CITY OF MANASSAS PARK

City Hall • One Park Center Court • Manassas Park, Virginia 20111-2395
(703) 335-8800 • Fax (703) 335-0053
www.cityofmanassaspark.us

Mayor:
Jeanette Rishell

Vice Mayor
Preston Banks

Council Members:
Alanna Mensing
Haseeb Javed
Laura Hampton
Yesy Amaya
Darryl Moore

Lana A Conner
City Clerk

Laszlo A. Palko
City Manager

December 9, 2021

Good Afternoon:

It has come to our attention that HB 2000 regarding changes to the Virginia Freedom of Information Act (the "FOIA") is being put forward for a vote in the General Assembly's 2022 session. Manassas Park would like to register a concern about this bill.

As written, HB 2000 would act as an unfunded mandate on localities, hitting smaller localities especially hard. Not only does it remove charges for the first two hours of staff time needed to respond to a FOIA request, it does this for up to four FOIA requests in a 31-day period. This change would encourage a requester to break up on FOIA request into several requests to avoid having to pay anything. For those requesters who use the FOIA as a way to harass local governments, there would beno disincentive to regularly file such requests.

In addition, HB 2000 would cap the amount charged for staff time at $33.00 per hour. For large localities that can afford to hire full-time staff to respond to FOIArequests this might not have a significant impact. Smaller localities, though, are often understaffed, with little if any specialization, and do not have staff devoted to answering FOIA requests. This means that often the least expensive person who can properly respond to a FOIA request is a department head or deputy, whose hourly rate can and often does exceed $33.00.

Even if the least expensive person who can respond is not a department head or deputy, the time spent working on a FOIA request is time not spent doing that person's primary job, meaning that either someone more expensive has to cover for that person or that person has to work overtime (at time and a half) to complete the primary work responsibilities. This added cost cannot be charged to the FOIA requester.

Small localities already have a difficult time responding to FOIA requests as required by existing law. Recently, Manassas Park spent an exorbitant amount of time trying to determine exactly what records a taxpayer who was upset with his tax assessment actually wanted. He had submitted a very broad request, which resulted in many records that would have had to be reviewed by numerous individuals to determine whether or not they were confidential or privileged.

Ultimately, he rescinded his FOIA request, without reimbursing the City for any of the staff time spent trying to assist him. It was very clear that he had used the FOIA as a way to "punish" the city for not giving him a tax break that other taxpayers would not have received.

The city has also seen plaintiff's counsel use the FOIA as a form of intimidation. Manassas Park is an understaffed locality with department directors oftentimes doing work that their counterparts in larger jurisdictions would delegate to staff. The City's department directors often work late in the evening to ensure that work is complete. A large, broad FOIA request therefore has a huge impact, since directors are the custodians of many of the records and need to review each record for confidentiality. The costs of replying to the FOIA request are not a deterrent to plaintiff's counsel since there is an expectation that the Court will award damages far in excess of what the City charges; in any case, counsel will add that cost to the damages submitted to the Court. This bypasses the normal oversight that a court has when counsel issues a subpoena.

For the reasons listed above, Manassas Park respectfully requests that you not support HB 2000. It will just add to that already onerous requirement to respond to FOIA requests for localities by adding an unfunded mandate.

Respectfully,

Jeanette Rishell

Jeanette Rishell,
Mayor
City of Manassas Park

C: Senator Jeremy McPike
Delegate Danica Roem, 13th District
Delegate Michael Mullins, 93rd District
Virginia Municipal League
FOIA Council