



VIRGINIA FREEDOM OF INFORMATION ADVISORY COUNCIL

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Policy on Public Comment at Public Meetings

Policy Statement: As a matter of best practices, the FOIA Council encourages all public bodies to include public comment periods during public meetings. Additionally, the FOIA Council specifically recommends that all public institutions of higher education should afford an opportunity for public comment during any open meeting where a vote to recommend or change any fee or tuition amount occurs.

Background

The statutory policy of the Virginia Freedom of Information Act (FOIA) expressed in subsection B of § 2.2-3700 states that "[FOIA] shall not be construed to discourage the free discussion by government officials or employees of public matters with the citizens of the Commonwealth." Public comment periods help to facilitate input from and communication with citizens and other interested parties on matters of public concern, thus furthering this policy of FOIA regarding free discussion of public matters. However, only one provision of FOIA currently mentions public comment periods at public meetings: Subsection F of § 2.2-3707 provides that "[t]he proposed agendas for meetings of state public bodies where at least one member has been appointed by the Governor shall state whether or not public comment will be received at the meeting and, if so, the approximate point during the meeting when public comment will be received." Otherwise, FOIA is silent regarding whether a public body must include public comment periods during its meetings. Generally, it is up to each public body to decide whether it will allow public comment at its meetings, unless some other law requires it (for example, laws in Title 15.2 and elsewhere may require public hearings on certain matters)

Legislation that would have amended FOIA to require public comment periods at public meetings was introduced to the General Assembly in 2016, 2017, and 2018.¹ Each year the General Assembly referred the legislation to the FOIA Council for study. After hearing testimony both for and against these legislative proposals, the FOIA Council did not recommend any legislative change, but instead voted unanimously on October 17, 2018, to recommend that all public bodies adopt best practices to include providing public comment periods at public meetings. Additionally, because of specific concerns that were brought to the FOIA Council's attention regarding public institutions of higher education, the FOIA Council also voted unanimously to recommend the following policy statement: "All public institutions of higher education should afford an opportunity for public comment during any open meeting where a vote to recommend or change any fee or tuition amount occurs."

¹ Senate Bill 336 (Peake, 2018), House Bills 1101 (Robinson, 2018), 2223 (Kory, 2017), 698 (Kory, 2016), and 757 (Bell, R.B., 2016).