

MEMORANDUM

To: SB 324 Work Group (2024)
From: Ramin Seddiq, citizen member, SB 324 Work Group
Re: The Virginia Freedom of Information Act, Va. Code § 2.2-3700 et seq. (“VFOIA”)
 • **Opposition to Legislative Draft 25100607D, lines 58-66 and 151-160**
Date: October 21, 2024

Senate Bill 324 (Roem, 2024) states in part that “the FOIA Council shall convene a work group [(the “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.”

I oppose Legislative Draft 25100607D in part for the following reasons:

- 1.) Legislative Draft 25100607D removes the fixed-rate cap and first hour fee waiver that exist in Senate Bill 324, as approved on April 8, 2024.
- 2.) Using the median hourly pay rate at the public body level (or at the level of the public body’s constituent departments or divisions), as one of the two factors in calculating VFOIA fees:¹
 - a) Is likely to result in irrational inconsistencies in VFOIA fees across public bodies and their constituent departments/divisions;
 - b) Is likely to cause confusion, foster disputes, and increase the risk of litigation; and
 - c) Is unlikely likely to achieve the objectives (as stated in Senate Bill 324) of making the assessment of charges by public bodies for the production of public records more uniform, more transparent, easier to understand, and less costly.
- 3.) Calculating VFOIA fees based the lesser of: a) the median hourly pay rate of statewide employees as of the previous July 1; or b) \$40² per hour, is more likely to achieve the objectives of making the assessment of charges by public bodies for the production of public records more uniform, more transparent, easier to understand, and less costly.

¹ Apart from the York County Board VFOIA Policy (No. BP94-06), which was suggested on September 9, 2024 (and distributed for the September 30th Work Group meeting) as a potential source of emulation, as of the writing of this Memorandum, no data or evidence has been presented to the Work Group supporting the stance that Legislative Draft 25100607D is likely to advance the stated objectives of Senate Bill 324.

² If there is concern that the General Assembly may not revisit this issue for a protracted amount of time and as a result, this rate could become outdated and artificially low, then we can propose the addition of an annual escalation factor to this rate (e.g., two percent) to account for inflation and other increases such as pay raises.

The legislative process inherently involves public policy compromises. In this regard, although it may not be possible for the advocates of a robust VFOIA to realize all their objectives in the context of SB 324 and this Work Group, a reasonable degree of progress is essential. Legislative Draft 25100607D does not offer this. Indeed, this legislative draft amounts to a capitulation to the expensive and opaque status quo.

I thank Senator Danica Roem for her leadership on this important cause. Though we may not have succeeded in this particular endeavor, I am confident that in the long run, the people of Virginia will succeed in securing the liberties that are rightfully theirs.