

## MEMORANDUM

**To: The Virginia Freedom of Information Advisory Council (the “Council”)**  
**From: Ramin Seddiq, citizen member, SB 324 Work Group**  
**Re: The Virginia Freedom of Information Act, Va. Code § 2.2-3700 et seq. (“VFOIA”);  
Senate Bill 324 (Roem, 2024) (“SB 324”); SB 324 Work Group (the “Work Group”);  
Proposed Alternative to Legislative Draft (“LD”) 25101081D.**  
**Date: December 4, 2024**

Pursuant to its powers and duties, as set forth in Senate Bill 324 (Roem, 2024), the Code of Virginia § 30-179(7), and other applicable sections, the Council is urged to recommend the adoption of the following alternative<sup>1</sup> to the SB 324 Work Group’s proposed version of § 2.2-3704.02(B) (as articulated in LD 25101081D).

B. If the public body chooses to charge, any charges for staff time shall be calculated based on the lesser of: a.) the median hourly rate of pay of public employees of the public body statewide as of the previous July 1; or b.) the actual hourly rate of pay of the employee who is accessing, duplicating, supplying, or searching for the requested records forty dollars per hour, whichever is the lesser amount rate shall increase by two percent per annum.<sup>2</sup> The hourly rate of pay calculated shall not include the cost of fringe benefits or any overhead costs. When calculating the median hourly rate of pay, the hourly rate of pay of full-time and part-time employees shall be included, but the hourly rate of pay of temporary employees shall not be included. ~~A public body that has multiple departments or divisions may calculate separately the median hourly rate of pay for each such department or division based on the hourly rate of pay of employees of that department or division. With regard to this subsection, a public body may petition the appropriate court for relief from the fee cap imposed by such clause upon showing by a preponderance of the evidence that there is no qualified individual capable of fulfilling the request at the median hourly rate of pay or less. Upon hearing such petition, the court in its discretion may set the hourly rate to be charged not to exceed the actual cost incurred by the public body. Any such petition shall be heard within seven days of the date when the same is made, provided that the public body has sent and the requester has received a copy of the petition at least three working days prior to filing. The hearing on any petition made outside of the regular terms of the circuit court of a locality that is included in a judicial circuit with another locality or localities shall be given precedence on the docket of such court over all cases that are not otherwise given precedence by law. The period within which the public body shall respond under this section shall be tolled for the amount of time that elapses between the requester's receipt of a copy of the petition and a final disposition of the court. A public body shall not pass along to the requester or otherwise incorporate into allowable charges any court costs or fees resulting from such petition.~~

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<sup>1</sup> This alternative represents the bare minimum revision to LD 25101081D necessary to render the Work Group’s effort marginally effective in meeting the stated objectives of SB 324. SB 324 states in part that “the FOIA Council shall convene a work group ... to examine the current FOIA provisions on charges and make recommendations on ways to amend such provisions to make the assessment of charges by public bodies for the production of public records more uniform, more transparent, easier to understand, and less costly.” As indicated in the three memoranda (dated July 29, Sept. 30, and Oct. 31) presented to the Work Group, fully achieving the objectives of SB 324 requires comprehensive and structural reform to VFOIA.

<sup>2</sup> In lieu of a fixed-rate escalation approach, this rate could be pegged to the year-over-year percentage change in the Chained Consumer Price Index for all Urban Consumers (C-CPI-U), as published by the Bureau of Labor Statistics, U.S. Department of Labor.