

**PPEA SUBCOMMITTEE  
of the  
Freedom of Information Advisory Council**

**ISSUES UNDER DISCUSSION--RESULTS OF JULY 13, 2005 MEETING**

<b>Issue</b>	<b>Current Law</b>	<b>Options</b>	<b>Suggested Approach (7/13/05)</b>
1. Identification of records actually exempted by FOIA for PPEA and PPTA projects	See § 2.2-3705.6 (11) <sup>i</sup>	Does the universe need to be expanded or contracted or left unchanged?	Not discussed
2. Define "confidential proprietary records."	"Procurement records shall not be interpreted to include proprietary, commercial or financial information, balance sheets, financial statements, or trade secrets that may be provided by the private entity as evidence of its qualifications." See 2.2-3705.6 (11)	PPEA/PPTA only OR as defined term in FOIA (applicable to all proprietary record exemptions) OR as defined term in VPPA OR all of the above.	General agreement that this term should be defined and that trade secrets and financial statements and other financial information related to privately held companies should be held confidential.  Discussion that confidential proprietary information may include the method of design or construction and the cost of a proposal.
3. Affirmative declaration and/or agreement by a public entity that certain records will be	Nothing to prohibit or require in law.	PPEA/PPTA only OR as defined term in FOIA (applicable to all proprietary record exemptions) OR as defined term in VPPA OR all of the	DGS process should be required for all public entities. <sup>1</sup> Amend ONLY § 2.2-3705.6 (11) in FOIA at this time. Subcommittee will consider other options at future meetings.

<sup>1</sup> DGS posts all unsolicited proposals and notice of same as they are received in the *Virginia Business Opportunities* publication and posting on the Commonwealth's electronic procurement website (eVA).

considered proprietary and thus protected from disclosure.		above.	
4. Specific time lines for release of records related to PPEA projects.	§§ 55-573.1 and 56-575.16-- "Once a comprehensive agreement has been entered into, and the process of bargaining of all phases or aspects of the comprehensive agreement is complete, a responsible public entity shall make available, upon request, procurement records in accordance with § 2.2-4342."	Amend PPEA to provide for release of records once an interim agreement has been entered into	Agreement that within five working days of the close of the required notice period for unsolicited proposals, the public body must post all conceptual phase proposals received, minus trade secrets, financial records, and confidential proprietary records In addition, the public body may, in its discretion, elect to post records generated by the public body in response to the proposals. Additionally, subcommittee suggests public comment period on proposals.
5. Interim versus comprehensive agreements, and when records related to each must be made available.	Not specified in the law. SB 1107 (05) eff. 7/1/05	Amend § 56-575.16 to specify time for release of records when interim or comprehensive agreement(s) are entered into.	Once an agreement, whether interim or comprehensive, becomes binding on the parties and public funds are committed to a project, the agreement should be available for public inspection. Generally, the agreement itself incorporates the successful proposal and specifies the terms and conditions for performance of the agreement. Additionally, those records of the public body that directly relate to the agreement would be available for public inspection.
6. Disclosure by school boards to the local governing bodies	§56-575.16 E--"A responsible public entity that is a school board or a county, city or town	Specify what records must be made available to local governing body by school board as part of approval	No recommendation.

responsible for approving funding for school construction.	may enter into a comprehensive agreement under this chapter only with the approval of the local governing body. "	process by local governing body.	
7. Use of term "working papers" in FOIA PPEA exemption	"Working papers" is a defined term in FOIA; not applicable in this context. See § 2.2-3705.6 (11) <sup>ii</sup>	Use another term of art to convey same meaning OR Leave unchanged b/c context requires a different meaning.	Not discussed.

Source: *Virginia Freedom of Information Advisory Council*

i Confidential proprietary records...(i) voluntarily provided by a private entity pursuant to a proposal filed with a public entity or an affected local jurisdiction under the Public-Private Transportation Act of 1995 (§ 56-556 et seq.) or the Public-Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.), pursuant to a promise of confidentiality... , (ii) used by the responsible public entity or affected local jurisdiction for purposes related to the development of a qualifying transportation facility or qualifying project; and (iii) memoranda, working papers or other records related to proposals filed under the Public-Private Transportation Act of 1995 or the Public-Private Education Facilities and Infrastructure Act of 2002, where, if such records were made public, the financial interest of the public or private entity involved with such proposal or the process of competition or bargaining would be adversely affected. (Emphasis added).

ii [A]nd memoranda, working papers or other records related to proposals filed under the Public-Private Transportation Act of 1995 or the Public-Private Education Facilities and Infrastructure Act of 2002, where, if such records were made public, the financial interest of the public or private entity involved with such proposal or the process of competition or bargaining would be adversely affected. (Emphasis added).