



Virginia Freedom of Information Advisory Council

Meetings Issues Subcommittee

October 5, 2021, at 11:00 a.m.

Senate Subcommittee Room 2, Pocahontas Building

foiacouncil.dls.virginia.gov

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

Discussion: Concept Draft on Electronic Meeting Provisions

On July 19, 2021, the Council voted 10-2 to have the Subcommittee continue studying electronic meetings options for public bodies with appointed members. Mr. Seltzer stated that because a quorum of the Subcommittee was not present, the Subcommittee could not vote or take any action on the presented options but would hear public comment on and discuss the options. After a brief overview, Mr. Seltzer opened the floor for public comment, beginning with a concept draft presented on behalf of Virginia Coalition for Open Government (VCOG), Virginia Press Association (VPA), Virginia Municipal League (VML), Virginia Association of Counties (VACo), and Elizabeth Bennett-Parker, Vice Mayor of the City of Alexandria that includes amendments to §§ 2.2-3701 and 2.2-3708.2 of the Code of Virginia and the addition to the Code of Virginia of a section numbered 2.2-3708.3.

- Megan Rhyne, on behalf of VCOG, said that many people from state agencies brought to her attention issues about electronic meetings. She stated that state agencies were being told that they were not allowed to stream meetings and that a provision allowing participants to call in to meetings was not supported by current law. Ms. Rhyne agreed with Mr. Seltzer's previously stated sentiments about this issue being a difficult one to tackle and detailed some ways it was addressed in the concept draft, such as breaking down the rules by type of meeting instead of by type of public body.
- In response to a remark by Ms. Rhyne regarding some agencies' preference for in-person meetings, Chidi James made the comment that some members of the public do not have adequate resources that allow them to access the meetings electronically.
- Aimee Perron Seibert, on behalf of VPA, clarified that the meetings they were referring to are those that will be held after COVID-19 restrictions have ended. She then noted that meetings should be formatted so that the public can be more involved, including allowing virtual or electronic public comments and providing options to livestream meetings whenever possible. Ms. Seibert said that simplicity is important when drafting this legislation.

¹ **Members Present:** Cullen Seltzer (chair), Lee Bujakowski, Chidi James

Members Absent: Delegate William C. Wampler III, Billy Coleburn, Matthew Conrad

- Phyllis Errico, on behalf of VACo and VML, stated that she did not want to create more complications because people are now inadvertently violating Virginia Freedom of Information Act (FOIA) regulations. She did agree that there is a digital divide even though during the pandemic more resources were allotted to rural broadband access. Ms. Errico said that some committee members in these rural areas have to participate by telephone because their Internet access is not always guaranteed to work.
- Vice Mayor Bennett-Parker briefly discussed why she strongly favors electronic meeting provisions and allowing both virtual and in-person meetings. She then discussed the issues of financial and logistical constraints on electronic meetings.

Discussion: Electronic Meeting Provisions

The Subcommittee discussed whether it would be feasible to schedule another meeting so that staff can draft legislation based on the presented concept draft. Mr. Seltzer directed staff to prepare legislation based on the concept draft for further consideration and to poll the Subcommittee members for a suitable meeting date before the next meeting of the Council.

Other Business: Public Comment

The Subcommittee heard from Phil Abraham, on behalf of the Vectre Corporation, who said that there is confusion about what constitutes a public body that is subject to FOIA, particularly when a public official or agency is directed to gather a group of stakeholders and interested parties to study and advise on particular issues because these groups take many different forms, are usually composed of volunteers, do not receive public funding, and do not necessarily have a set membership. He also noted that he consulted the Office of the Attorney General (OAG) because he heard that different stakeholder groups had received conflicting advice regarding whether they were subject to FOIA and that he expects there will be some further response and clarification from OAG on the matter.

Mr. Seltzer agreed that the statutory definition of "public body" is very broad, and there was a discussion about whether the language "supported by public funds" could be used in the definition as a qualifier. Mr. Seltzer asked staff to explain the definitions of "public body." Mr. Abraham said that he will continue to work with OAG.

Next Meeting

Staff will poll members of the Subcommittee regarding a future meeting date. Once a date is set, it will be posted on the [*Council's 2021 Subcommittees webpage*](#).



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

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