



To: The FOIA Council Subcommittee on Records Issues  
Re: FOIA Fee ideas/proposals

Tuesday, August 31, 2021

Dear FOIA Council Subcommittee members,

In keeping with VCOG's efforts to facilitate discussion, offer solutions and build consensus for addressing the high cost and inconsistent application of FOIA fees in Virginia, we offer some possible options to consider. The concepts offered here are of more importance than the exact wording. Three of the four recommendations amend the same section of FOIA but I have offered them separately to keep the focus on the individual concepts.

1. VCOG suggests giving the FOIA Council the duty to set rate schedules, preferably with input from state/local government, press and citizens. This is an approach taken in varying degrees by Colorado, Florida, Hawaii, Indiana, Louisiana, Pennsylvania, Tennessee, Vermont and Washington.

**Amend § 30-179 to add a subsection (9):**

*9. Adopt rate schedules that set forth the maximum hourly rate a public body can charge for a request made under § 2.2-3704 for the time spent accessing, duplicating, supplying, or searching for requested records. Such schedules may account for differences in actual cost by region of the state and by the specific job performed. Such schedules shall be reviewed and adjusted, if necessary, by Jan. 1 of every other year beginning in 2022.*

2. VCOG suggests amending FOIA to reference back to § 30-179 in order to place a cap on labor rates.

**Amend 2.2-3704(F)**

(F) A public body may make reasonable charges not to exceed its actual cost incurred in accessing, duplicating, supplying, or searching for the requested records, *however, any charge for labor may not exceed the hourly rates set by the Freedom of Information*



*Advisory Council pursuant to 30-179(9).* No public body shall impose any extraneous, intermediary, or surplus fees or expenses to recoup the general costs associated with creating or maintaining records or transacting the general business of the public body. Any duplicating fee charged by a public body shall not exceed the actual cost of duplication.

3. Regardless of whether #1 and #2 are accepted and/or changed, VCOG recommends requiring a breakdown of costs for all requests so that a requester will have a better understanding of what the actual cost is and so that — if there is a dispute — a judge will be able to assess whether the charged fee is reasonable.

**Amend 2.2-3705(F)**

F. A public body may make reasonable charges.....All charges for the supplying of requested records shall be estimated in advance at the request of the citizen. *Such estimate shall identify with reasonable specificity the volume and format of the responsive records, the cost of copies (if any), the hourly rate of any personnel costs and the anticipated amount of time the public body needs to complete the request.* The period within which the public body shall respond under this section shall be tolled for the amount of time that elapses between notice of the cost estimate and the response of the requester. If the public body receives no response from the requester within 30 days of sending the cost estimate, the request shall be deemed to be withdrawn.

4. Finally, and admittedly more controversial, VCOG would recommend eliminating or limiting “exclusion review.” The following language is based on the South Carolina open records statute.

**Amend 2.2-3704(F)**

A public body may make reasonable charges not to exceed its actual cost incurred in accessing, duplicating, supplying, or searching for the requested records, *however, no charges may be imposed for the examination and review of records to determine whether they may be withheld from disclosure pursuant to an exemption in this chapter or prohibited from disclosure by another law.* No public body shall impose any extraneous, intermediary, or surplus fees or expenses to recoup the general costs associated with creating or maintaining records or transacting the general business of



the public body. Any duplicating fee charged by a public body shall not exceed the actual cost of duplication.

VCOG is extremely concerned that members of the public and the press are being priced out of accessing records they have a statutory right to inspect or obtain copies. We remain hopeful that there are at least some incremental steps that can be taken by the council for action during the 2022 legislative session that can bring some measure of relief and consistency to the process.

Thank you for your continued attention to this important issue.

A handwritten signature in black ink that reads "Megan Rhyne".

Megan Rhyne  
Virginia Coalition for Open Government