



VIRGINIA FREEDOM OF INFORMATION ADVISORY COUNCIL
COMMONWEALTH OF VIRGINIA

Senator Richard H. Stuart, Chair
Delegate Luke E. Torian, Vice-Chair
foiacouncil@dls.virginia.gov

Alan Gernhardt, Esq., Executive Director
Chad Ayers, Esq., Attorney

Pocahontas Building ~ 900 East Main Street, 10th Floor ~ Richmond, Virginia 23219
804-698-1810 ~ (Toll Free) 1-866-448-4100 ~ (Fax) 804-698-1899 ~ <http://foiacouncil.dls.virginia.gov>

June 4, 2018
10:00 AM

House Committee Room 300A
Pocahontas Building, Richmond, Virginia
PROPOSED AGENDA (Annotated)

**Remedies Subcommittee
of the Virginia Freedom of Information Advisory Council**

1. **Call to Order, introduction of members.**
2. **Bills referred by the 2018 Session of the General Assembly.** *At its meeting on April 4, 2018, the FOIA Council referred the following two bills to the subcommittee for study, as summarized below.*
 - **HB 213 (Mullin) Virginia Freedom of Information Advisory Council; formal advisory opinions; immunity from civil penalty.** Requires that formal advisory opinions issued by the Virginia Freedom of Information Advisory Council (Council) be approved by the Council and, after such approval, be published on the Council's website. The bill also provides that no officer, employee, or member of a public body shall be found to have willfully and knowingly violated certain enumerated provisions of the Freedom of Information Act if the alleged violation resulted from his good faith reliance on a formal advisory opinion of the Council made in response to his written request for such opinion and such opinion was made after a full disclosure of the facts. *As you will recall, at its May 21, 2018 meeting the Subcommittee requested that staff prepare an amended draft with additional options for advisory opinions, and asked for further information regarding how other states handle advisory opinions.*
 - **SB 630 (Surovell) Virginia Freedom of Information Act (FOIA); civil penalty.** Provides that in addition to any penalties imposed under FOIA, (i) if a court finds that any officer, employee, or member of a public body failed to provide public records to a requester in accordance with the provisions of FOIA because such officer, employee, or member of a public body intentionally altered or destroyed the requested public records prior to the expiration of the applicable record retention period set by the retention regulations promulgated pursuant to the Virginia Public Records Act (§ 42.1-76 et seq.) by the State Library Board, the court shall impose upon such officer, employee, or member in his individual capacity,

whether or not a writ of mandamus or injunctive relief is awarded, a civil penalty of up to \$100 per record altered or destroyed, which amount shall be paid into the Literary Fund, and (ii) if a court finds that a member of a public body voted to certify a closed meeting and at the time of such certification such certification was not in accordance with the requirements of FOIA, the court may impose on each such member voting to certify in his individual capacity, whether or not a writ of mandamus or injunctive relief is awarded, a civil penalty of \$500, which amount shall be paid into the Literary Fund. *As you will recall, at its meeting on May 21, 2018, the subcommittee voted to recommend an amended version of SB 630 to be presented to the full FOIA Council at its next meeting on August 22, 2018. The amendments change the amount of the civil penalty for improper certification of a closed meeting from \$500 to a range from \$100 to \$1,000 and add a second enactment clause to make clear that the new penalties would only apply to conduct occurring after the law takes effect on July 1, 2019. The amended draft is available for review (note: no further action by the subcommittee is necessary).*

3. Public Comment.

4. Discussion.

5. Recommendations.

6. Other Business.

7. Adjournment.

Subcommittee Members

Stephanie Hamlett (Chair)
Shawri King-Casey
Mark Vucci

Ed Jones
Sandra Treadway

Staff

Alan Gernhardt, Esq., Executive Director
Chad Ayers, Esq., Attorney