

Database Index Subcommittee of the FOIA Council
Meeting Summary
October 6, 2008
Richmond, Virginia

The Database Index Subcommittee held its second meeting on December 1, 2008¹ to consider draft legislation that would make two changes to current law: (1) it would repeal subsection J of § 2.2-3704, which requires that every public body of state government shall compile, and annually update, an index of computer databases,² and (2) it would amend § 2.2-3704.1, the rights and responsibilities statement state public bodies in the executive branch must publish, to add provisions requiring such public bodies to identify generally the type(s) of records they have and exemptions that apply to those records. The Subcommittee had directed staff to prepare this draft after discussing the various issues involved with the database index requirement at its last meeting, held October 6, 2008.

The Subcommittee stated that the goal of the legislation is to increase public awareness of what records are available, but not to impose an overly burdensome requirement upon public bodies. The subsequent discussion³ addressed the actual language of the draft amending § 2.2-3704.1. The language at issue would require state agencies in the executive branch to publish upon request, and to post on the Internet, a "general description, summary, list, or index of the types of public records maintained by such state public body," and a "general description, summary, list, or index of any exemptions in law that permit or require such public records to be withheld from release." Some concern was expressed over the use of the term "index" and whether that might cause confusion, as the term may be used differently by information technology professionals and in other contexts. Staff clarified that the language chosen - "general description, summary, list, or index" - would give the affected public bodies choices and flexibility in how they comply with the new requirement, particularly as it uses the disjunctive "or." The discussions also clarified the intent that the information so published should be general in nature and address categories or types of records, but need not be an exhaustive list of every record held by a public body. While there may be some initial burden placed on public bodies by this requirement, it is meant to be a less onerous burden than compiling a database index as required by current law, and the new listing is not required to be updated every year. It was suggested that an

¹ Subcommittee Members Landon (Chair), Spencer, and Clark were present; Mr. Axselle was absent. Note that Mary Clark sat as a member of the Subcommittee by designation of Dr. Sandra Treadway, Librarian of Virginia.

² In full, subsection J of § 2.2-3704 reads as follows: "Every public body of state government shall compile, and annually update, an index of computer databases that contains at a minimum those databases created by them on or after July 1, 1997." "Computer database" means a structured collection of data or records residing in a computer. Such index shall be a public record and shall include, at a minimum, the following information with respect to each database listed therein: a list of data fields, a description of the format or record layout, the date last updated, a list of any data fields to which public access is restricted, a description of each format in which the database can be copied or reproduced using the public body's computer facilities, and a schedule of fees for the production of copies in each available form. The form, context, language, and guidelines for the indices and the databases to be indexed shall be developed by the Virginia Information Technologies Agency in consultation with the Librarian of Virginia and the State Archivist. The public body shall not be required to disclose its software security, including passwords."

³ Aside from the subcommittee members, several members of the public participated in this discussion, including Megan Rhyne, Executive Director of the Virginia Coalition for Open Government; Tom Falat, representing the Virginia Information Technologies Agency; Wendy Thomas, Senior Policy Analyst from the Virginia Department of Transportation; and Martha Brissette, from the State Board of Elections.

agency's record retention schedules under the Virginia Public Records Act might be used by reference or as examples in helping to compile the general description, summary, list, or index of types of records held. It was also expressed that such a listing would be a useful tool for agencies as a reference to help direct requesters' inquiries. Similarly, the list of exemptions to be published would be those exemptions commonly used or likely to be used by a public body, not an exhaustive list of every exemption that might possibly apply in every situation. Most, if not all, affected agencies already have such a list of exemptions published as part of their current rights and responsibilities statement. Furthermore, the FOIA Council is already tasked with assisting in the development and implementation of these requirements under subsection B of § 2.2-3704.1. The Council currently publishes guidance and a sample template for the rights and responsibilities statement, and will update that guidance and the template as necessary to accommodate legislative changes.⁴

Through these discussions it appeared that the various representatives of state agencies present generally agreed that the draft would achieve the stated goal of increasing public awareness while eliminating the overly burdensome database index requirement, and that the new amendments to the rights and responsibilities statement would not be overly burdensome. The Subcommittee then asked representatives of the Virginia Press Association (VPA) and the Virginia Municipal League (VML) for their reactions to the proposed legislation, as they had not yet spoken. Ginger Stanley, Executive Director of VPA, stated that VPA had no problems with it, and she believed it would be helpful. Phyllis Errico, General Counsel for VML, indicated that she felt the legislation might be burdensome if it applied to local governments, because local governments perform a wide variety of governmental functions and holds a corresponding wide variety of types of records. However, as the rights and responsibilities statement is only required to be published by state agencies in the executive branch, Ms. Errico indicated she had no objections to the draft as written.

Following this discussion, the Subcommittee voted unanimously (3-0) to recommend the legislation as drafted to the full FOIA Council. The work of the Subcommittee being concluded, the meeting adjourned without setting any future meeting date.

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⁴ Available on the FOIA Council website at http://dls.state.va.us/groups/foiacouncil/rts_resp.htm.