



CITY OF PORTSMOUTH, VIRGINIA

— Established 1752 —

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September 5, 2019

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To: The FOIA Council Subcommittee on Phishing

Re: HJR 628 – Delegate Steve Heretick

Follow-up on concerns raised by The Virginia Coalition for Open Government and the Virginia Press Association

Dear Subcommittee Members:

Thank you again for all the kind considerations given to the issues raised in HJR 628 and the decisions made to do the following:

1. Due to the complexity of this issue, recommending to the full FOIA Committee that this study be continued for another year; and
2. Potential legislative recommendation to the full FOIA Committee addressing the concerns regarding the release of citizen's personal contact information.

It is important to note up front that this is an issue of public safety. We understand the concerns of the Virginia Coalition for Open Government (VCOG) and the Virginia Free Press Association (VPA), but there is an obligation that government has that the media does not which is to protect the safety and privacy rights of the public it serves. The balance between transparency in government and the public's right to have private information protected lies in our hands.

For your records, we would also like to provide the following rebuttals to concerns raised by VCOG and VPA:

1. First and foremost, the concerns brought forth in HJR 628 and the City of Portsmouth are in no way intended to "throttle back on public access to government information" as asserted by VCOG.
2. As stated in the last Subcommittee meeting, the five (5) recommendations provided by the City of Portsmouth to address phishing of public employee's personal

identifiable information (PII) was not submitted as solutions to the issues raised in HJR628, but to provide a starting point for framing the conversations in search for solutions.

3. This matter is not solely an issue for the City of Portsmouth, but all Virginia municipalities and state agencies as well. The City of Portsmouth has been extremely proactive in improving the security of our computer systems, and consistently engages in ongoing employee training. However, phishing incidents and problems still arise.
4. VCOG and VPA assert that *“all contact information has public value...contact information can say something about who is influencing government or asking government to intervene, as well as who is carrying out public business outside official channels of communication.”* We agree to some extent that this is a valid concern, and as citizens as well as government employees, we would in no way wish to circumvent the provision of this transparency.

However, § 2.2-3705.1 subsection 10 already provides an exemption for electronic FOIA requests, if the citizen requests their personal contact information not be disseminated. Furthermore, we contend that the average citizen does not know to ask to have this information not disseminated; therefore, they will not ask, thus making this provision moot. Furthermore, this exemption should be provided to citizens regardless of their method of contacting a municipality for information or assistance. Otherwise, it is an unequal application of the law.

In keeping with the spirit of open government and transparency, this “opt out” provision should be information that is included as part of any and all postings of notice of rights and responsibilities by state and local public bodies as required by Virginia Code §2.2-3704.1. Our suggestion is to further educate the citizens of this provision and provide transparency of the FOIA. Therefore, our suggestion as to including this information on a municipalities’ webpage with an “opt-out” button, is not contradictory to current law.

5. Both the VPA and VCOG contended that data mining can be done using multiple other platforms and programs readily available for anyone at any time and FOIA requests do not contribute to this problem. We hardily disagree with this contention because many FOIA requests are for large data dumps. Therefore, rather than having to go to several different platforms to extract information, many of the points of information can be garnered through a government’s large data dump FOIA request, thereby expediting the ability to steal one’s identity and use the information for nefarious purposes.
6. Requiring Virginia State identification as proof of identity is allowed under Virginia Code §.2-3704 (A). VPA and VCOG do not agree that this should be a requirement when seeking employment data. The city’s suggestion was directed to large data dumps for information of this nature, not for requests for five (5) or less

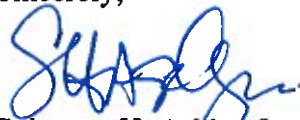
individuals. Due to the advances in technology, and increasing nefarious actors using the internet, providing this type of information in volumes is potentially problematic. Although having this proof may not prevent a phishing scheme, it provides some protection to the municipality should a nefarious action occur from the release of this information.

Please note that we have no ability to control or safeguard the handling of information once it leaves our system, and we frankly have no idea what the media or anyone else might do with large information dumps once they get it. It is well understood that the media is in the business of selling information, and they account to no one when they do. While the media wraps its opposition to this in the cloak of transparency, what they're really arguing about is convenience.

In closing, we are greatly appreciative of the time and considerations this Subcommittee has given and will give to this matter. We are grateful that your committee agreed with the city, VCOG and VPA that further study of this matter is needed, and you are recommending to the full committee that HJR628 be continued for another year. We look forward to your consideration of potential legislation for the 2020 General Assembly Session to address the concern of the collection and dissemination of contact information of citizens that have made general inquires for information or assistance from a municipality.

We stand ready and look forward to working with you and all the stakeholders in identifying means to update the FOIA Code and attempt to keep up with ever increasing technology and nefarious actors.

Sincerely,

A handwritten signature in blue ink, appearing to read "Solomon H. Ashby, Jr.", written over a faint, illegible background.

Solomon H. Ashby, Jr.
City Attorney

c: Portsmouth City Council
Dr. L. Pettis-Patton, City Manager
The Honorable Steve Heretick