

Virginia Freedom of Information Advisory Council  
Meetings Subcommittee  
October 17, 2016  
10:00 AM  
House Room D  
General Assembly Building  
Richmond, Virginia  
Meeting Summary

The Meetings Subcommittee of the FOIA Council (the Subcommittee) held its seventh and final meeting of the 2016 Interim on October 17, 2016.<sup>1</sup> The purpose of the meeting was to continue the study of FOIA in accordance with House Joint Resolution No. 96 (HJR 96).

The first order of business was the consideration of HB 698(Kory, 2016) and HB 757 (R. Bell, 2016) referred by the General Assembly. Both Delegates Kory and Bell were again unable to attend this meeting, however the Subcommittee asked for public comment on these bills. Prior to any public comment, Subcommittee member Stern suggested that a better approach to HB 698 or HB 757 was that no public body could take formal action without providing an opportunity for public comment. Megan Rhyne, Executive Director of the Virginia Coalition for Open Government told the Subcommittee that she believed that Mr. Stern's idea was a good one. Dick Hammerstrom on behalf of the Virginia Press Association stated that many times citizens have a petition that they wish to present during the course of a public meeting, but because there is no requirement for public comment, they are denied the opportunity. David Blount, Thomas Jefferson Planning District Commission and also speaking unofficially on behalf of the Virginia Municipal League (VML) and Virginia Association of Counties (VACo), speaking to Mr. Stern's suggestion stated that there are many provisions in local government law (Title 15.2 of the Code of Virginia) that require public hearings before official action can be taken by local public bodies. He stated that the real issue is how a public body is going to move through its agenda and otherwise managing meeting procedures. Mr. Blount stated that he did not favor HB 757 and was unsure that HB 698 would improve things. Chair Dooley then requested additional comment from members of the Subcommittee. Ms. Porto averred that there were too many procedural issues with HB 757 as raised by all sides of the issue and therefore suggested that the Subcommittee not recommend HB 757. With regard to HB 698, Ms. Porto observed that this approach was more acceptable to the parties present at today's meeting. Mr. Stern said that he agreed with Ms. Porto and suggested that public comment may not be necessary at every meeting, but again be required before any official action be taken by a public body. By consensus, the Subcommittee agreed not to recommend HB 757 because of the practical problems it presented as well as the belief that it was tantamount to the micro management of meeting procedures. Ms. Dooley, speaking to HB 698, reiterated that there are many statutes that require public hearing by local public bodies (i.e., rezoning, adoption of budgets, capital improvements, tax increases, and adoption of ordinances), and stated that she was reluctant to advance HB 698 because it was

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<sup>1</sup> Dooley (Chair), Porto, and Stern were present. Ms. King-Casey and Mr. Coleburn were absent.

too broad and the concerns raised about specific public bodies could be addressed without affecting all public bodies, most of which routinely provide a public comment period even though it is not required. Ms. Dooley added that her final concern was that FOIA was about access and public comment is not an access issue. She repeated that while she supports the idea that where important decisions are being made, an opportunity for public comment should be given. However, she suggested that the focus should be on specific public bodies where the concern lies and not craft a law that applies to all public bodies. Further public comment was requested. Roger Wiley, Esq., for VML and VACo stated that he agrees with Ms. Dooley and noted that neither bill limited public comment to the topic being discussed by public body. Dave Ress, Daily Press, responding to Mr. Wiley's comments stated that by limiting the topic of public comment, a public body may miss the informing quality that a public body may consider at some later date. Because this was the final meeting of the Subcommittee as directed by Delegate LeMunyon, Chair of the FOIA Council, the Subcommittee referred HB 698 back to the full FOIA Council without recommendation for consideration at the Council's next meeting on October 17, 2016.

The Subcommittee next turned its attention to a matter unresolved from its previous four meetings. The issue was the website posting of minutes under § 2.2-3707.1 by public bodies. By way of background, the Subcommittee directed staff to prepare a draft amending § 2.2-3707.1 to require posting of meeting minutes for all state public bodies and local governing bodies, including school boards; however, for such local bodies, posting is required only for approved minutes. This limitation for local governing bodies and school boards was acknowledgment of the fact that such local governing bodies and school boards meet monthly and as a practical matter, draft minutes are prepared in time for approval at the next meeting. The discussion at today's meeting again included the potential difficulty for legislative branch agencies to comply with posting minutes within the statutory time frame due to the substantial difference in staffing levels for legislative branch agencies as compared to executive branch agencies, as well as the fact that minutes are generally not approved by legislative branch boards, councils, and commissions. The Subcommittee recalled the public comment offered on this issue at each of its previous meetings, namely, the draft presented real problems for localities because many localities have (i) no IT staff, (ii) limited websites that are operated by a third party vendor on a contractual basis, or (iii) no website of their own, but instead the website is hosted on other entities websites, whether public or private; the draft was an unfunded mandate on localities. Ms. Porto opined that because there remain many questions on both sides, the posting of minutes is essentially a technology issue and FOIA addresses more than just website posting of minutes. Ms. Porto suggested that resolution of this issue should not be done on a piecemeal basis, but rather a review of the larger technology issues using a more holistic approach as will be undertaken by the FOIA Council in 2017. Ultimately, the Subcommittee by consensus agreed with Ms. Porto's suggestion and directed staff to amend the draft (LD 17100057D) to keep current law, which requires posting of minutes by state public bodies in the executive branch of state government; but update the "Commonwealth Calendar" language to "a central electronic calendar maintained by the Commonwealth."

The Subcommittee next took action on its recommendation to require public notice for continued meetings to include a corresponding amendment to § 15.2-1416, which

authorizes local governing bodies to adjourn their meetings from time to time, without further notice to the public, until the work of the body is complete. Given the Subcommittee's prior recommendation for notice of continued meetings be given under FOIA, amendment of § 15.2-1416 is necessary to make this section consistent with the Subcommittee's recommendation (LD17100047D). The Subcommittee agreed to amendment of § 15.2-1416 unanimously to be included in LD 17100047.

The Subcommittee asked for any further public comment. Dave Ress, Daily Press, noted that while there was no time this year, § 2.2-3703, public bodies excluded from FOIA should be revisited, specifically considering clerk of court's records and voter registration records. He noted that Virginia is one of very few states that exempt voter registration records.

Because of time limitations due to the convening of the FOIA Council meeting at 1:30 p.m., the Subcommittee took no action on the remaining agenda items. The Subcommittee did review Senator Surovell's draft (LD 17100846), relating to the imposition of additional penalties for members of a public body improperly certifying a closed meeting. The Subcommittee by consensus agreed that there were many concerns with this draft and due to today's time constraints took no action on the draft.

Ms. Dooley thanked everyone present for their participation and hard work. The meeting was adjourned.

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