



Date: December 2, 2020

To: Virginia Freedom of Information Act (FOIA) Advisory Council

From: Virginia Press Association (VPA)

Re: VPA positions and recommendations on FOIA Advisory Council matters

The VPA appreciates the opportunity to comment on the matters before the FOIA Advisory Council at its December 2, 2020 meeting. Below are our positions and recommendations organized by subcommittee topic.

Phishing Study Subcommittee

VPA opposes [Draft 21100969D](#) that will further expand the mandatory FOIA exclusions in subdivision 10 of § 2.2-3705.1 to include personal contact information provided to a public body or any of its members or employees during general correspondence. This would be a stark and broad departure from current practice and allow for anyone – including lobbyists and donors, for example – to remain anonymous when corresponding with a public body or its members for any reason. Such a general exemption is far different from the current one that applies only to simple one-way communication from the public body to an individual person, such as for informational newsletters. Two-way communication, especially when someone is requesting action or seeking specific information of public concern from a member of a public body, is at the heart of FOIA, open government, and the public’s right to know, including access for the press.

VPA prefers [Draft 21100968D](#), but opposes changing the current “opt out” structure to an “opt in” structure, whereby someone would have to indicate approval for the public body to disclose such information. The current “opt out” system should be kept.

Electronic Meeting Subcommittee

Overall, VPA strongly supports a comprehensive study of electronic participation by members and the holding of electronic meetings during the interim of 2021, after the conclusion of the legislature’s regular session, rather than a piecemeal approach. This applies to [Draft 21100964D](#) (HB 321-Levine) that is currently in front of the Council. We have no objection to adding language to allow electronic participation when taking care of a sick family member, but we do not believe the two-meeting limit should be changed or eliminated fully in the personal matters section. We recommend looking at those changes as part of a more focused study.

However, we do support taking action in 2021 to amend the statute to clarify how and when electronic meetings should be held during an emergency that extends past 30 days because the current language in the budget expires in June 2021. We also worked extensively with fellow stakeholders since March 2020 to arrive at the [consensus draft](#) that was submitted to the Electronic Meetings Subcommittee on November 18. After the subcommittee made amendments to that draft, we continued to work with the interested stakeholders, Delegate Levine and the bill’s patron, Delegate Sullivan, and ask that the full

FOIA Council support and accept the line amendments that will be offered in the meeting to the new bill Draft [LD2110997D](#), reflecting the new compromise supported by the stakeholders.

Criminal Incident Information Subcommittee

VPA supports the current proposed draft of Delegate Hurst's bill and thanks the patron, stakeholders, and the subcommittee for their work on this important legislation.

Please contact VPA lobbyist Mark Hickman (mark@commonwealthstrategy.net) with any questions.

Thank you for your consideration and service.

/VPA