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HOUSE BILL NO. 449
Offered January 13, 2010
Prefiled January 12, 2010
A BILL to amend and reenact § 2.2-3704 of the Code of Virginia, relating to the Freedom of Information Act; injunctive relief for public bodies under certain circumstances.
_____

Patron—Ware, R.L.
_____

Referred to Committee on General Laws
_____

Be it enacted by the General Assembly of Virginia:

1. That § 2.2-3704 of the Code of Virginia is 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.

Any public body may petition the appropriate court as provided in § 2.2-3713, for injunctive relief to restrain a requester from harassment or other abuse of the rights or privileges granted under this chapter.

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 subsection G, 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

59 constitute a violation of this chapter.
60   F. A public body may make reasonable charges not to exceed its actual cost incurred in accessing,
61 duplicating, supplying, or searching for the requested records. No public body shall impose any
62 extraneous, intermediary or surplus fees or expenses to recoup the general costs associated with creating
63 or maintaining records or transacting the general business of the public body. Any duplicating fee
64 charged by a public body shall not exceed the actual cost of duplication. The public body may also
65 make a reasonable charge for the cost incurred in supplying records produced from a geographic
66 information system at the request of anyone other than the owner of the land that is the subject of the
67 request. However, such charges shall not exceed the actual cost to the public body in supplying such
68 records, except that the public body may charge, on a pro rata per acre basis, for the cost of creating
69 topographical maps developed by the public body, for such maps or portions thereof, which encompass
70 a contiguous area greater than 50 acres. All charges for the supplying of requested records shall be
71 estimated in advance at the request of the citizen.
72   G. Public records maintained by a public body in an electronic data processing system, computer
73 database, or any other structured collection of data shall be made available to a requester at a reasonable
74 cost, not to exceed the actual cost in accordance with subsection F. When electronic or other databases
75 are combined or contain exempt and nonexempt records, the public body may provide access to the
76 exempt records if not otherwise prohibited by law, but shall provide access to the nonexempt records as
77 provided by this chapter.
78   Public bodies shall produce nonexempt records maintained in an electronic database in any tangible
79 medium identified by the requester, including, where the public body has the capability, the option of
80 posting the records on a website or delivering the records through an electronic mail address provided
81 by the requester, if that medium is used by the public body in the regular course of business. No public
82 body shall be required to produce records from an electronic database in a format not regularly used by
83 the public body. However, the public body shall make reasonable efforts to provide records in any
84 format under such terms and conditions as agreed between the requester and public body, including the
85 payment of reasonable costs. The excision of exempt fields of information from a database or the
86 conversion of data from one available format to another shall not be deemed the creation, preparation or
87 compilation of a new public record.
88   H. In any case where a public body determines in advance that charges for producing the requested
89 records are likely to exceed $200, the public body may, before continuing to process the request, require
90 the requester to agree to payment of a deposit not to exceed the amount of the advance determination.
91 The deposit shall be credited toward the final cost of supplying the requested records. The period within
92 which the public body shall respond under this section shall be tolled for the amount of time that
93 elapses between notice of the advance determination and the response of the requester.
94   I. Before processing a request for records, a public body may require the requester to pay any
95 amounts owed to the public body for previous requests for records that remain unpaid 30 days or more
96 after billing.