

VIRGINIA ACTS OF ASSEMBLY -- 1997 SESSION

CHAPTER 402

An Act to amend and reenact §§ 9-364 and 9-365 of the Code of Virginia, relating to the Virginia Information Providers Network Authority.

[H 2421]

Approved March 15, 1997

Be it enacted by the General Assembly of Virginia:

1. That §§ 9-364 and 9-365 of the Code of Virginia are amended and reenacted as follows:

§ 9-364. Access to public information of state agencies.

A. All state agencies may make available to the Authority access to public information upon terms mutually agreed upon by the Authority and any such state agency.

B. The Authority shall reimburse the state agency for costs incurred to provide such access to the Authority. The terms of the agreement between the Authority and state agency shall provide, *inter alia*, that the Authority shall retain from the proceeds from providing access to public information only an agreed-upon amount sufficient to cover an appropriate share of the expenses incurred by the Authority in accomplishing the purposes set forth in this chapter. If the state agency is the Department of Motor Vehicles, such agreements shall provide that the balance of the proceeds from the sale or licensing of such public information shall be distributed to such state agency. For any other state agency, such agreements shall provide that one-half of the balance of the proceeds shall be distributed to the state agency and the other one-half of the balance of the proceeds shall be distributed to the general fund of the state treasury. *The Authority shall establish a reasonable fee, which may include no fee where appropriate, for electronic access to information and electronic transactions, such that user fees from all Authority electronic services shall be sufficient to maintain, develop, operate, and expand the electronic network on a continuing basis. Any fees due and owing under statutory authority to an agency for specific types of information accessed shall be paid by the Authority to the agency. The Authority shall minimize the fees charged for commercially viable information, and shall maximize the amount of information provided at no charge.*

§ 9-365. Access to public information; receipt of information; application of statutory restrictions on confidentiality to Authority.

A. The Authority may provide electronic access to public information provided to it by any state agency and to the extent provided in the agreement with the providing agency. The Authority shall explore ways and means of expanding the amount and kind of public information provided, increasing the utility of the public information provided and the form in which it is provided, expanding the base of users who access such public information and, where appropriate, implementing changes.

B. The Authority shall be authorized to execute license agreements which provide access to public information in any electronic medium or format. ~~However, any licensing agreement executed by the Authority shall contain language or terms that prohibit the disclosure of information that reveals or reasonably could be expected to reveal the identity of any individual who is a data subject. Further, information subject to any such licensing agreement shall be designed to prevent persons from combining data elements to reveal the identity of individual data subjects. For the purposes of this subsection, "data subject" and "personal information" mean the same as those terms are defined in § 2.1-379.~~ Nothing contained in this chapter shall preclude any state agency from providing access to public information to the public or other government agencies or entities, or from disseminating any public information to which the Authority does not provide access. *Further, nothing contained in this chapter shall authorize any state agency to provide access to information on a basis that is otherwise prohibited under existing law.*

C. The Authority may be authorized by the judicial and legislative branches to execute license agreements which provide access to public information in any electronic medium or format on their behalf. However, nothing in this chapter shall be construed to affect or pertain to records originating from or under the control of the clerks of the circuit courts of the Commonwealth except upon terms mutually agreed upon by the Authority, any state agency that may be holding such records for archival purposes, and the clerk's office where such records originated.

D. The Authority may receive public information in electronic format from members of the public for the purpose of transmitting such public information electronically to state agencies.

E. In circumstances where official records subject to the Virginia Freedom of Information Act (§ 2.1-340 et seq.) are furnished to the Authority by any state agency and such records are no longer available from such agency, the Authority, as custodian of such records, shall be subject to requests for such records made pursuant to the Freedom of Information Act. All statutory provisions governing public or official records, including, but not limited to, the Freedom of Information Act (§ 2.1-340 et

seq.), the Privacy Protection Act of 1976 (§ 2.1-377 et seq.), and the Virginia Public Records Act (§ 42.1-76 et seq.), and all penalties for any violation thereof shall apply to the Authority and its employees. Nothing in this chapter shall relieve any public body, including the Authority, of any duty imposed by such statutory provisions governing public or official records, nor shall this chapter be construed to authorize or encourage the destruction or deletion of such records by public bodies.