

**SENATE BILL NO. \_\_\_\_\_ HOUSE BILL NO. \_\_\_\_\_**

1 A BILL to amend and reenact §§ 2.2-3704, 2.2-3704.1, and 16.1-77 of the Code of Virginia, relating to  
2 the Virginia Freedom of Information Act; procedure for responding to requests; charges; posting  
3 of notice of rights and responsibilities.

4 **Be it enacted by the General Assembly of Virginia:**

5 **1. That §§ 2.2-3704, 2.2-3704.1, and 16.1-77 of the Code of Virginia are amended and reenacted as**  
6 **follows:**

7 **§ 2.2-3704. Public records to be open to inspection; procedure for requesting records and**  
8 **responding to request; charges; transfer of records for storage, etc.**

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

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

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

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

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

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

37           C. Any public body may petition the appropriate general district or circuit court for additional time  
38 to respond to a request for records when the request is for an extraordinary volume of records or requires  
39 an extraordinarily lengthy search, and a response by the public body within the time required by this  
40 chapter will prevent the public body from meeting its operational responsibilities. The period within which  
41 the public body shall respond under this section shall be tolled while such petition is pending before the  
42 court. The hearing on any such petition made outside of the regular terms of the court of a locality that is  
43 included in a judicial circuit with another locality or localities shall be given precedence on the docket of  
44 such court over all cases that are not otherwise given precedence by law. Before proceeding with the  
45 petition, however, the public body shall make reasonable efforts to reach an agreement with the requester  
46 concerning the production of the records requested.

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

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

52 F. Except with regard to scholastic records requested pursuant to subdivision A 1 of § 2.2-3705.4  
53 that must be made available for inspection pursuant to the federal Family Educational Rights and Privacy  
54 Act (20 U.S.C. § 1232g) and such requests for scholastic records by a parent or legal guardian of a minor  
55 student or by a student who is 18 years of age or older, a public body may make reasonable charges not  
56 to exceed its actual cost incurred in accessing, duplicating, supplying, or searching for the requested  
57 records and shall make all reasonable efforts to supply the requested records at the lowest possible cost.  
58 If the public body chooses to charge, any charges for staff time shall be calculated based on the median  
59 hourly rate of pay of employees of the public body as of the previous July 1 or the actual hourly rate of  
60 pay of the employee who is accessing, duplicating, supplying, or searching for the requested records,  
61 whichever is the lesser amount. The hourly rate of pay calculated shall not include the cost of fringe  
62 benefits or any overhead costs. When calculating the median hourly rate of pay, the hourly rate of pay of  
63 full-time and part-time employees shall be included, but the hourly rate of pay of temporary employees  
64 shall not be included. A public body that has multiple departments or divisions may calculate separately  
65 the median hourly rate of pay for each such department or division based on the hourly rate of pay of  
66 employees of that department or division. No public body shall impose any extraneous, intermediary, or  
67 surplus fees or expenses to recoup the general costs associated with creating or maintaining records or  
68 transacting the general business of the public body. Any duplicating fee charged by a public body shall  
69 not exceed the actual cost of duplication. The public body may also make a reasonable charge for the cost  
70 incurred in supplying records produced from a geographic information system at the request of anyone  
71 other than the owner of the land that is the subject of the request. However, such charges shall not exceed  
72 the actual cost to the public body in supplying such records, except that the public body may charge, on a  
73 pro rata per acre basis, for the cost of creating topographical maps developed by the public body, for such  
74 maps or portions thereof, which encompass a contiguous area greater than 50 acres. Prior to conducting a  
75 search for records, the public body shall notify the requester in writing that the public body may make  
76 reasonable charges not to exceed its actual cost incurred in accessing, duplicating, supplying, or searching  
77 for requested records and inquire of the requester whether he would like to request a cost estimate in  
78 advance of the supplying of the requested records. The public body shall provide the requester with a cost

79 estimate if requested. The period within which the public body shall respond under this section shall be  
80 tolled for the amount of time that elapses between notice of the cost estimate and the response of the  
81 requester. If the public body receives no response from the requester within 30 days of sending the cost  
82 estimate, the request shall be deemed to be withdrawn. Any costs incurred by the public body in estimating  
83 the cost of supplying the requested records shall be applied toward the overall charges to be paid by the  
84 requester for the supplying of such requested records. Any local public body that charges for the  
85 production of records pursuant to this section may provide an electronic method of payment through which  
86 all payments for the production of such records to such locality may be made. For purposes of this  
87 subsection, "electronic method of payment" means any kind of noncash payment that does not involve a  
88 paper check and includes credit cards, debit cards, direct deposit, direct debit, electronic checks, and  
89 payment through the use of telephonic or similar communications.

90 G. Public records maintained by a public body in an electronic data processing system, computer  
91 database, or any other structured collection of data shall be made available to a requester at a reasonable  
92 cost, not to exceed the actual cost in accordance with subsection F. When electronic or other databases  
93 are combined or contain exempt and nonexempt records, the public body may provide access to the exempt  
94 records if not otherwise prohibited by law, but shall provide access to the nonexempt records as provided  
95 by this chapter.

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

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

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

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

129 **§ 2.2-3704.1. Posting of notice of rights and responsibilities by state and local public bodies;**  
130 **assistance by the Freedom of Information Advisory Council.**

131 A. All state public bodies subject to the provisions of this chapter, any county or city, any town  
132 with a population of more than 250, and any school board shall make available the following information

133 to the public upon request and shall post a link to such information on the homepage of their respective  
134 official public government websites:

135 1. A plain English explanation of the rights of a requester under this chapter, the procedures to  
136 obtain public records from the public body, and the responsibilities of the public body in complying with  
137 this chapter. For purposes of this section, "plain English" means written in nontechnical, readily  
138 understandable language using words of common everyday usage and avoiding legal terms and phrases  
139 or other terms and words of art whose usage or special meaning primarily is limited to a particular field  
140 or profession;

141 2. Contact information for the FOIA officer designated by the public body pursuant to § 2.2-3704.2  
142 to (i) assist a requester in making a request for records or (ii) respond to requests for public records;

143 3. A general description, summary, list, or index of the types of public records maintained by such  
144 public body;

145 4. A general description, summary, list, or index of any exemptions in law that permit or require  
146 such public records to be withheld from release;

147 5. Any policy the public body has concerning the type of public records it routinely withholds from  
148 release as permitted by this chapter or other law;

149 6. The following statement: "A public body may make reasonable charges not to exceed its actual  
150 cost incurred in accessing, duplicating, supplying, or searching for the requested records and shall make  
151 all reasonable efforts to supply the requested records at the lowest possible cost. If the public body chooses  
152 to charge, any charges for staff time shall be calculated based on the median hourly rate of pay of  
153 employees of the public body as of the previous July 1 or the actual hourly rate of pay of the employee  
154 who is accessing, duplicating, supplying, or searching for the requested records, whichever is the lesser  
155 amount. The hourly rate of pay calculated shall not include the cost of fringe benefits or any overhead  
156 costs. When calculating the median hourly rate of pay, the hourly rate of pay of full-time and part-time  
157 employees shall be included, but the hourly rate of pay of temporary employees shall not be included. A  
158 public body that has multiple departments or divisions may calculate separately the median hourly rate of  
159 pay for each such department or division based on the hourly rate of pay of employees of that department

160 or division. No public body shall impose any extraneous, intermediary, or surplus fees or expenses to  
161 recoup the general costs associated with creating or maintaining records or transacting the general business  
162 of the public body. Any duplicating fee charged by a public body shall not exceed the actual cost of  
163 duplication. Prior to conducting a search for records, the public body shall notify the requester in writing  
164 that the public body may make reasonable charges not to exceed its actual cost incurred in accessing,  
165 duplicating, supplying, or searching for requested records and inquire of the requester whether he would  
166 like to request a cost estimate in advance of the supplying of the requested records as set forth in subsection  
167 F of § 2.2-3704 of the Code of Virginia."; and

168 7. A written policy (i) explaining how the public body assesses charges for accessing or searching  
169 for requested records and (ii) noting the current fee charged, if any, for accessing and searching for such  
170 requested records.

171 B. Any state public body subject to the provisions of this chapter and any county or city, and any  
172 town with a population of more than 250, shall post a link on its official public government website to the  
173 online public comment form on the Freedom of Information Advisory Council's website to enable any  
174 requester to comment on the quality of assistance provided to the requester by the public body.

175 C. The Freedom of Information Advisory Council, created pursuant to § 30-178, shall assist in the  
176 development and implementation of the provisions of subsection A, upon request.

177 **§ 16.1-77. Civil jurisdiction of general district courts; amending amount of claim.**

178 Except as provided in Article 5 (§ 16.1-122.1 et seq.), each general district court shall have, within  
179 the limits of the territory it serves, civil jurisdiction as follows:

180 (1) Exclusive original jurisdiction of (i) any claim to specific personal property or to any debt, fine  
181 or other money, or to damages for breach of contract or for injury done to property, real or personal, when  
182 the amount of such claim does not exceed \$4,500, exclusive of interest and any attorney fees, and  
183 concurrent jurisdiction with the circuit courts having jurisdiction in such territory of any such claim when  
184 the amount thereof exceeds \$4,500 but does not exceed \$25,000, exclusive of interest and any attorney  
185 fees, and (ii) any action for injury to person, regardless of theory, and any action for wrongful death as  
186 provided for in Article 5 (§ 8.01-50 et seq.) of Chapter 3 of Title 8.01 when the amount of such claim does

187 not exceed \$4,500, exclusive of interest and any attorney fees, and concurrent jurisdiction with the circuit  
188 courts having jurisdiction in such territory of any such claim when the amount thereof exceeds \$4,500 but  
189 does not exceed \$50,000, exclusive of interest and any attorney fees. However, the jurisdictional limit  
190 shall not apply with respect to distress warrants under the provisions of § 8.01-130.4, cases involving  
191 liquidated damages for violations of vehicle weight limits pursuant to § 46.2-1135, nor cases involving  
192 forfeiture of a bond pursuant to § 19.2-143. While a matter is pending in a general district court, upon  
193 motion of the plaintiff seeking to increase the amount of the claim, the court shall order transfer of the  
194 matter to the circuit court that has jurisdiction over the amended amount of the claim without requiring  
195 that the case first be dismissed or that the plaintiff suffer a nonsuit, and the tolling of the applicable statutes  
196 of limitations governing the pending matter shall be unaffected by the transfer. Except for good cause  
197 shown, no such order of transfer shall issue unless the motion to amend and transfer is made at least 10  
198 days before trial. The plaintiff shall pay filing and other fees as otherwise provided by law to the clerk of  
199 the court to which the case is transferred, and such clerk shall process the claim as if it were a new civil  
200 action. The plaintiff shall prepare and present the order of transfer to the transferring court for entry, after  
201 which time the case shall be removed from the pending docket of the transferring court and the order of  
202 transfer placed among its records. The plaintiff shall provide a certified copy of the transfer order to the  
203 receiving court.

204 (2) Jurisdiction to try and decide attachment cases when the amount of the plaintiff's claim does  
205 not exceed \$25,000 exclusive of interest and any attorney fees.

206 (3) Jurisdiction of actions of unlawful entry or detainer as provided in Article 13 (§ 8.01-124 et  
207 seq.) of Chapter 3 of Title 8.01, and in Chapter 14 (§ 55.1-1400 et seq.) of Title 55.1, and the maximum  
208 jurisdictional limits prescribed in subdivision (1) shall not apply to any claim, counter-claim or cross-  
209 claim in an unlawful detainer action that includes a claim for damages sustained or rent against any person  
210 obligated on the lease or guarantee of such lease.

211 (4) Except where otherwise specifically provided, all jurisdiction, power and authority over any  
212 civil action or proceeding conferred upon any general district court judge or magistrate under or by virtue  
213 of any provisions of the Code.



214 (5) Jurisdiction to try and decide suits in interpleader involving personal or real property where  
215 the amount of money or value of the property is not more than the maximum jurisdictional limits of the  
216 general district court. However, the maximum jurisdictional limits prescribed in subdivision (1) shall not  
217 apply to any claim, counter-claim, or cross-claim in an interpleader action that is limited to the disposition  
218 of an earnest money deposit pursuant to a real estate purchase contract. The action shall be brought in  
219 accordance with the procedures for interpleader as set forth in § 8.01-364. However, the general district  
220 court shall not have any power to issue injunctions. Actions in interpleader may be brought by either the  
221 stakeholder or any of the claimants. The initial pleading shall be either by motion for judgment, by warrant  
222 in debt, or by other uniform court form established by the Supreme Court of Virginia. The initial pleading  
223 shall briefly set forth the circumstances of the claim and shall name as defendant all parties in interest who  
224 are not parties plaintiff.

225 (6) Jurisdiction to try and decide any cases pursuant to § 2.2-3713 of the Virginia Freedom of  
226 Information Act (§ 2.2-3700 et seq.) or § 2.2-3809 of the Government Data Collection and Dissemination  
227 Practices Act (§ 2.2-3800 et seq.), for writs of mandamus or for injunctions.

228 (7) Jurisdiction to try and decide any cases pursuant to § 55.1-1819 of the Property Owners'  
229 Association Act (§ 55.1-1800 et seq.) or § 55.1-1959 of the Virginia Condominium Act (§ 55.1-1900 et  
230 seq.).

231 (8) Concurrent jurisdiction with the circuit courts to submit matters to arbitration pursuant to  
232 Chapter 21 (§ 8.01-577 et seq.) of Title 8.01 where the amount in controversy is within the jurisdictional  
233 limits of the general district court. Any party that disagrees with an order by a general district court  
234 granting an application to compel arbitration may appeal such decision to the circuit court pursuant to §  
235 8.01-581.016.

236 (9) Jurisdiction to try and decide any cases pursuant to § 2.2-3704 of the Virginia Freedom of  
237 Information Act (§ 2.2-3700 et seq.) for additional time to respond to a request for public records.

238 For purposes of this section, the territory served by a county general district court expressly  
239 authorized by statute to be established in a city includes the general district court courtroom.

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