



VIRGINIA FREEDOM OF INFORMATION ADVISORY COUNCIL

COMMONWEALTH OF VIRGINIA

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August 19, 2024
10:00 AM
(via Zoom)

PROPOSED AGENDA (Annotated)

SB 324 Workgroup Studying Charges under the Virginia Freedom of Information Act

- 1. Call to Order, introduction of participants.**
- 2. Review draft proposed best practices for making a request.** *At its last meeting the workgroup recommended that staff prepare a best practices guide for making requests, rather than try to put such practices into legislation. Interested parties were encouraged to submit their own recommendations for best practices.*
- 3. Discuss current Virginia law on procedures for responding to a request.** *At its first meeting the workgroup agreed by consensus to study certain parts of the process of making and responding to a request and how they affect the costs involved, beginning with the process of making the initial request and negotiating its terms as needed discussed at the workgroup's last meeting. For today's meeting, the workgroup will consider how requests are processed after being received and how the process(es) involved affect costs.*

Current statutory law: Generally, subsection F of § 2.2-3704 provides that "a public body may make reasonable charges not to exceed its actual cost incurred in accessing, duplicating, supplying, or searching for the requested records and shall make all reasonable efforts to supply the requested records at the lowest possible cost."

Controlling case law: In American Tradition Institute v. Rector and Visitors of the University of Virginia (Va. 2014), the Supreme Court of Virginia affirmed the trial court's ruling that a public body may charge for "exclusion review," meaning "review of public records sought pursuant to [FOIA] to assure that those records are

responsive, are not exempt from disclosure, and may be disclosed without violating other provisions of law."

Suggested topics to study include the following:

- Who within an organization performs search and review?
- What are the charges for search and review?
- Should there be a statutory cap on search and review charges, and if so, what should it be? (Keeping in mind that SB 324 would impose a \$40 per hour cap with certain exceptions.)

4. Discussion.

5. Recommendations.

6. Other Business.

7. Schedule reminder. *The next workgroup meetings are scheduled to be held virtually at 10 AM on the following dates:*

Monday September 9

Monday September 30

Monday October 21

8. Adjournment.

Staff

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