

**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; charges for production of 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 citizens of  
8 the Commonwealth, representatives of newspapers and magazines with circulation in the Commonwealth,  
9 and representatives of radio and television stations broadcasting in or into the Commonwealth during the  
10 regular office hours of the custodian of such records. Access to such records shall be provided by the  
11 custodian in accordance with this chapter by inspection or by providing copies of the requested records,  
12 at the option of the requester. The custodian may require the requester to provide his name and legal  
13 address. The custodian of such records shall take all necessary precautions for their preservation and  
14 safekeeping.

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

21 1. The requested records are being entirely withheld. Such response shall identify with reasonable  
22 particularity the volume and subject matter of withheld records, and cite, as to each category of withheld  
23 records, the specific Code section that authorizes the withholding of the records.

24           2. The requested records are being provided in part and are being withheld in part. Such response  
25 shall identify with reasonable particularity the subject matter of withheld portions, and cite, as to each  
26 category of withheld records, the specific Code section that authorizes the withholding of the records.

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

30           4. It is not practically possible to provide the requested records or to determine whether they are  
31 available within the five-work-day period. Such response shall specify the conditions that make a response  
32 impossible. If the response is made within five working days, the public body shall have an additional  
33 seven work days or, in the case of a request for criminal investigative files pursuant to § 2.2-3706.1, 60  
34 work days in which to provide one of the four preceding responses.

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

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

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

46           F. A public body may make reasonable charges not to exceed its actual cost incurred in accessing,  
47 duplicating, supplying, or searching for the requested records, except that (i) for the first four individual  
48 record requests made by a requester to a public body during a period of 31 consecutive days, a public body  
49 shall not charge a requester for any costs incurred during the first two hours spent accessing or searching  
50 for the requested records and (ii) for any additional time spent accessing or searching for such records, or

51 for any additional record requests, the public body shall not charge an hourly rate for accessing or  
52 searching for the records exceeding the lesser of the hourly rate of pay of the lowest-paid individual  
53 capable of fulfilling the request or \$33 per hour. With regard to clause (ii), a public body may petition the  
54 appropriate court for relief from the fee cap imposed by such clause upon showing by a preponderance of  
55 the evidence that there is no qualified individual capable of fulfilling the request for \$33 per hour or less.  
56 Any such petition shall be heard within seven days of the date when the same is made, provided that the  
57 public body has sent and the requester has received a copy of the petition at least three working days prior  
58 to filing. The hearing on any petition made outside of the regular terms of the circuit court of a locality  
59 that is included in a judicial circuit with another locality or localities shall be given precedence on the  
60 docket of such court over all cases that are not otherwise given precedence by law. The period within  
61 which the public body shall respond under this section shall be tolled for the amount of time that elapses  
62 between the requester's receipt of a copy of the petition and a final disposition of the court. A public body  
63 shall not pass along to the requester or otherwise incorporate into allowable charges any court costs or  
64 fees resulting from such petition.

65 Each public body shall post on its website or otherwise publish a written policy (a) explaining how  
66 the public body assesses charges for accessing or searching for requested records and (b) noting the current  
67 fee charged, if any, by the public body for accessing and searching for such requested records. No public  
68 body shall impose any extraneous, intermediary, or surplus fees or expenses to recoup the general costs  
69 associated with creating or maintaining records or transacting the general business of the public body.  
70 Any duplicating fee charged by a public body shall not exceed the actual cost of duplication. The public  
71 body may also make a reasonable charge for the cost incurred in supplying records produced from a  
72 geographic information system at the request of anyone other than the owner of the land that is the subject  
73 of the request. However, such charges shall not exceed the actual cost to the public body in supplying such  
74 records, except that the public body may charge, on a pro rata per acre basis, for the cost of creating  
75 topographical maps developed by the public body, for such maps or portions thereof, which encompass a  
76 contiguous area greater than 50 acres. All charges for the supplying of requested records shall be estimated  
77 in advance at the request of the citizen. The period within which the public body shall respond under this

78 section shall be tolled for the amount of time that elapses between notice of the cost estimate and the  
79 response of the requester. If the public body receives no response from the requester within 30 days of  
80 sending the cost estimate, the request shall be deemed to be withdrawn.

81 G. Public records maintained by a public body in an electronic data processing system, computer  
82 database, or any other structured collection of data shall be made available to a requester at a reasonable  
83 cost, not to exceed the actual cost ~~in accordance with~~ and the costs permitted to be charged by a public  
84 body in accordance with the provisions of subsection F. When electronic or other databases are combined  
85 or contain exempt and nonexempt records, the public body may provide access to the exempt records if  
86 not otherwise prohibited by law, but shall provide access to the nonexempt records as provided by this  
87 chapter.

88 Public bodies shall produce nonexempt records maintained in an electronic database in any  
89 tangible medium identified by the requester, including, where the public body has the capability, the option  
90 of posting the records on a website or delivering the records through an electronic mail address provided  
91 by the requester, if that medium is used by the public body in the regular course of business. No public  
92 body shall be required to produce records from an electronic database in a format not regularly used by  
93 the public body. However, the public body shall make reasonable efforts to provide records in any format  
94 under such terms and conditions as agreed between the requester and public body, including the payment  
95 of reasonable costs. The excision of exempt fields of information from a database or the conversion of  
96 data from one available format to another shall not be deemed the creation, preparation, or compilation of  
97 a new public record.

98 H. In any case where a public body determines in advance that charges for producing the requested  
99 records are likely to exceed \$200, the public body may, before continuing to process the request, require  
100 the requester to pay a deposit not to exceed the amount of the advance determination. The deposit shall be  
101 credited toward the final cost of supplying the requested records. The period within which the public body  
102 shall respond under this section shall be tolled for the amount of time that elapses between notice of the  
103 advance determination and the response of the requester.

104 I. Before processing a request for records, a public body may require the requester to pay any  
105 amounts owed to the public body for previous requests for records that remain unpaid 30 days or more  
106 after billing.

107 J. In the event a public body has transferred possession of public records to any entity, including  
108 but not limited to any other public body, for storage, maintenance, or archiving, the public body initiating  
109 the transfer of such records shall remain the custodian of such records for purposes of responding to  
110 requests for public records made pursuant to this chapter and shall be responsible for retrieving and  
111 supplying such public records to the requester. In the event a public body has transferred public records  
112 for storage, maintenance, or archiving and such transferring public body is no longer in existence, any  
113 public body that is a successor to the transferring public body shall be deemed the custodian of such  
114 records. In the event no successor entity exists, the entity in possession of the public records shall be  
115 deemed the custodian of the records for purposes of compliance with this chapter, and shall retrieve and  
116 supply such records to the requester. Nothing in this subsection shall be construed to apply to records  
117 transferred to the Library of Virginia for permanent archiving pursuant to the duties imposed by the  
118 Virginia Public Records Act (§ 42.1-76 et seq.). In accordance with § 42.1-79, the Library of Virginia  
119 shall be the custodian of such permanently archived records and shall be responsible for responding to  
120 requests for such records made pursuant to this chapter.

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