

Virginia Freedom of Information Advisory Council
Meetings Subcommittee
April 11, 2016
10:00 AM
Speaker's Conference Room, Sixth Floor
General Assembly Building
Richmond, Virginia
Meeting Summary

The Meetings Subcommittee of the FOIA Council (the Subcommittee) held its first meeting of the 2016 Interim on April 11, 2016. All Subcommittee members were present.¹ The purpose of the meeting was to continue the study of FOIA in accordance with House Joint Resolution No. 96 (HJR 96). As per the study plan adopted by the Council, with the completion of the review of (i) open meeting exemptions found in § 2.2-3711 and (ii) § 2.2-3712 (closed meeting procedures), the Subcommittee began review of § 2.2-3707 (notice of meetings, etc.).

Staff provided the Subcommittee with the legislative history of § 2.2-3707 (notice of meetings, etc.), which was part of the original enactment of FOIA in 1968 (chapter 479, Acts of Assembly of 1968). Staff advised that the meeting notice provision has been amended many times since 1968, with the last amendment in 2015 (chapter 131 of the Acts of Assembly of 2015). The Subcommittee discussed subsection A of § 2.2-3707, which provides "[A]ll meetings of public bodies shall be open, except as provided in § 2.2-3707.01 and § 2.2-3711." Mary Yancey Spencer of the Virginia State Bar advised that VSB committees operate under the Rules of the Virginia Supreme Court and inquired whether these Rules are as otherwise provided by law. Staff answered that the Rules of the Virginia Supreme Court are law, except when in conflict with the Code of Virginia, in which case the Code of Virginia controls.

There being no further comment, the Subcommittee discussed subsection B of § 2.2-3707, which provides "No meeting shall be conducted through telephonic, video, electronic or other communication means where the members are not physically assembled to discuss or transact public business, except as provided in 2.2-3708, 2.2-3708.1 or as may be specifically provided in Title 54.1 for the summary suspension of professional licenses." The only discussion relative to subsection B was whether group emails and group texts are included in the phrase "other communication means." Staff averred that such emails and texts were included. The Subcommittee by consensus agreed to move the last sentence of subsection B² to provisions in § 2.2-3707 relating to agendas.

¹ Dooley (Chair), Selph, Landon, Porto, King-Casey.

² "Notices for meetings of state public bodies on which there is at least one member appointed by the Governor shall state whether or not public comment will be received at the meeting and, if so, the approximate point during the meeting when public comment will be received."

The Subcommittee moved next to subsection C, which specifies when and where notice is required to be given, including the posting of notice on the respective public body's website for state public bodies. Staff indicated that in some localities, there are large, multi-room meeting facilities and questioned whether the specific location of the meeting (i.e. the room number) should be identified in the notice. Ms. Dooley responded that this issue may be best handled by a FOIA Council opinion or in one of the Council's educational materials on public meetings. The Subcommittee concurred. Staff then raised the issue that FOIA does not require an agenda and the only reference in FOIA to an agenda is found in subsection F of § 2.2-3707, which requires at least one copy of any nonexempt agenda materials be available for public inspection. Staff stated that it advises as a best practice that an agenda accompany the meeting notice. Staff also observed that while the last sentence of the subsection requires certain public bodies to give notice of whether public comment will be received and if so, approximately when during the meeting, as a practical matter it made more sense for this provision to be included on the agenda, rather than in the meeting notice. Mark Courtney of the Department of Professional and Occupational Regulation and Roger Wiley, Esq., who represents many localities, both advised that in many instances notices of regular meetings are given for an entire year and as such there are no agendas for future meetings at the time when the notice is given. The Subcommittee next discussed where notices are published--specifically, in "a prominent public location where notices are regularly posted." Staff questioned where such a location is in large jurisdictions and for state public bodies. Mr. Wiley stated that he believes this provision is backwards, meaning that in 2016 there should be website posting first and if no website, then post notice to a bulletin board. Ms. Porto advised that many citizens do not check the Internet as a first step. David Lacey, representing the Virginia Press Association, opined that where notice is posted seems to be working and he has heard little issue with this provision. Several members of the public commented that smaller localities do not yet have websites and any posting requirement would need to take that fact into account. Additionally, public bodies like economic development authorities and local electoral boards likewise do not have websites and so instead post notice on the "parent" body website. Further, for state public bodies there are a number of different websites such as the Commonwealth Calendar and Regulatory Town Hall where notices are posted. After lengthy discussion about the availability of state and local government websites and correct identification of a central Commonwealth website, the Subcommittee directed staff to draft a proposal to address the issues raised as described above.

Subsection D of § 2.2-3707 (notice of special or emergency meetings) was the next topic of discussion. Megan Rhyne of the Virginia Coalition for Open Government (VCOG) expressed concern that when meetings are continued, there is no requirement for additional notice of the continued meeting, other than an announcement of same at the meeting itself. After a brief discussion of this issue, the Subcommittee agreed that provision addressing notice of special and emergency meetings should be amended to include written notice of a continued meeting.

With regard to subsection E of § 2.2-3707 (requested personal meeting notice), there was agreement that there were no problems with this subsection and as such it should remain as written.

Subsection F of § 2.2-3707 (availability of agenda materials) was next discussed by the Subcommittee. Staff advised the Subcommittee that it recommends, when available, that the agenda accompany the meeting notice. As noted above, this cannot be done when notice of regular meetings is given on a calendar year basis. The Subcommittee agreed with staff that a copy of the agenda, in addition to the agenda materials should be available for inspection. As a result, the Subcommittee agreed to amend subsection F to include a copy of the proposed agenda be available when agenda materials are available for public inspection. The Subcommittee also agreed that the agenda should include whether or not public comment will be received as currently stated in subsection C (discussed above).

The Subcommittee recommended the deletion of subsection G - "The notice provisions of this chapter shall not apply to informal meetings or gatherings of the members of the General Assembly" - as this provision is obsolete because of the enactment of § 2.2-3707.01, relating special meeting requirements for the General Assembly in 2005.

The Subcommittee next considered subsection H of § 2.2-3707 (Any person may photograph, film, record or otherwise reproduce any portion of a meeting required to be open). There was no issue raised with this subsection as written and as a result, no change was recommended.

Subsection I of § 2.2-3707 (meeting minutes) was the next topic of discussion. Staff noted that in 2004 (c. 730) requirements for the content of meeting minutes was added, and the Council has written several formal opinions on this provision, as well as including guidance in educational materials on the content of minutes. Megan Rhyne, VCOG, indicated that the content of meeting minutes vary widely; some almost a verbatim transcript, others cryptic, and most almost never include any public comment made at a meeting. The Subcommittee directed staff to bring copies of relevant advisory opinions to the next Subcommittee meeting.

With the completion of the initial review of § 2.2-3707, the Subcommittee turned its attention to the next agenda item--the "context draft". At previous meetings, the Subcommittee discussed whether the current meeting exemptions that reference existing FOIA record exemptions should be amended to contain more information, to include the identity of the public body(s) to which the exemption applies and a general description of the subject matter of the excluded records/topic for discussion in a closed meeting in addition to the citation to the applicable records exemption. A draft was prepared by staff, discussed by the Subcommittee, and posted on the Council website to receive further comment. The Subcommittee again deferred action on this draft to allow ample time for review and reflection by interested parties. As a result, no action to date on this approach has been taken by the Subcommittee.

The next meeting of the Subcommittee is scheduled for Monday, June 6, 2016 in Richmond. There being no further business, the meeting was adjourned.

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