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HOUSE BILL NO. 154

Offered January 12, 2022

Prefiled January 9, 2022

A BILL to amend and reenact § 2.2-3704 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 37 of Title 2.2 a section numbered 2.2-3716, relating to the Virginia Freedom of Information Act; public records database.

Patron—March

Committee Referral Pending

Be it enacted by the General Assembly of Virginia:

1. That § 2.2-3704 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Chapter 37 of Title 2.2 a section numbered 2.2-3716 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 *free of charge in a central public records database maintained by the Virginia Information Technologies Agency. For any public record not available in such database, access to such record 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. A public body may make reasonable charges not to exceed its actual cost incurred in accessing, duplicating, supplying, or searching for the requested records. No public body shall impose any

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extraneous, intermediary, or surplus fees or expenses to recoup the general costs associated with creating or maintaining records or transacting the general business of the public body. Any duplicating fee charged by a public body shall not exceed the actual cost of duplication. The public body may also make a reasonable charge for the cost incurred in supplying records produced from a geographic information system at the request of anyone other than the owner of the land that is the subject of the request. However, such charges shall not exceed the actual cost to the public body in supplying such records, except that the public body may charge, on a pro rata per acre basis, for the cost of creating topographical maps developed by the public body, for such maps or portions thereof, which encompass a contiguous area greater than 50 acres. All charges for the supplying of requested records shall be estimated in advance at the request of the citizen. The period within which the public body shall respond under this section shall be tolled for the amount of time that elapses between notice of the cost estimate and the response of the requester. If the public body receives no response from the requester within 30 days of sending the cost estimate, the request shall be deemed to be withdrawn.

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

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

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

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

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

§ 2.2-3716. Public records database.

Every public body shall upload or otherwise transfer any public records in its possession to a central public records database on the Internet that is created and managed by the Virginia Information Technologies Agency (VITA). Such database shall provide a central resource for the public to access public records.

Every public body shall submit all public records, in a form to be determined by VITA, in its possession to VITA. All such public records shall be redacted in accordance with § 2.2-3704.01 before submission to prevent the disclosure of information that may be excluded from disclosure pursuant to this chapter.

Nothing in this section shall be construed to prohibit a public body from responding to a request for

public records pursuant to § 2.2-3704 if the public records sought by a requester are not yet available on the database.

2. That the Virginia Information Technologies Agency, in consultation with the Virginia Freedom of Information Advisory Council, shall convene a workgroup consisting of representatives from state and local public bodies in every region of the Commonwealth to make recommendations for the effective implementation of a central public records database pursuant to the first enactment of this act. In making its recommendations, the workgroup shall (i) determine the specific parameters and processes necessary for the implementation of a central public records database; (ii) establish a timeline for implementing the database; (iii) consult with the Department of Planning and Budget and all state and local public bodies to estimate the costs associated with implementing and maintaining the database; and (iv) conduct research to determine if any other states have a similar database and, if so, the parameters of such database. The workgroup shall submit its recommendations to the Governor and the Chairmen of the House Committee on General Laws and the Senate Committee on General Laws and Technology on or before December 1, 2022.

3. That upon the effective date of the first enactment of this act, each public body subject to the Virginia Freedom of Information Act (§ 2.2-3700 et. seq. of the Code of Virginia) shall begin the process, as determined by the Virginia Information Technologies Agency (VITA), in consultation with the Virginia Freedom of Information Advisory Council, of submitting all public records in its possession, in redacted form if necessary, to VITA for inclusion in the central public records database created pursuant to the first enactment of this act. The initial upload of all such public records by VITA shall be completed by December 31, 2023.

4. That § 2.2-3716 of the Code of Virginia, as created by this act, shall become effective on July 1, 2023.

5. That the provisions of this act amending § 2.2-3704 of the Code of Virginia shall become effective on January 1, 2024.