

## Suggested Revisions to Draft Legislation

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

1. Subsection (C) – new language:

The period within which the public body shall respond under this section shall be tolled while such petition is pending before the court. The hearing on any such petition made outside of the regular terms of the 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 language in yellow is confusing. I believe the objective is to help those jurisdictions where there is not a judge sitting every day in court – by making this type of action a priority that can be heard in any court in the jurisdictions. If that is correct, I think there is a clearer way to state:

*The hearing on any such petition shall be given precedence on the docket of all courts in the judicial district over all cases that are not otherwise given precedence by law.*

2. Draft is missing (F) which I believe should go before the line that reads: *When ~~electronic or other databases~~ public records maintained by a public body in an electronic data processing system, computer database, or any other structured collection of data are combined or contain exempt and nonexempt records, the public body may provide access to the exempt records if not otherwise prohibited by law, but shall provide access to the nonexempt records as provided by this chapter.*

### **§ 2.2-3704.02. Charges for the production of public records.**

1. Same language change proposed for 2.2-3704 (C) would be needed in this section under B.
2. Also under (B) there is a reference to “final disposition” – this should include clarification that final disposition would not be until after any appeal is resolved.
3. Also under (B), the last line is confusing: 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.

I believe the intention is to not allow court time and costs to go into the cost for producing the FOIA; however, a court could award costs and fees pursuant to the court action for the court action – that is within the powers of the court. I suggest modifying that last sentence to read:

*A public body shall not include in the actual costs of responding to a request, time and costs associated with a petition for relief from the fee cap.*