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Public information is 'free' if you're willing to pay

SUFFOLK

When the Citizens for the Preservation of Obici House failed in its bid to remodel the historic mansion, the members wanted to find out why.

The group wrote a letter to the city government, citing the state's Freedom of Information Act to request copies of the winning proposal, correspondence related to the city's consideration of the bids and the property's lease agreement.

Suffolk responded with a bill for \$310.07 - saying that was the cost of compiling the requested information. In the letter, Diana Klink, who handles the city's FOIA requests, broke down the charges - labor, \$211.82 and copies, \$98.25.

The nonprofit dropped the request.

"It's disappointing and disheartening," said Fred Taylor, a lawyer working with the group. "I think it discourages a lot of people from either taking part in the process or, when they hear something like this happening, disheartened in having faith in their local government."

The Virginia Freedom of Information Act requires that certain government records be made available to the public. It also allows governmental entities to charge for compiling or reproducing those records. In South Hampton Roads, the cities interpret the latter differently. Suffolk tends to impose higher fees for labor and charges more often than the other cities.

Suffolk's records of FOIA requests do not specify when a request has been dropped, as was the case with the Obici House group. Since March, about a dozen requests have been noted as requiring a \$200 deposit before further action could be taken.

Suffolk routinely charges the labor of a mid level employee in addition to other clerical or departmental employees, depending on the request. Copies are 25 cents a page.

Klink, who manages the city's FOIA requests, makes \$63,810 annually and charges an hourly rate of \$30.68 when compiling requests. She said city spokeswoman Debbie George holds the title of FOIA officer and fills requests when Klink is out. George makes \$104,000 annually, up from \$91,747 last fiscal year.

George said the city tries to be fair when assessing charges.

"It would not be fair to pass that burden (of cost) to all of our taxpayers, so the costs are passed to

the requester, who in a lot of cases are individuals and businesses who are using the information obtained for profit," she wrote in an e-mail.

The law does not distinguish between profit and nonprofit entities. It states that records should be open to any Virginia resident. Between March and mid-July, most of the requests in Suffolk were filed by private businesses - including The Virginian-Pilot and other local news media outlets.

Maria Everett, the executive director of the Virginia FOIA Advisory Council, said most cities charge the labor of a lower-paid employee, but there's nothing in the law preventing a mid level employee's labor charge.

"That's what they're there for," Everett said.

Portsmouth, Chesapeake and Virginia Beach charge for labor only on requests that require substantial research time, representatives from those cities said. Norfolk charges an hourly rate of \$25 in most cases, records show. The hourly rate is not defined by any single employee's salary.

In some cases, Chesapeake charges for what it calls computer operations time, which costs almost \$400 an hour.

There are also differences in copying fees. Printing charges range from 2 cents a page in Portsmouth to 25 cents in Chesapeake.

The intent of the law is for cities to recoup their costs, not to generate revenue, said Alan Gernhardt, the state's FOIA advisory council staff attorney.

"The law is pretty clear," he said. "Some requests are very large and expensive."

Susan Blair, who headed the Obici House group, said the city's FOIA price tag deters the public from getting, or trying to obtain, information.

"It's an immediate turn off because people are not expecting to have to pay such an exuberant amount to get some information," Blair said. "It's the Freedom of Information Act. We should be able to get the information."

Taylor said that in his experience, he has learned he needs to know specifically what he wants and not make a blanket request trying to find something he's not sure exists.

"I guess at the end of the day, actions speak louder than words," he said. "Is there sunshine in access in government in Suffolk? Yes, but it comes at a price."

Suffolk-based lawyer Kirk Pretlow said he filed his last request there in 2008 - when he wanted to learn how much money the city paid out in tax-related lawsuits. The response was on one page and cost about \$125. Pretlow said he opted to pay the fee because he could afford it but doubts that would be true for the average person.

"I haven't FOIA'ed anything since then," he said. "I've thought about it, but I know what they'll want to do."

Suffolk keeps a detailed log with the requester's name and address, what was requested and the steps the city took to fill it.. Virginia Beach keeps a less detailed log. Portsmouth, Chesapeake and Norfolk do not keep such logs.

A review of Virginia Beach FOIA records and corresponding invoices since the end of April showed that out of 75 requests, the city charged a handful of times.

The city did not charge for a request for 10 encroachment permits including correspondence, memoranda, reports, plans and designs. In Suffolk, a copy of a building permit and inspection for a single property cost \$10.01 for labor.

An inspection of Suffolk's log shows that Milton Liverman, the recently retired Suffolk schools superintendent, requested information regarding actions taken by the city's planning commission and council in relation to the city's comprehensive plan over the last four years. He could not be reached for comment.

The log shows that the city sent a letter of extension to Liverman saying his request would take 26 hours of staff time and cost \$1,396.93.

Liverman dropped the request.

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