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HOUSE BILL NO. 1392

Offered January 8, 2020
Prefiled January 8, 2020

A BILL to amend the Code of Virginia by adding a section numbered 2.2-501.1, relating to the Office of the Attorney General; Virginia Freedom of Information Act Ombudsman; powers and duties; report.

Patrons—Roem, Levine, Rasoul and Samirah

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 2.2-501.1 as follows:

§ 2.2-501.1. Virginia Freedom of Information Act Ombudsman created; powers and duties; report.

A. As used in this section, unless the context requires a different meaning:

"Mediation" means a process in which parties work with one or more impartial mediators who assist the parties in reaching a voluntary agreement for the resolution of a dispute or issues that are part of a dispute.

"Party" means a person or state agency that participates in a mediation and whose agreement is necessary to resolve the dispute.

"Public records" means the same as that term is defined in § 2.2-3701.

"Requester" means any person who requests public records from a state agency.

"State agency" means any agency, institution, board, bureau, commission, or council listed in the appropriation act. "State agency" does not include any public institution of higher education, any county, city, or town, or any other local or regional public body.

B. There is hereby established a Virginia Freedom of Information Act Ombudsman (Ombudsman) in the Office of the Attorney General to (i) mediate disputes between requesters and state agencies over requests for public records and (ii) promote compliance by state agencies with the provisions of the Virginia Freedom of Information Act (§ 2.2.-3700 et seq.). The Attorney General shall hire the Ombudsman, who shall be licensed to practice law in the Commonwealth. The Ombudsman shall be designated a full-time state employee.

C. The Ombudsman shall be responsible for mediating disputes between requesters and state agencies over requests for public records, including disputes involving (i) the application of an exemption, (ii) proper redaction of information contained in a public record, (iii) production of a public record given available staff and resources, and (iv) adequate disclosure of public records relevant to the request.

Prior to entering into an agreement for mediation, all parties shall be provided by the Ombudsman information regarding the mediation process. The Ombudsman shall also notify the parties that they must refrain from disclosing mediation communications in any judicial setting. All parties shall confirm in writing that they have received such information and agree not to disclose mediation communications in any judicial setting. Additionally, parties to a mediation shall not be compelled to disclose any mediation materials, communications, or information in any court proceeding.

D. During mediation, the Ombudsman shall not (i) compel a state agency to disclose to the Ombudsman or a requester public records or redacted information in the state agency's physical custody or (ii) disclose information received from a requester or state agency without written consent. In addition, the Ombudsman may share information received by one party with the other party to facilitate mediation, unless a party expressly provides otherwise; however, the Ombudsman shall remain neutral at all times during the mediation process.

E. The Ombudsman may adopt such policies and guidelines necessary to carry out the provisions of this section.

F. The Ombudsman shall not mediate in any case where he has a conflict of interest. If a conflict of interest exists, the Ombudsman shall designate an alternate, qualified person to serve as a mediator.

G. The Ombudsman shall regularly consult with relevant stakeholders, including the Virginia Association of Counties, the Virginia Municipal League, the Local Government Attorneys of Virginia, the Virginia Coalition for Open Government, and other interested persons, to improve the efficacy of the Virginia Freedom of Information Act.

H. The Ombudsman shall report annually, by November 30 of each year, to the Governor and the General Assembly on his activities and policy recommendations, including the input from stakeholders obtained pursuant to subsection G.