

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; fees charged for public records requests.

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. Except with regard to scholastic records requested pursuant to subdivision A 1 of § 2.2-3705.4
47 that must be made available for inspection pursuant to the federal Family Educational Rights and Privacy
48 Act (20 U.S.C. § 1232g) and such requests for scholastic records by a parent or legal guardian of a minor
49 student or by a student who is 18 years of age or older, a public body may make reasonable charges not
50 to exceed its actual cost incurred in accessing, duplicating, supplying, or searching for the requested

51 records and shall make all reasonable efforts to supply the requested records at the lowest possible cost.
52 Charges for staff time will be calculated based on the median hourly rate of pay of employees of the public
53 body or the actual hourly rate of the employee who is accessing, duplicating, supplying, or searching for
54 the requested records, whichever is the lesser amount. The hourly rate calculated shall not include the cost
55 of fringe benefits or any overhead costs. When calculating the median rate of pay, the rate of pay of full-
56 time and part-time employees shall be included, but the rate of pay of temporary employees shall not be
57 included. No public body shall impose any extraneous, intermediary, or surplus fees or expenses to recoup
58 the general costs associated with creating or maintaining records or transacting the general business of the
59 public body. Any duplicating fee charged by a public body shall not exceed the actual cost of duplication.
60 The public body may also make a reasonable charge for the cost incurred in supplying records produced
61 from a geographic information system at the request of anyone other than the owner of the land that is the
62 subject of the request. However, such charges shall not exceed the actual cost to the public body in
63 supplying such records, except that the public body may charge, on a pro rata per acre basis, for the cost
64 of creating topographical maps developed by the public body, for such maps or portions thereof, which
65 encompass a contiguous area greater than 50 acres. Prior to conducting a search for records, the public
66 body shall notify the requester in writing that the public body may make reasonable charges not to exceed
67 its actual cost incurred in accessing, duplicating, supplying, or searching for requested records and inquire
68 of the requester whether he would like to request a cost estimate in advance of the supplying of the
69 requested records. The public body shall provide the requester with a cost estimate if requested. The period
70 within which the public body shall respond under this section shall be tolled for the amount of time that
71 elapses between notice of the cost estimate and the response of the requester. If the public body receives
72 no response from the requester within 30 days of sending the cost estimate, the request shall be deemed
73 to be withdrawn. Any costs incurred by the public body in estimating the cost of supplying the requested
74 records shall be applied toward the overall charges to be paid by the requester for the supplying of such
75 requested records. Any local public body that charges for the production of records pursuant to this section
76 may provide an electronic method of payment through which all payments for the production of such
77 records to such locality may be made. For purposes of this subsection, "electronic method of payment"

78 means any kind of noncash payment that does not involve a paper check and includes credit cards, debit
79 cards, direct deposit, direct debit, electronic checks, and payment through the use of telephonic or similar
80 communications.

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 subsection F. When electronic or other databases
84 are combined or contain exempt and nonexempt records, the public body may provide access to the exempt
85 records if not otherwise prohibited by law, but shall provide access to the nonexempt records as provided
86 by this chapter.

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

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

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

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

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