

SENATE BILL NO. _____ HOUSE BILL NO. _____

1 A BILL to amend and reenact §§ 2.2-3714 and 2.2-3715 of the Code of Virginia, relating to Virginia
2 Freedom of Information Act; officers, employees, or members of a public body; alleged willful
3 and knowing violations; mitigating factors to be considered.

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

5 **1. That §§ 2.2-3714 and 2.2-3715 of the Code of Virginia are amended and reenacted as follows:**

6 **§ 2.2-3714. Violations and penalties.**

7 A. In a proceeding commenced against any officer, employee, or member of a public body in his
8 individual capacity under § 2.2-3713 for a violation of § 2.2-3704, 2.2-3705.1 through 2.2-3705.7, 2.2-
9 3706, 2.2-3706.1, 2.2-3707, 2.2-3708.2, 2.2-3708.3, 2.2-3710, 2.2-3711, or 2.2-3712, the court, if it finds
10 that a violation was willfully and knowingly made, shall impose upon such officer, employee, or member
11 in his individual capacity, whether a writ of mandamus or injunctive relief is awarded or not, a civil penalty
12 of not less than \$500 nor more than \$2,000, which amount shall be paid into the Literary Fund. For a
13 second or subsequent violation, such civil penalty shall be not less than \$2,000 nor more than \$5,000.

14 B. In addition to any penalties imposed pursuant to subsection A, if the court finds that any officer,
15 employee, or member of a public body failed to provide public records to a requester in accordance with
16 the provisions of this chapter because such officer, employee, or member altered or destroyed the
17 requested public records with the intent to avoid the provisions of this chapter with respect to such request
18 prior to the expiration of the applicable record retention period set by the retention regulations
19 promulgated pursuant to the Virginia Public Records Act (§ 42.1-76 et seq.) by the State Library Board,
20 the court may impose upon such officer, employee, or member in his individual capacity, whether or not
21 a writ of mandamus or injunctive relief is awarded, a civil penalty of up to \$100 per record altered or
22 destroyed, which amount shall be paid into the Literary Fund.

23 C. In addition to any penalties imposed pursuant to subsections A and B, if the court finds that a
24 public body voted to certify a closed meeting in accordance with subsection D of § 2.2-3712 and such
25 certification was not in accordance with the requirements of clause (i) or (ii) of subsection D of § 2.2-

3712, the court may impose on the public body, whether or not a writ of mandamus or injunctive relief is awarded, a civil penalty of up to \$1,000, which amount shall be paid into the Literary Fund. In determining whether a civil penalty is appropriate, the court shall consider mitigating factors, including good faith reliance of members of the public body on (i) opinions of the Attorney General, (ii) court cases substantially supporting the rationale of the public body, and (iii) ~~published~~ written opinions of the Virginia Freedom of Information Advisory Council, and (iv) advice of counsel for the public body.

§ 2.2-3715. Effect of good faith reliance upon advisory opinions from the Freedom of Information Advisory Council and certain legal advice and opinions on liability for willful and knowing violations.

~~Any~~ When determining whether an officer, an employee, or a member of a public body ~~who is~~ alleged to have has committed a willful and knowing violation pursuant to § 2.2-3714 ~~shall have the right to introduce at any proceeding a copy of a relevant advisory opinion issued pursuant to § 30-179, the court shall consider mitigating factors, including good faith reliance on (i) opinions of the Attorney General; (ii) court cases substantially supporting such officer's, employee's, or member's actions; (iii) written opinions of the Virginia Freedom of Information Advisory Council; and (iv) advice of counsel for the public body, as evidence that ~~he~~ such officer, employee, or member did not willfully and knowingly commit the violation ~~if the alleged violation resulted from his good faith reliance on the advisory opinion.~~~~

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