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SENATE BILL NO. 1316

Offered January 14, 2009

Prefiled January 14, 2009

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; requirements to publish a database index and a statement of rights and responsibilities.*

Patrons—Houck; Delegate: Griffith

Referred to Committee on General Laws and Technology

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.

A. Except as otherwise specifically provided by law, all public records shall be open to inspection and copying by any citizens of the Commonwealth during the regular office hours of the custodian of such records. Access to such records shall not be denied 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. 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:

1. The requested records are being entirely withheld because their release is prohibited by law or the custodian has exercised his discretion to withhold the records in accordance with this chapter. Such response shall identify with reasonable particularity the volume and subject matter of withheld records, and cite, as to each category of withheld records, the specific Code section that authorizes the withholding of the records.

2. The requested records are being provided in part and are being withheld in part because the release of part of the records is prohibited by law or the custodian has exercised his discretion to withhold a portion of the records in accordance with this chapter. Such response shall identify with reasonable particularity the subject matter of withheld portions, and cite, as to each category of withheld records, the specific Code section that authorizes the withholding of the records. When a portion of a requested record is withheld, the public body may delete or excise only that portion of the record to which an exemption applies and shall release the remainder of the record.

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

4. It is not practically possible to provide the requested records or to determine whether they are available within the five-work-day period. Such response shall specify the conditions that make a response impossible. If the response is made within five working days, the public body shall have an additional seven work days in which to provide one of the four preceding responses.

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

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

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

F. A public body may make reasonable charges not to exceed its actual cost incurred in accessing,

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59 duplicating, supplying, or searching for the requested records. No public body shall impose any
60 extraneous, intermediary or surplus fees or expenses to recoup the general costs associated with creating
61 or maintaining records or transacting the general business of the public body. Any duplicating fee
62 charged by a public body shall not exceed the actual cost of duplication. The public body may also
63 make a reasonable charge for the cost incurred in supplying records produced from a geographic
64 information system at the request of anyone other than the owner of the land that is the subject of the
65 request. However, such charges shall not exceed the actual cost to the public body in supplying such
66 records, except that the public body may charge, on a pro rata per acre basis, for the cost of creating
67 topographical maps developed by the public body, for such maps or portions thereof, which encompass
68 a contiguous area greater than 50 acres. All charges for the supplying of requested records shall be
69 estimated in advance at the request of the citizen.

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

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

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

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

95 J. Every public body of state government shall compile, and annually update, an index of computer
96 databases that contains at a minimum those databases created by them on or after July 1, 1997.
97 "Computer database" means a structured collection of data or records residing in a computer. Such index
98 shall be a public record and shall include, at a minimum, the following information with respect to each
99 database listed therein: a list of data fields; a description of the format or record layout; the date last
100 updated; a list of any data fields to which public access is restricted; a description of each format in
101 which the database can be copied or reproduced using the public body's computer facilities; and a
102 schedule of fees for the production of copies in each available form. The form, context, language, and
103 guidelines for the indices and the databases to be indexed shall be developed by the Virginia
104 Information Technologies Agency in consultation with the Librarian of Virginia and the State Archivist.
105 The public body shall not be required to disclose its software security, including passwords.

106 § 2.2-3704.1. Posting of notice of rights and responsibilities by state public bodies; assistance by the
107 Freedom of Information Advisory Council.

108 A. All state public bodies created in the executive branch of state government and subject to the
109 provisions of this chapter shall make available the following information to the public upon request and
110 shall post such information on the Internet:

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

117 2. Contact information for the person designated by the public body to (i) assist a requester in
118 making a request for records or (ii) respond to requests for public records; and

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

121 4. *A general description, summary, list, or index of any exemptions in law that permit or require*
122 *such public records to be withheld from release; and*
123 5. Any policy the public body has concerning the type of public records it routinely withholds from
124 release as permitted by this chapter *or other law*.
125 B. The Freedom of Information Advisory Council, created pursuant to § 30-178, shall assist in the
126 development and implementation of the provisions of subsection A, upon request.

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