

Department of Planning and Budget 2024 Session Fiscal Impact Statement

1. Bill Number: SB324-ER

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

2. Patron: Roem

3. Committee: General Laws and Technology

4. Title: Virginia Freedom of Information Act; charges for production of public records.

5. Summary: Prohibits a public body from charging a requester for any costs incurred during the first two hours spent accessing or searching for requested records when such requester has made four or fewer individual record requests to such public body within 31 consecutive days. The bill provides that for any additional time spent accessing or searching for such records, or when such requester makes five or more individual record requests to such public body within any 31-consecutive-day period, the public body shall not charge an hourly rate for accessing or searching for the records exceeding the lesser of the hourly rate of pay of the lowest-paid individual capable of fulfilling the request or \$33 per hour. The bill allows a public body to petition the appropriate court for relief from the \$33 per hour fee cap upon showing by a preponderance of the evidence that there is no qualified individual capable of fulfilling the request for \$33 per hour or less and requires such petition to be heard within seven days of when the petition is made, provided that the public body has sent and the requester has received a copy of the petition at least three working days prior to filing. The bill also provides that in certain instances a hearing on any petition shall be given precedence on a circuit court's docket over all cases that are not otherwise given precedence by law and that the time period the public body has to respond to a record request shall be tolled between the requester's receipt of the petition and the final disposition of the court. Finally, the bill prohibits a public body from charging a requester for any court costs or fees resulting from a petition.

6. Budget Amendment Necessary: See Item 8.

7. Fiscal Impact Estimates: Final, see Item 8.

8. Fiscal Implications: This bill contains an enactment clause that delays the effective date of the first enactment clause until it is reenacted by the 2025 Session of the General Assembly. If reenacted the provisions of this bill could potentially create an indeterminate impact to state agencies and other public bodies covered by the Virginia Freedom of Information Act. The exact impact, if any, to a specific state agency or other public body will depend on the current policies implemented by such agencies or bodies to recover the costs associated with accessing and searching for records as part of responding to requests for information. To the

extent that the provisions of this bill are in line with an agency's or public body's current practices, no negative impact is expected for that agency or body. To the extent that an agency's or other public body's current policies allow for a higher charge than that outlined in this bill, they may experience a fiscal impact in the form of a reduction in the amount charged to requesting parties.

Department of Criminal Justice Services (DCJS):

The Department indicates they expect an indeterminate fiscal impact from this legislation. The bill requires DCJS to cap the hourly rate to fulfill a FOIA request at \$40 an hour. Currently the agency can charge for the hourly rate of the employee or employees who fulfill the FOIA request. The imposed fee cap can only be waived if DCJS petitions in court. However, the agency cannot pass along any administrative or court fees associated with the petition to the requester.

This bill also requires DCJS to waive the fee for the first hour of the first request made by a specific requester to a public body during a calendar year. DCJS currently charges all the hours related to each FOIA request. The agency will need additional information about the requester in order to uniquely identify and keep track of how many FOIA requests the individual has submitted.

Additionally, a database is needed to meet the record keeping requirements of this bill. The data will be used to calculate the cost for each request which includes applying any hourly rate cap, keeping track of requesters as detailed above, and waiving the costs for the first hour if applicable.

The fiscal impact is indeterminate due to the unique nature of each FOIA request. However, the agency anticipates more staff hours will be needed for each request to satisfy all requirements from this bill compared to the current FOIA procedure.

Virginia Freedom of Information Advisory Council (FOIA Council)

The FOIA Council does not anticipate a fiscal impact from this bill.

9. Specific Agency or Political Subdivisions Affected: All state public bodies subject to the Freedom of Information Act

10. Technical Amendment Necessary: No

11. Other Comments: None