

On Mon, Jun 14, 2021 at 1:11 PM Robert Zullo <rzullo@virginiamercury.com> wrote:

Good afternoon and thanks for the opportunity to speak to you.

My name is Robert Zullo and I'm the editor of the Virginia Mercury, which is a nonprofit online news organization covering Virginia government and policy. We are also a member of the Virginia Press Association. Prior to launching the Mercury three years ago I spent 13 years as a reporter and editor at weekly and daily newspapers, including the Richmond Times-Dispatch, in Virginia, Louisiana, New Jersey and Pennsylvania.

I wanted to talk to you today not to lobby for or against any specific legislation but to provide some recent real world examples of some of the problems members of the public, including journalists, encounter while making FOIA requests, particularly around cost. However, I will say generally speaking that the concept of capping how much custodians of records can charge for locating, reviewing and making them available is a good idea.

Here's why:

In May of last year, we filed a request with the Virginia Department of Health seeking communications, including emails and letters, spanning a roughly two-month period from certain officials concerning COVID-19 outbreaks at Virginia meatpacking facilities.

We were quoted an estimated cost of \$2,191 — nearly 63 hours of staff time at a rate of \$35 an hour — to “review, redact as necessary, and produce these emails.” We were told VDH would be willing to waive a portion of the fee. At that point we entered into what I've come to call the “let's make a deal” phase of high-dollar FOIA requests, which we've found to be a common, if arbitrary and inconsistently applied, practice. Eventually VDH said it would charge only \$1,095 for the correspondence, which was the basis for an award-winning story [that uncovered](#) how health officials had backed off a push to shut down poultry processing plants on the Eastern Shore amid pushback from the industry.

Around the same time, we had sought emails, again from the Department of Health, between top health officials and health care industry lobbyists. The initial quote for that request was \$2,800, based on an estimated 40 hours of staff labor (at \$70 an hour by a high-ranking state official) though we were able to talk the department again down to a little more than \$1,000.

We are a small, nonprofit organization but were fortunate to have enough donations from readers at that point in time to cover those fees. And we felt it was worth the expense to shed light on how Virginia's leaders were making decisions during a once-in-a-century health crisis. But it's easy to see how being quoted thousands of dollars to access information that should be public could be a barrier for anyone making a similar request.

At the moment, we are negotiating with another state agency over a similar FOIA request for what should be readily accessible records but have been told they will require exhaustive and expensive staff time to produce.

Virginia's lack of limitations on what custodians of public records can charge in hourly rates for complying with FOIA requests in effect subsidizes poor record-keeping practices and presents unreasonably high barriers to access to public information. This committee has heard past testimony that's suggested government bodies need to be able to charge high prices to deter what they consider to be frivolous or disruptive requests. But I would encourage you to keep in mind that nowhere in FOIA are custodians of records allowed to make a determination as to motives for records requests. And too often, governmental bodies treat FOIA as an annoyance rather than part of their responsibilities as public agencies.

Thanks again for allowing me to address you on this important issue.

- Robert Zullo,
Editor, Virginia Mercury