***The Freedom of Information Act and***

***Local Government Officials***

****

***Prepared by the Virginia Freedom of Information Advisory Council***

***in cooperation with***

***the Virginia Association of Counties***

***and***

***the Virginia Municipal League***

****

**FOIA and Local Government Officials**

As such, these emails must be retained as required by the VA Public Records Act. For practical advice for email use, access and retention, see FOIA Council handout entitled *"Email: Use, Access and Retention"* available on the FOIA Council website.

\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*

***Resources for FOIA Questions***

**VA Freedom of Information Advisory Council:**

**Alan Gernhardt**, *Executive Director*

**Joseph Underwood**, *Senior* *Attorney*

Email: foiacouncil@dls.virginia.gov

Telephone: (804) 698-1810

Toll-Free: 1-866-448-4100

*foiacouncil.dls.virginia.gov*

**Virginia Association of Counties:**

**Phyllis Errico**,General Counsel

Email: perrico@vaco.org

Telephone: (804) 343-2509

*www.vaco.org*

**Virginia Municipal League:**

**Michelle Gowdy**, General Counsel

Email: mgowdy@vml.org

Telephone: (804) 523-8525

*www.vml.org*

**Library of Virginia:** (records management Q's)

**Glenn Smith**, Records Analyst

Email: Glenn.Smith@lva.virginia.gov
Telephone: (804) 692-3604

*http://www.lva.virginia.gov/agencies/records/index.htm*

FOIA and Local Government Officials

**RECORDS**

**What is a public record?**

All writings and recordings that consist of letters, words or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostatting, photography, magnetic impulse, optical or magneto-optical form, mechanical or electronic recording or other form of data compilation, however stored, and regardless of physical form or characteristics, prepared or owned by, or in the possession of a public body or its officers, employees or agents in the transaction of public business.

All public records are open to the public unless a specific exemption in law allows the record to be withheld.

**What about record retention?**

Public records must be retained according to retention schedules set by the Library of Virginia. The length of retention depends on the content of the record. After expiration of the applicable retention period, the records may be destroyed or discarded.

\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*

**E-MAIL**

Email messages that relate to the public business are public records, regardless whether you use your home oroffice computer or a personal or government email account.

FOIA and Local Government Officials

**What is not a meeting (continued)**

with any purpose of discussing or transacting any public business; or

(2) A public forum, candidate appearance, or debate, the purpose of which is to inform the electorate and not to discuss or transact public business.

**OTHER FOIA PROVISIONS**

**MINUTES:**

* Required for any meeting of the board or council.
* Minutes are also required for any subcommittee thereof only if a majority of the board/council members are on the subcommittee.
* Must be posted within 7 working days of final approval.

**VOTING:**

* No secret or written ballots are allowed.

**POLLING:**

* You may contact individual members separately to ascertain their positions by phone, letter or email so long as the contact does not constitute a meeting.

**CLOSED MEETINGS:**

* Allowed only as specifically authorized by FOIA;
* Must vote on a motion to convene stating the purpose, Code citation *and* subject, and must vote on certification afterward. [See §§ 2.2-3711and 2.2-3712 of FOIA]

FOIA and Local Government Officials

# meeting requirements

**What is considered a meeting under FOIA for board of supervisors or city or town council members?**

Any gathering, including work sessions, of the constituent membership, sitting (or through electronic communications pursuant to §§ 2.2-3708.2 or 2.2-3708.3) as:

* the board or council, or
* an informal assemblage of
* (i) as many as three members, or
* (ii) a quorum, if less than three, of the constituent membership,

wherever the gathering is held;

with or without minutes being taken;

and whether or not votes are cast.

**NOTE:** This also applies to any meeting, including work sessions, of any subgroup (committee, subcommittee, etc.) of the board or council.

**What is not a meeting?**

* The gathering of employees; or
* The gathering or attendance of two or more board/council members at:

(1) Any place or function where no part of the purpose of such gathering or attendance is the discussion or transaction of any public business, and such gathering or attendance was not called or prearranged

**FOIA and Local Government Officials**

**POLICY OF FOIA**

*By enacting this chapter, the General Assembly ensures the people of the Commonwealth ready access to records in the custody of public officials and free entry to meetings of public bodies wherein the business of the people is being conducted. The affairs of government are not intended to be conducted in an atmosphere of secrecy since at all times the public is to be the beneficiary of any action taken at any level of government.*

*Unless a public body or public official specifically elects to exercise an exemption provided by this chapter or any other statute, every meeting shall be open to the public and all public records shall be available for inspection and copying upon request. All public records and meetings shall be presumed open, unless an exemption is properly invoked.*