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HOUSE BILL NO. 2006

House Amendments in [] - February 1, 2023

A *BILL to amend and reenact § 2.2-3704 of the Code of Virginia, relating to Virginia Freedom of Information Act; public records charges; electronic payment method.*

Patron Prior to Engrossment—Delegate Roem

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; transfer of records for storage, etc.**

A. Except as otherwise specifically provided by law, all public records shall be open 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 during the regular office hours of the custodian of such records. Access to such records shall be provided by the custodian in accordance with this chapter by inspection or by providing copies of the requested records, at the option of the requester. 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. 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. 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.

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 or, in the case of a request for criminal investigative files pursuant to § 2.2-3706.1, 60 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 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 constitute a violation of this chapter.

F. Except with regard to scholastic records requested pursuant to subdivision A 1 of § 2.2-3705.4 that must be made available for inspection pursuant to the federal Family Educational Rights and Privacy Act (20 U.S.C. § 1232g) and such requests for scholastic records by a parent or legal guardian of a minor student or by a student who is 18 years of age or older, a public body may make reasonable charges not to exceed its actual cost incurred in accessing, duplicating, supplying, or searching for the requested records and shall make all reasonable efforts to supply the requested records at the lowest possible cost. No public body shall impose any extraneous, intermediary, or surplus fees or expenses to

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59 recoup the general costs associated with creating or maintaining records or transacting the general
60 business of the public body. Any duplicating fee charged by a public body shall not exceed the actual
61 cost of duplication. The public body may also make a reasonable charge for the cost incurred in
62 supplying records produced from a geographic information system at the request of anyone other than
63 the owner of the land that is the subject of the request. However, such charges shall not exceed the
64 actual cost to the public body in supplying such records, except that the public body may charge, on a
65 pro rata per acre basis, for the cost of creating topographical maps developed by the public body, for
66 such maps or portions thereof, which encompass a contiguous area greater than 50 acres. Prior to
67 conducting a search for records, the public body shall notify the requester in writing that the public
68 body may make reasonable charges not to exceed its actual cost incurred in accessing, duplicating,
69 supplying, or searching for requested records and inquire of the requester whether he would like to
70 request a cost estimate in advance of the supplying of the requested records. The public body shall
71 provide the requester with a cost estimate if requested. The period within which the public body shall
72 respond under this section shall be tolled for the amount of time that elapses between notice of the cost
73 estimate and the response of the requester. If the public body receives no response from the requester
74 within 30 days of sending the cost estimate, the request shall be deemed to be withdrawn. Any costs
75 incurred by the public body in estimating the cost of supplying the requested records shall be applied
76 toward the overall charges to be paid by the requester for the supplying of such requested records. Any
77 [local] public body that charges for the production of records pursuant to this section [~~shall~~ may]
78 provide an electronic method of payment through which all payments for the production of such records
79 to such locality may be made [~~unless such locality lacks the necessary technology for receipt of such~~
80 ~~electronic payments~~] . For purposes of this subsection, "electronic method of payment" means any kind
81 of noncash payment that does not involve a paper check and includes credit cards, debit cards, direct
82 deposit, direct debit, [~~and~~] electronic checks [, and payment through the use of telephonic or similar
83 communications] .

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

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

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

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

109 J. In the event a public body has transferred possession of public records to any entity, including but
110 not limited to any other public body, for storage, maintenance, or archiving, the public body initiating
111 the transfer of such records shall remain the custodian of such records for purposes of responding to
112 requests for public records made pursuant to this chapter and shall be responsible for retrieving and
113 supplying such public records to the requester. In the event a public body has transferred public records
114 for storage, maintenance, or archiving and such transferring public body is no longer in existence, any
115 public body that is a successor to the transferring public body shall be deemed the custodian of such
116 records. In the event no successor entity exists, the entity in possession of the public records shall be
117 deemed the custodian of the records for purposes of compliance with this chapter, and shall retrieve and
118 supply such records to the requester. Nothing in this subsection shall be construed to apply to records
119 transferred to the Library of Virginia for permanent archiving pursuant to the duties imposed by the
120 Virginia Public Records Act (§ 42.1-76 et seq.). In accordance with § 42.1-79, the Library of Virginia

- 121** shall be the custodian of such permanently archived records and shall be responsible for responding to
122 requests for such records made pursuant to this chapter.

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