

Personal Identifying Information Subcommittee
May 10, 2007 Meeting Summary
Richmond, VA

The Personal Identifying Information Subcommittee (the Subcommittee)¹ of the Virginia Freedom of Information Advisory Council held its first meeting of the 2007 interim to begin its deliberations on the nine bills referred to the FOIA Council for study.² Senator Houck, chair of the Subcommittee opened the meeting by explaining the need for, and the charge of the Subcommittee. Senator Houck mentioned that a number of bills introduced during the 2007 Session concerned public access to personal identifying information, including social security numbers; addresses of citizens; rabies vaccination information; and holders of boat, fishing, and hunting licenses. He indicated that each bill represented a differing, piecemeal approach and it was the intent of the Subcommittee to devise a uniform rule concerning access to personal identifying information after careful consideration of all sides. Additionally, Senator Houck noted that a related issue, public access to holders of concealed weapons permits, would be included as part of the Subcommittee's work. He advised that although this was not the subject of legislation in the 2007 Session, it came to light following the publication of the names and addresses of holders of concealed weapons permits in the Roanoke Times and the resulting controversy.

Although invited to discuss their respective bills, Senators Chichester, Cuccinelli, and Hanger, and Delegates Cole and Sickles were able to attend this meeting, but requested an opportunity at future meeting of the Subcommittee to present their bills. Delegate Carrico and Senator Deeds were present and discussed their identical bills (HB 3118 and SB 883) with the Subcommittee. Delegate Carrico indicated that his intent was to expand the current exemption to include the names, addresses, and social security numbers of holders of boat, fishing, hunting, and other licenses/permits issued by the Department of Game and Inland Fisheries. Delegate Carrico indicated that HB 3118 as drafted contained an "opt out" provision.³ He stated that he was not in favor of citizens having the burden to opt out in order to protect their personal information. Senator Deeds told that Subcommittee that most licenses issued by the Department of Game and Inland Fisheries (DGIF) can be obtained online and include social security numbers. He also did not favor the opt out requirement. Senator Deeds did, however, admit that he has taken advantage of the availability of contact information (i.e., names and addresses) for his work as a public official. A spokesman for DGIF informed the

¹ Senator Houck, Stewart Bryan, John Edwards, Courtney Malveaux, and Mary Yancey Spencer were present; Delegate Griffith and Mssrs. Hopkins and Yelich were absent.

² SB 1106 (Chichester)/HB 3097 (Cole), HB 2558 (Brink), SB 883 (Deeds)/HB 3118 (Carrico), HB 2821 (Sickles), SB 819 (Cuccinelli), and SB 1404 (Hanger)/HB 3161 (Marshall, D.W.).

³ Opt out provisions require the individual who is the subject of the record to affirmatively inform the public body that he does not want his personal information released. Absent the exercise of this option, the information will be released if requested.

Subcommittee that the Department has extensive databases containing names, addresses, social security numbers and financial account information on persons to whom licenses are issued by the Department. He advised that currently there are 250,000 registered boats in Virginia. With regard to hunting and fishing licenses, he indicated that the Department uses a point-of-sale electronic licensing system, which contains credit card information. The Department stated that they receive many requests for licensee/permittee lists and databases. In response to requests for these records, the Department regularly records the records on CDs and provides them at cost, as required by FOIA. He noted, however, that they do redact social security numbers even though there is no current exemption for this redaction.

Subcommittee member John Edwards asked if the social security numbers and other sensitive information can be segregated in the database. The Department indicated that the system was designed to do that. Subcommittee member Courtney Malveaux noted that there was a potential for identity theft with access to social security numbers, but questioned whether release of names and addresses threatened any harm. In response, the Department indicated that potentially one could use FOIA to get the address of nicer boats, for example, and the addresses to be used to steal the boats. Mr. Edwards questioned whether this has happened and was told no. The Department compared the information they hold to records of DMV, which are not publicly accessible under state and federal law. The Department indicated that the Virginia Information Technologies Agency (VITA) routinely combines and sells public records. A spokesman for VITA indicated that it does combine public records and makes them available through "Virginia Interactive," but would need to find out more about how they system works and would report back to the Subcommittee.

Next, Delegate Brink discussed HB 2558 (released of rabies certificate information), which was enacted into law in 2007. The bill, however, contained a sunset provision of July 1, 2008 in order to allow the FOIA Council to study the issues raised by the bill. Delegate Brink noted that, but for a bill passed in 2006 sponsored by Delegate Orrock, the information held by a veterinarian on an animal and the animal owner would never be shared with the government. However, Delegate Orrock's bill, which does not become effective until January 1, 2008, required the filing of rabies certificates by veterinarians with local treasurers as a measure to enforce animal licensing laws that have been in place for 30 years. John Edwards inquired what information was contained in animal license application. A representative of the Virginia Veterinary Association responded that the application can be either oral or written along with the presentation of the rabies certificate. She indicated that most are written applications, but there is no uniform application used by local treasurers and sometimes the rabies certificate is the application. The goal of the legislation is to keep dog specific information out of the public domain. John Edwards asked if the bill was some sort of HIPPA for dogs and questioned from

what are we protecting dogs. The response was that the biggest concern was that insurance companies would not write homeowner insurance for "powerful" breeds. In addition, there was concern that this may lead to the theft of rare breeds. A representative of the Virginia Treasurer's Association indicated that animal health information is sensitive information. He reiterated that the goal of Delegate Orrock's bill was the enforcement of animal vaccination and licensing laws. He indicated that there were three different goals of the licensing scheme and HB 2558. First as a designated revenue measure for animal control. Secondly, for the safety of animal control officers, and third, for the privacy of animal owners. He likened privacy of animal owners to personal property roll books in which only certain information is available with the remainder being considered confidential under state law. He noted, however, that the proponents of HB 2558 were working together to develop a uniform license application, part of which is public and part of which is confidential, and finally to eliminate the retention of the rabies certificate by local treasurers. Rabies certificates were generated by individual veterinarians through a veterinary software program, which contain information required by law. The net effect of recent legislation in this area has made veterinarians and treasurers part of animal control.

Council staff briefed the Subcommittee on the remaining bills referred by the 2007 Session to the Council. Senator Houck then discussed concealed weapons permits and the publication of this permit database by the Roanoke Times. Senator Houck stated that he believed it would be advantageous to take a long term look at this issue and recommend an approach to head off the number of legislative requests already made on this topic. Such an approach gives ample time for reflection and consideration of the attendant issues without the pressure of session.

The Council briefly discussed a work plan for future meetings. Staff noted that the issues can be divided into three categories: unique identifying information (i.e., social security numbers, etc), financial account information, and contact information (i.e., name and address). Staff suggested, however, that because all of the issues were essentially access to personal identifying information, the Subcommittee may want to begin its work by looking at the issues as a whole and, as the need to subdivide the issues becomes apparent, to create subgroups of the Subcommittee. Staff briefly discussed how FOIA currently protects citizen personal identifying information. Staff prepared a table titled "Protection of Citizens' Personal Identifying Information under the Virginia Freedom of Information Act." which was distributed at the meeting to the Subcommittee members and the public alike. This document is available on the Council's website.

The next meeting of the Subcommittee is schedule for Thursday, July 12, 2007 at 1:00 p.m. in the Speaker's Conference Room, sixth floor of the General Assembly Building. The Subcommittee will meet with the members of Joint Commission on Technology and Science concerning HB 2821.