



Virginia Freedom of Information Advisory Council

Records Issues Subcommittee

June 14, 2021, at 1:00 p.m.

Electronic Meeting

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The Records Issues Subcommittee (the Subcommittee) of the Virginia Freedom of Information Advisory Council (the Council) met electronically with Matthew Conrad, chair, presiding.¹ The meeting began with introductions and opening remarks followed by presentations and discussion. Materials presented at the meeting, as well as all written public comments, are accessible through the [Council's 2021 Subcommittees webpage](#).

Presentation and Public Comment: HB 2000 (Roem, 2021)

Delegate Danica A. Roem

Council Staff

The Subcommittee heard a brief overview of HB 2000 from Delegate Roem followed by a presentation by Council staff on the topic of fee provisions in open records laws across the United States.

The Subcommittee then heard comments from members of the public who are in favor of the legislation. Delegate Roem's constituent, Stephanie Minor, gave an overview of the situation in which she was quoted a price of \$8,000 for email and video records from an incident on a school bus involving her autistic daughter. This incident is what led Delegate Roem to introduce HB 2000. Other members of the public noted generally that public records should be public and that they believe HB 2000 will make it easier for members of the public and the media to have access to those records. Megan Rhyne, on behalf of the Virginia Coalition for Open Government (VCOG), noted that VCOG generally supports the legislation but wants to make sure that any new fee provisions in FOIA lead to lower costs for requesters, consistency across different requests, and overall transparency. To reach those goals, Ms. Rhyne noted that the priority and focus should be on provisions that require public bodies to provide a breakdown of costs, a cap on hourly rates, and a limit on fees charged for exclusion review, all while ensuring that public bodies retain the ability and authority to waive fees for smaller and more routine requests.

Next, the Subcommittee heard from members of the public who are more neutral on the ideas presented in HB 2000. There was a general consensus that high fees for FOIA requests create barriers for members of the public to access public records. Phyllis Errico, on behalf of the Virginia Association of Counties (VACo), noted that VACo does not specifically endorse the language presented in HB 2000 and expressed her opinion that public bodies have to be careful when releasing public records because there are other state and federal laws that require withholding or redacting certain information for privacy reasons. Ms. Errico noted that exclusion review by a lawyer is extremely important in those instances and said that perhaps the solution to

¹ **Members Present:** Matthew Conrad (chair), Pamela O'Berry, Bruce Potter, Cullen Seltzer, Dr. Sandra Treadway, and Amigo Wade

Members Absent: None

the issue of high FOIA fees is to further define "actual costs" or to train employees better on what actual costs entail. James Hingeley, Albemarle County attorney for the Commonwealth, expressed his opinion that capping costs for exclusion review would handicap operations for attorneys for the Commonwealth who are responsible for reviewing and releasing criminal investigative files because the actual hourly rate of those capable of that level of exclusion review exceeds the \$33 per hour proposed in HB 2000. Mr. Hingeley noted that any limitation on fees under FOIA needs to work alongside the system that now requires the disclosure of criminal investigative files since the passage of HB 2004 (Hurst) during the 2021 Special Session I.

The Subcommittee finished the period for public comment with comments from members of the public who are against HB 2000. Those who spoke against the language in HB 2000 were members of law-enforcement and related associations who expressed an opinion that a cap on FOIA fees would encourage numerous frivolous requests for records and would cause a budget deficit for law-enforcement agencies, especially smaller agencies, and create a burden on taxpayers. Chief Maggie DeBoard with the Herndon Police Department detailed the process for redacting body-worn and dashboard camera video footage and explained why that sort of exclusion review is so costly. There was also a general consensus that some sort of FOIA appeals process would be better than a cap on fees.

Discussion: HB 2000

After receiving comments from members of the public, the Subcommittee discussed how best to approach the topic presented in HB 2000 and FOIA fee reform in general and decided to forego any official action until the next Subcommittee meeting. The Subcommittee agreed to utilize the next meeting as a work group session to nail down any details.

Presentation and Public Comment: HB 2196 (Mullin, 2021)

Delegate Michael P. Mullin

Delegate Mullin gave a detailed overview of HB 2196 and noted that there is still work to be done to improve the language in the bill. He noted that law-enforcement disciplinary records are FOIA-able records but are never released because of the current discretionary exemption. He believes that the public has the right to know if a law-enforcement officer has founded complaints against him for matters such as excessive use of force and racial profiling behavior and that the public is better served when it has access to information about law enforcement. Delegate Mullin expressed his opinion that when there are founded complaints of significant misconduct, those records should be open to the public.

The Subcommittee then heard from members of the public who are in favor of the bill. There was a general consensus that a lack of transparency currently exists between law enforcement and the public and that HB 2196 will help hold law-enforcement officers accountable and will increase transparency between law-enforcement agencies and the communities they serve. In response to a question from Bruce Potter, Rebecca Brown with the Innocence Project, and speaking on behalf of the Virginia Innocence Coalition, noted surveys show that legislation in other states similar to HB 2196 has actually helped law-enforcement agencies and has been beneficial to policing efforts.

Next, the Subcommittee heard from those who are opposed to HB 2196. Those opposed to the bill were members of law-enforcement and related organizations who largely believe and expressed an opinion that the release of law-enforcement disciplinary records would negatively



impact the ability of law-enforcement agencies to recruit and retain qualified officers. Virginia Tech Chief of Police Mac Babb expressed his concerns about harassment and doxing of police officers if disciplinary records are allowed to be released for any reason. John Jones, on behalf of the Virginia Sheriffs' Association, and Chief DeBoard both noted that there has been significant police reform legislation enacted over the past couple of General Assembly sessions and that it is best to give those measures a chance to work before changing the law further.

Mr. Potter asked Council staff if they could conduct research on similar provisions in other states and prepare a presentation for the next meeting of the Subcommittee. Delegate Mullin wrapped up the conversation by noting that HB 2196 is still a work in progress, and he pledged to work on changes to the language in the bill before the next Subcommittee meeting.

Next Meeting

Council staff will poll members of the Subcommittee for their availability for the next meeting.

For more information, see the [Council's website](#) or contact the Division of Legislative Services staff:

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