

SENATE BILL NO. _____ HOUSE BILL NO. _____

1 A BILL to amend and reenact § 2.2-3713 of the Code of Virginia, relating to Virginia Freedom of
2 Information Act; proceedings for enforcement; petition for mandamus or injunction.

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

4 **1. That § 2.2-3713 of the Code of Virginia is amended and reenacted as follows:**

5 **§ 2.2-3713. Proceedings for enforcement of chapter.**

6 A. Any person, including the attorney for the Commonwealth acting in his official or individual
7 capacity, denied the rights and privileges conferred by this chapter may proceed to enforce such rights and
8 privileges by filing a petition for mandamus or injunction, supported by an affidavit showing good cause.
9 Such petition may be brought in the name of the person notwithstanding that a request for public records
10 was made by the person's attorney in his representative capacity. Venue for the petition shall be addressed
11 as follows:

12 1. In a case involving a local public body, to the general district court or circuit court of the county
13 or city from which the public body has been elected or appointed to serve and in which such rights and
14 privileges were so denied;

15 2. In a case involving a regional public body, to the general district or circuit court of the county
16 or city where the principal business office of such body is located; and

17 3. In a case involving a board, bureau, commission, authority, district, institution, or agency of the
18 state government, including a public institution of higher education, or a standing or other committee of
19 the General Assembly, to the general district court or the circuit court of the residence of the aggrieved
20 party or of the City of Richmond.

21 B. In any action brought before a general district court, a corporate petitioner may appear through
22 its officer, director or managing agent without the assistance of counsel, notwithstanding any provision of
23 law or Rule of Supreme Court of Virginia to the contrary.

24 C. Notwithstanding the provisions of § 8.01-644, the petition for mandamus or injunction shall be
25 heard within seven days of the date when the same is made, provided [that the Freedom of Information Act](#)

officer designated by the public body pursuant to § 2.2-3704.2, the attorney for the public body, if it has one, the chief administrator for the public body, or the party against whom the petition is brought has received a copy of the petition at least three working days prior to filing. If an individual is alleged to have committed a knowing and willful violation of this chapter in his individual capacity pursuant to subsection A of § 2.2-3714, then that individual shall also receive a copy of the petition at least three working days prior to filing. However, if the petition or the affidavit supporting the petition for mandamus or injunction alleges violations of the open meetings requirements of this chapter, the three-day notice to the party against whom the petition is brought shall not be required. The hearing on any petition made outside of the regular terms of the circuit 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. Immediately upon filing the petition, or as soon thereafter as is practicable, the clerk shall issue a summons for the hearing to each respondent identified in the petition. Nothing in this section shall be construed to require service of process by a sheriff or private process server when a petition for mandamus or injunction to enforce rights granted under this chapter has been filed. The provisions of Chapter 8 (§ 8.01-285 et seq.) of Title 8.01 regarding service of process shall not apply to a petition for mandamus or injunction to enforce rights granted under this chapter.

D. The petition shall allege with reasonable specificity the circumstances of the denial of the rights and privileges conferred by this chapter. A single instance of denial of the rights and privileges conferred by this chapter shall be sufficient to invoke the remedies granted herein. If the court finds the denial to be in violation of the provisions of this chapter, the petitioner shall be entitled to recover reasonable costs, including costs and reasonable fees for expert witnesses, and attorney fees from the public body if the petitioner substantially prevails on the merits of the case, unless special circumstances would make an award unjust. In making this determination, a court may consider, among other things, the reliance of a public body on an opinion of the Attorney General or a decision of a court that substantially supports the public body's position.

E. In any action to enforce the provisions of this chapter, the public body shall bear the burden of proof to establish an exclusion by a preponderance of the evidence. No court shall be required to accord

53 any weight to the determination of a public body as to whether an exclusion applies. Any failure by a
54 public body to follow the procedures established by this chapter shall be presumed to be a violation of this
55 chapter.

56 F. Failure by any person to request and receive notice of the time and place of meetings as provided
57 in § 2.2-3707 shall not preclude any person from enforcing his rights and privileges conferred by this
58 chapter.

59 #