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HOUSE BILL NO. 307
AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee on General Laws
on _____)
(Patron Prior to Substitute--Delegate Freitas)

A BILL to amend and reenact §§ 2.2-3704 and 2.2-3704.1 of the Code of Virginia, relating to the Virginia Freedom of Information Act; estimated charges.

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-3704 and 2.2-3704.1 of the Code of Virginia are amended and reenacted as follows:

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

A. Except as otherwise specifically provided by law, all public records shall be open to citizens of the Commonwealth, representatives of newspapers and magazines with circulation in the Commonwealth, and representatives of radio and television stations broadcasting in or into the Commonwealth during the regular office hours of the custodian of such records. Access to such records shall be provided by the custodian in accordance with this chapter by inspection or by providing copies of the requested records, at the option of the requester. The custodian may require the requester to provide his name and legal address. The custodian of such records shall take all necessary precautions for their preservation and safekeeping.

B. A request for public records shall identify the requested records with reasonable specificity. The request need not make reference to this chapter in order to invoke the provisions of this chapter or to impose the time limits for response by a public body. Any public body that is subject to this chapter and that is the custodian of the requested records shall promptly, but in all cases within five working days of receiving a request, provide the requested records to the requester or make one of the following responses in writing:

26 1. The requested records are being entirely withheld. Such response shall identify with reasonable
27 particularity the volume and subject matter of withheld records, and cite, as to each category of withheld
28 records, the specific Code section that authorizes the withholding of the records.

29 2. The requested records are being provided in part and are being withheld in part. Such response
30 shall identify with reasonable particularity the subject matter of withheld portions, and cite, as to each
31 category of withheld records, the specific Code section that authorizes the withholding of the records.

32 3. The requested records could not be found or do not exist. However, if the public body that
33 received the request knows that another public body has the requested records, the response shall include
34 contact information for the other public body.

35 4. It is not practically possible to provide the requested records or to determine whether they are
36 available within the five-work-day period. Such response shall specify the conditions that make a response
37 impossible. If the response is made within five working days, the public body shall have an additional
38 seven work days or, in the case of a request for criminal investigative files pursuant to § 2.2-3706.1, 60
39 work days in which to provide one of the four preceding responses.

40 C. Any public body may petition the appropriate court for additional time to respond to a request
41 for records when the request is for an extraordinary volume of records or requires an extraordinarily
42 lengthy search, and a response by the public body within the time required by this chapter will prevent the
43 public body from meeting its operational responsibilities. Before proceeding with the petition, however,
44 the public body shall make reasonable efforts to reach an agreement with the requester concerning the
45 production of the records requested.

46 D. Subject to the provisions of subsection G, no public body shall be required to create a new
47 record if the record does not already exist. However, a public body may abstract or summarize information
48 under such terms and conditions as agreed between the requester and the public body.

49 E. Failure to respond to a request for records shall be deemed a denial of the request and shall
50 constitute a violation of this chapter.

51 F. A public body may make reasonable charges not to exceed its actual cost incurred in accessing,
52 duplicating, supplying, or searching for the requested records and shall make all reasonable efforts to

53 supply the requested records at the lowest possible cost. No public body shall impose any extraneous,
54 intermediary, or surplus fees or expenses to recoup the general costs associated with creating or
55 maintaining records or transacting the general business of the public body. Any duplicating fee charged
56 by a public body shall not exceed the actual cost of duplication. The public body may also make a
57 reasonable charge for the cost incurred in supplying records produced from a geographic information
58 system at the request of anyone other than the owner of the land that is the subject of the request. However,
59 such charges shall not exceed the actual cost to the public body in supplying such records, except that the
60 public body may charge, on a pro rata per acre basis, for the cost of creating topographical maps developed
61 by the public body, for such maps or portions thereof, which encompass a contiguous area greater than 50
62 acres. ~~All charges for the supplying of requested records shall be estimated in advance at the request of~~
63 ~~the citizen.~~ Prior to conducting a search for records, the public body shall notify the requester in writing
64 that the public body may make reasonable charges not to exceed its actual cost incurred in accessing,
65 duplicating, supplying, or searching for requested records and inquire of the requester whether he would
66 like to request a cost estimate in advance of the supplying of the requested records. The public body shall
67 provide the requester with a cost estimate if requested. The period within which the public body shall
68 respond under this section shall be tolled for the amount of time that elapses between notice of the cost
69 estimate and the response of the requester. If the public body receives no response from the requester
70 within 30 days of sending the cost estimate, the request shall be deemed to be withdrawn. Any costs
71 incurred by the public body in estimating the cost of supplying the requested records shall be applied
72 toward the overall charges to be paid by the requester for the supplying of such requested records.

73 G. Public records maintained by a public body in an electronic data processing system, computer
74 database, or any other structured collection of data shall be made available to a requester at a reasonable
75 cost, not to exceed the actual cost in accordance with subsection F. When electronic or other databases
76 are combined or contain exempt and nonexempt records, the public body may provide access to the exempt
77 records if not otherwise prohibited by law, but shall provide access to the nonexempt records as provided
78 by this chapter.

79 Public bodies shall produce nonexempt records maintained in an electronic database in any
80 tangible medium identified by the requester, including, where the public body has the capability, the option
81 of posting the records on a website or delivering the records through an electronic mail address provided
82 by the requester, if that medium is used by the public body in the regular course of business. No public
83 body shall be required to produce records from an electronic database in a format not regularly used by
84 the public body. However, the public body shall make reasonable efforts to provide records in any format
85 under such terms and conditions as agreed between the requester and public body, including the payment
86 of reasonable costs. The excision of exempt fields of information from a database or the conversion of
87 data from one available format to another shall not be deemed the creation, preparation, or compilation of
88 a new public record.

89 H. In any case where a public body determines in advance that charges for producing the requested
90 records are likely to exceed \$200, the public body may, before continuing to process the request, require
91 the requester to pay a deposit not to exceed the amount of the advance determination. The deposit shall be
92 credited toward the final cost of supplying the requested records. The period within which the public body
93 shall respond under this section shall be tolled for the amount of time that elapses between notice of the
94 advance determination and the response of the requester.

95 I. Before processing a request for records, a public body may require the requester to pay any
96 amounts owed to the public body for previous requests for records that remain unpaid 30 days or more
97 after billing.

98 J. In the event a public body has transferred possession of public records to any entity, including
99 but not limited to any other public body, for storage, maintenance, or archiving, the public body initiating
100 the transfer of such records shall remain the custodian of such records for purposes of responding to
101 requests for public records made pursuant to this chapter and shall be responsible for retrieving and
102 supplying such public records to the requester. In the event a public body has transferred public records
103 for storage, maintenance, or archiving and such transferring public body is no longer in existence, any
104 public body that is a successor to the transferring public body shall be deemed the custodian of such
105 records. In the event no successor entity exists, the entity in possession of the public records shall be

106 deemed the custodian of the records for purposes of compliance with this chapter, and shall retrieve and
107 supply such records to the requester. Nothing in this subsection shall be construed to apply to records
108 transferred to the Library of Virginia for permanent archiving pursuant to the duties imposed by the
109 Virginia Public Records Act (§ 42.1-76 et seq.). In accordance with § 42.1-79, the Library of Virginia
110 shall be the custodian of such permanently archived records and shall be responsible for responding to
111 requests for such records made pursuant to this chapter.

112 **§ 2.2-3704.1. Posting of notice of rights and responsibilities by state and local public bodies;**
113 **assistance by the Freedom of Information Advisory Council.**

114 A. All state public bodies subject to the provisions of this chapter, any county or city, any town
115 with a population of more than 250, and any school board shall make available the following information
116 to the public upon request and shall post a link to such information on the homepage of their respective
117 official public government websites:

118 1. A plain English explanation of the rights of a requester under this chapter, the procedures to
119 obtain public records from the public body, and the responsibilities of the public body in complying with
120 this chapter. For purposes of this section, "plain English" means written in nontechnical, readily
121 understandable language using words of common everyday usage and avoiding legal terms and phrases
122 or other terms and words of art whose usage or special meaning primarily is limited to a particular field
123 or profession;

124 2. Contact information for the FOIA officer designated by the public body pursuant to § 2.2-3704.2
125 to (i) assist a requester in making a request for records or (ii) respond to requests for public records;

126 3. A general description, summary, list, or index of the types of public records maintained by such
127 public body;

128 4. A general description, summary, list, or index of any exemptions in law that permit or require
129 such public records to be withheld from release;

130 5. Any policy the public body has concerning the type of public records it routinely withholds from
131 release as permitted by this chapter or other law; and

132 6. The following statement: "A public body may make reasonable charges not to exceed its actual
133 cost incurred in accessing, duplicating, supplying, or searching for the requested records and shall make
134 all reasonable efforts to supply the requested records at the lowest possible cost. No public body shall
135 impose any extraneous, intermediary, or surplus fees or expenses to recoup the general costs associated
136 with creating or maintaining records or transacting the general business of the public body. Any
137 duplicating fee charged by a public body shall not exceed the actual cost of duplication. ~~All charges for~~
138 ~~the supplying of requested records shall be estimated in advance at the request of the citizen.~~ Prior to
139 conducting a search for records, the public body shall notify the requester in writing that the public body
140 may make reasonable charges not to exceed its actual cost incurred in accessing, duplicating, supplying,
141 or searching for requested records and inquire of the requester whether he would like to request a cost
142 estimate in advance of the supplying of the requested records as set forth in subsection F of § 2.2-3704 of
143 the Code of Virginia."

144 B. Any state public body subject to the provisions of this chapter and any county or city, and any
145 town with a population of more than 250, shall post a link on its official public government website to the
146 online public comment form on the Freedom of Information Advisory Council's website to enable any
147 requester to comment on the quality of assistance provided to the requester by the public body.

148 C. The Freedom of Information Advisory Council, created pursuant to § 30-178, shall assist in the
149 development and implementation of the provisions of subsection A, upon request.

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