

## **Department of Planning and Budget**

### **2016 Fiscal Impact Statement**

**1. Bill Number:** HB817

<b>House of Origin</b>	<input type="checkbox"/> Introduced	<input checked="" type="checkbox"/> Substitute	<input type="checkbox"/> Engrossed
<b>Second House</b>	<input type="checkbox"/> In Committee	<input type="checkbox"/> Substitute	<input checked="" type="checkbox"/> Enrolled

**2. Patron:** LeMunyon, J.

**3. Committee:** Passed Both Houses

**4. Title:** Virginia Freedom of Information Act (FOIA); record exclusions; rule of redaction; no weight accorded to public body's determination.

**5. Summary:** Reverses the holding of the Virginia Supreme Court in the case of Department of Corrections v. Surovell by setting out the general rule of redaction, which provides that no provision of FOIA is intended, nor shall it be construed or applied, to authorize a public body to withhold a public record in its entirety on the grounds that some portion of the public record is excluded from disclosure by FOIA or by any other provision of law. Further, the bill states that a public record may be withheld from disclosure in its entirety only to the extent that an exclusion from disclosure under FOIA or other provision of law applies to the entire content of the public record. Otherwise, only those portions of the public record containing information subject to an exclusion under FOIA or other provision of law may be withheld, and all portions of the public record that are not so excluded shall be disclosed. The bill also provides that in a FOIA enforcement action, no court shall be required to accord any weight to the determination of a public body as to whether an exclusion applies. The bill contains technical amendments.

**6. Budget Amendment Necessary:** No.

**7. Fiscal Impact Estimates:** Indeterminate, see item #8.

**8. Fiscal Implications:** The provision to not accord any weight to the determination of a public body is likely to increase complexity and duration of trials as courts would not be required to defer to the case documentation introduced by the agency. Thus additional staff time for the Office of the Attorney General and courts may be necessary. For affected agencies that have their cases proceed to court, there may also be some impact in terms of additional staff resources that are required.

**9. Specific Agency or Political Subdivisions Affected:** The Office of the Attorney General, the Supreme Court, Circuit Courts, Court of Appeals of Virginia, General District Courts, and all state and local agencies that are not exempt from FOIA.

**10. Technical Amendment Necessary:** None.

**11. Other Comments:** The substitute adds a definition for “information,” and the following enactment clause: “2. That the provisions of this act are declaratory of the law as is it existed prior to the September 17, 2015 decision of the Supreme Court of Virginia in the case of the Department of Corrections v. Surovell.”

**Date:** 3/8/16