government and to abuse the law out of spite. Each locality I have worked for has had at least one FOIA antagonist at some point who filed multiple document requests for no practical purpose, so it cannot be said that the local governments must have done something to deserve such abuse. The wording of the bill also opens the door for litigation as to whether a particular request needed more than two hours to fulfill, which in many cases will not be worth the local government's time and expense in defending. The financial impact of the bill would be significant for many small localities.

In the discussion at the subcommittee meeting, the idea was floated of a cap on FOIA fees. That would result in someone requesting voluminous records, potentially bringing the local government's work to a standstill. As I mentioned during my spoken comments, I have seen such requests, and I know of many other localities that have also received them. Regardless of the motives of the requester, such requests would – if subject to a maximum search and copy fee – impede the operation of local government.

Another way to look at the impact of HB2000 is that it shifts the cost of providing public records from the requester to the taxpayers. I understand why the press association wishes to minimize its expenses, but often the documents requested are of no interest to the public and do not contribute to public understanding of government.

I see no reason why the existing legal remedies are insufficient. The subcommittee heard an anecdote regarding an individual seeking a school bus video, and I asked whether the individual had gone to court alleging a FOIA violation. In response, I heard about the allegations in the case and the news media coverage, but my question went unanswered. One speaker at the subcommittee questioned whether a non-attorney would be able to go to court and get a prompt resolution of a FOIA dispute.

Virginia Code § 2.2-3713 (C) already provides for an injunction or mandamus hearing in either General District Court or Circuit Court within seven days of filing, as long as the public body gets three days' notice of the hearing. For public records requests, there are no exceptions to this timing. Further, the petition gets precedence over other docket items. Failure to use the existing tools does not justify imposing burdens on the public as a whole.

## HB2196

This proposed bill would release law enforcement officers' disciplinary files to the public. Doing so would, in some instances, have the opposite effect of what is intended, because it would disincentivize management from committing anything to writing regarding law enforcement officer discipline. The release of existing files would encourage harassment of officers. The proposed bill would turn what is supposed to be a corrective process into a punitive one. It would treat law enforcement officers differently from all other employees, without appropriate justification. The bill appears to take no notice of the fact that police officers can be compelled to testify.

Make no mistake, I am strongly in favor of police reform. HB2196 is simply not the tool to accomplish that reform. I would support something along the lines of Sheriff Perry's discussion of the accreditation process looking at Internal Affairs files. As I and others noted during the public comment portion of the subcommittee meeting, the disciplinary process for attorneys also provides a model that makes complaints and many outcomes confidential, but allows the public to know of serious discipline. Deterring police misconduct is a major societal issue – but that deterrence is not going to be accomplished through FOIA amendments.

--Martin Crim

### **Martin R. Crim, Esq.**

Vanderpool, Frostick & Nishanian, P.C.

9200 Church Street, Suite 400, Manassas, VA 20110

Main: 703-369-4738 | Fax: 703-369-3653

Direct: 703-479-3175

[MCrim@vfnlaw.com](mailto:MCrim@vfnlaw.com)