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Subject: comments on proposed changes to contact information exemption
To: FOIA Council <foiacouncil@dls.virginia.gov>

Among other job responsibilities, I am the FOIA Officer at the Virginia IT Agency (VITA), a role that includes making decisions about what information to disclose and redacting information as needed.

I write with comments concerning the proposed changes to subdivision 10 of [Virginia Code § 2.2-3705.1](#), concerning "personal contact information."

Redacting information takes substantially more time, and may require additional software tools and/or manual effort, than producing unredacted records. VITA provides its customer agencies with a way to archive email centrally and search and export centrally from that archive, but ediscovery tools to ease tasks such as redaction are not yet generally available.

In considering revisions to the contact information exemption, I urge the Council to consider the increased costs to agencies of increased redaction (possibly passed along to requesters under existing case law), the increased burden on agencies' FOIA personnel, and the importance of clarity about what should be redacted or disclosed. The following specific comments relate to this general concern.

In [21100968D.PDF](#), the revision seems confusing and may require interpretive clarification and/or put FOIA officers in a difficult position by creating a disconnect between expectations and the letter of the law. Unlike the current wording, which makes the contact information exempt if the recipient has requested that it not be disclosed (but ultimately leaves disclosure in the discretion of the public body), the revision refers to the recipient providing "approval for the public body to disclose such information." It does not seem intended to make the information exempt if approval is given to disclose. And there seems increased risk that the revised exemption would create an expectation that approval is required to disclose, but the law would actually still leave the decision whether to disclose as an unguided discretionary decision of the public body.

In [21100969D.pdf](#), the revision substantially expands the exemption to "general correspondence" but leaves business contact information in that subdivision's definition of "personal contact information." Continuing to include business contact information seems likely to increase redaction of information that is not particularly confidential. Moreover, "general correspondence" is not defined, so it also is not clear how the expanded exemption would apply in particular administrative contexts, such as state procurement and contracting. As a central procurement agency with multiple ongoing supplier relationships, VITA regularly receives and creates records with contact information for businesses. If any business could demand or request that any email or

letter containing business contact information -- which is routine in signature blocks and letterhead -- be redacted before subsequent disclosure, without regard for the actual confidentiality of such business contact information, that would be a significant increased burden on FOIA officers.

Assuming the Council does not delete "or business" from line 72 of 21100969D, one way to address the issue of business contact information might be to treat such information like other types of business information. Other exemptions for proprietary or confidential information or trade secrets often require a person claiming such confidentiality to invoke an exemption upon submission of the information; identify with specificity the information for which protection is sought; and state the reasons why protection is necessary. While not perfect, that type of arrangement increases notice, understanding, and clarity for all involved, and it may provide a familiar way to distinguish between confidential and non-confidential business contact information.

Thank you for your time and consideration.

Sincerely,

Joshua Heslinga

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