



VIRGINIA FREEDOM OF INFORMATION ADVISORY COUNCIL

COMMONWEALTH OF VIRGINIA

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June 1, 2016

10:30 AM

Speaker's Conference Room, Sixth Floor
General Assembly Building, Richmond, Virginia

Meeting of the RECORDS Subcommittee of the FOIA Council

Proposed Agenda

1. Call to order and introduction of subcommittee members.
2. Continue implementation of subcommittee work plan: old business. *The following agenda items are carried over from the last meeting of the Subcommittee:*
 - Comparison draft re: public safety exemptions. *Last year the Subcommittee considered a draft prepared by staff based on a chart comparing several public safety exemptions found in § 2.2-3705.2, including subdivisions 2 (portions of engineering and construction drawings and plans), 4 (terrorism and cybersecurity plans), 6 (security of governmental facilities, buildings, and structures, and safety of persons using them), and 14 (Statewide Agencies Radio System (STARS) or any other similar local or regional public safety communications system). The draft was written to consolidate similar language and eliminate redundancies. At its last meeting the Subcommittee stated that it would recommend the draft to the FOIA Council after today's meeting unless objections were raised.*
 - Letters of recommendation - *At its last meeting the Subcommittee identified a discrepancy between the way letters of recommendation are treated in regard to students or employees of educational agencies or institutions (subdivision 2 of § 2.2-3705.4), other public employees under the personnel records exemption (subdivision 1 of § 2.2-3705.1), and all data subjects under the Government Data Collection and Dissemination Practices Act (subsection B of § 2.2-3806). The Subcommittee directed staff to prepare a draft that would reconcile these provisions such that letters of recommendation would be exempt from mandatory disclosure in all cases.*
 - Personal information held by the Virginia College Savings Plan (VCSP) - *At the last Subcommittee meeting Chris McGee of VCSP stated that the current exemption (subdivision 6 of § 2.2-3705.4) addresses personal information of account holders, but VCSP also has personal information of beneficiaries, authorized individuals, and designated survivors. The*

Subcommittee directed staff to prepare a draft adding these individuals to the existing exemption.

- *Reconsideration of global language change. Last year the Subcommittee recommended replacing language that appears in multiple existing exemptions that states that "nothing ... shall prohibit" disclosure or release of records. Recognizing that FOIA generally does not prohibit release, the Subcommittee recommended replacing that phrasing with language stating that "nothing ... shall authorize withholding" or other language indicating an affirmative duty to disclose. However, it has come to the attention of staff that such a global change may have unintended consequences, and therefore reconsideration of this recommendation is necessary.*

3. *Continue implementation of subcommittee work plan: new business. In addition to the exemptions carried over for further study, the remaining sections to be studied include §§ 2.2-3705.5 (health and social services records), and 2.2-3706 (Disclosure of criminal records; limitations). At its last meeting the Subcommittee agreed to study these sections in numerical order. Following is a summary of exemptions from § 2.2-3705.5:*

- *Health records - § 2.2-3705.5(1);*
- *Exam or licensure applications and scoring records maintained by the Department of Health Professions - § 2.2-3705.5(2);*
- *Certain records concerning adult services, adult protective services, the Office of the State Long-Term Care Ombudsman, and social services - § 2.2-3705.5(3);*
- *Certain records furnished to the Department of Social Services or the Office of the Attorney General related to certain investigations or litigation - § 2.2-3705.5(4);*
- *Certain records collected for the designation and verification of trauma centers and other specialty care centers within the Statewide Emergency Medical Services System - § 2.2-3705.5(5);*
- *Reports and court documents relating to involuntary admission required to be kept confidential pursuant to § 37.2-818 - § 2.2-3705.5(6);*
- *Certain records formerly required to be submitted to the Commissioner of Health - § 2.2-3705.5(7);*
- *Information required to be provided to the Department of Health Professions by certain licensees pursuant to § 54.1-2506.1 - § 2.2-3705.5(8);*
- *Certain records of a child fatality review team, family violence fatality review team, or adult fatality review team - § 2.2-3705.5(9);*
- *Certain Patient level data collected by the Board of Health and not yet processed, verified, and released, pursuant to § 32.1-276.9 - § 2.2-3705.5(10);*
- *Certain of the Health Practitioners' Monitoring Program Committee within the Department of Health Professions - § 2.2-3705.5(11);*
- *Certain grant application records submitted to the Commonwealth Neurotrauma Initiative Advisory Board - § 2.2-3705.5(12);*
- *Certain records copied, recorded or received by the Commissioner of Health in the course of an examination, investigation or review of a managed care health insurance plan licensee - § 2.2-3705.5(13);*

- *Certain social services records required to be kept confidential pursuant to §§ 63.2-102 and 63.2-104 - § 2.2-3705.5(14);*
- *Certain records of the Prescription Monitoring Program - § 2.2-3705.5(15);*
- *Records of the Virginia Birth-Related Neurological Injury Compensation Program required to be kept confidential pursuant to § 38.2-5002.2 - § 2.2-3705.5(16);*
- *Certain of the State Health Commissioner relating to the health of any person or persons subject to an order of quarantine or an order of isolation - § 2.2-3705.5(17);*
- *Certain records containing the names, addresses or other contact information of persons receiving transportation services under Title II of the Americans with Disabilities Act, (42 U.S.C. § 12131 et seq.) or funded by Temporary Assistance for Needy Families (TANF) created under § 63.2-600 - § 2.2-3705.5(18);*
- *Records of certain health care committees and entities, to the extent that they reveal information that may be withheld from discovery as privileged communications pursuant to § 8.01-581.17 - § 2.2-3705.5(19).*

4. Public Comment.

5. Discussion.

6. Set future meeting dates. *Reminder: At its last meeting the Subcommittee decided to meet at 10:30 AM on Wednesday, June 22, and 10:30 AM on Wednesday, July 20. Meetings may only be scheduled on Monday, Tuesday, and Wednesday of the first and third full weeks of the month. Please bring your calendars.*

7. Adjournment.

Subcommittee Members

Christopher Ashby, Chair
Ed Jones, Vice-Chair
Stephanie Hamlett

Shawri King-Casey
Marisa Porto
Mark Vucci

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