



***VIRGINIA FREEDOM OF INFORMATION
ADVISORY COUNCIL***

**Monday, March 31, 2008
1:00 p.m. House Room D
General Assembly Building**

**SUGGESTED AGENDA
*ANNOTATED***

- 1. Call to Order; introduction of members.**
- 2. Recap of FOIA and Related Access Bills from 2008 Session of General Assembly.**
- 3. Bills referred to Council for study by 2008 Session of General Assembly:¹**
 - Protection of Personal Identifying Information:**
 1. SB 529 (Houck)
 2. HB 858 (Ebbin)/SB 647 (Ticer)
 3. HB 1087 (Sickles)
 4. HB 1088 (Sickles)
 5. HB 1096 (Sickles)
 6. HB 1102 (Sickles)
- 4. Appointment of Subcommittees/Study Plan:**
 - I. Appointment of Subcommittees.**
 - Protection of Personal Identifying Information**

You will recall that last year the Council indicated it would continue the work of this subcommittee in studying social security numbers

¹ Summaries of each of the bills referenced below appear as Appendix A to this agenda.

(SSNs) and other personal identifying information in conjunction with the Joint Commission on Technology and Science (JCOTS). The current Subcommittee consists of Council members Senator Houck (Chair), Delegate Griffith, Malveaux, Edwards, Spencer, and Treadway. Subcommittee membership will be open to those who were members last year and other Council members who wish to participate.

II. Study Plan for protection of SSNs.

The Council has already indicated its intent to continue studying this area, which will coincide with the study to be conducted regarding collection and use of SSNs (see "Other Business," below). The following is reproduced to help focus that study based on work completed last year:

- A. Why is protection needed?
 - Fraud--real or perceived?
 - To what extent are government records implicated?
 - Online access vs. practical obscurity; is one more dangerous than the other?
- B. Other alternatives:
 - Protection of victims of abuse and other vulnerable persons;
 - Others attempting to protect their privacy (i.e. unpublished numbers)
 - Heightening penalties for existing crimes (SB 1282, 2007)
- C. If protection of SSN deemed necessary/advisable--
 - Protect in whole or in part;
 - General exemption or context specific (i.e. FOIA model);
 - Advisability of "opt out" provisions;
 - Advisability of prohibiting access if request made for a commercial purpose;
 - Appropriateness of a separate law from FOIA dealing with collection and access to SSN:
 - Establish general rule about access to SSNs/unique identifiers--(include collection limitations on government?)
 - Exceptions to general rule--access rights to persons with "legitimate interests" (i.e. private investigators, media representatives, mortgage brokers, and real estate title companies, etc).

5. Other Business.

- **SB 132 (Houck)/HB 634 (May)²**

You will recall that these bills were recommendations of the FOIA Council last year. The bills passed with provisions requiring that certain state agencies, cities, counties, and towns with a population in excess of 15,000 shall provide information regarding their collection and use of SSNs. Staff is to develop forms for this purpose in conjunction with the Joint Commission on Technology and Science, the Virginia Association of Counties, and the Virginia Municipal League. The completed forms are to be submitted to the chairs of the FOIA Council and JCOTS by October 1, 2008.

6. Of Note:

- Expiration of Council terms.
The membership terms of John Edwards, W. Wat Hopkins, and Craig Fifer expire as of July 1, 2008. Mr. Edwards and Mr. Hopkins are not eligible for reappointment, as they each have already served two four-year terms. Having served a single four-year term, Mr. Fifer is eligible for reappointment.
- Latest stats on services rendered by FOIA Council.
- Personal Information Privacy Act.
The Personal Information Privacy Act was amended by SB 133 (Houck)/HB 633 (May), bills recommended by the FOIA Council. News reports indicate this law may be the subject of a lawsuit on constitutional grounds. Staff will keep the Council updated on this matter as news develops.

7. Public Comment.

8. Set future meetings.

9. Adjournment.

Council Members

Senator R. Edward Houck, Chair
Roger C. Wiley
John B. Edwards
Ralph L. "Bill" Axselle
Mary Yancey Spencer
Sandra G. Treadway

Delegate H. Morgan Griffith
W. Wat Hopkins
E.M. Miller, Jr.
Craig T. Fifer
Courtney M. Malveaux
George T. Whitehurst

² The summary and enactment clauses of SB 132 referenced below appear as Appendix B to this agenda (the provisions of HB 634 are identical).

Staff

Maria J.K. Everett, Executive Director
Alan Gernhardt, Staff Attorney

The FOIA Council's web site is: <http://dls.state.va.us/foiacouncil.htm>. To assist us in providing Internet dissemination of materials, presenters are requested to submit written comments and handouts in electronic format by (i) e-mail to staff prior to meetings or (ii) diskette furnished to staff at meetings. Presenters are also requested to bring 20 copies of their remarks or handouts to meetings. These copies will be provided to FOIA Council members and the public.
E-mail: foiacouncil@leg.state.va.us.

***BILLS REFERRED TO COUNCIL FOR STUDY
BY 2008 SESSION OF GENERAL ASSEMBLY***

SB 529 (Houck)

Concealed handgun permits; access to permittee information. Protects from public disclosure permittee names and descriptive information held by the Department of State Police for purposes of entry into the Virginia Criminal Information Network. However, the information would still be available to law-enforcement agencies, officers, and agents in the course of law-enforcement duties, and non-identifying statistical information would be available to the general public. This bill is a recommendation of the Freedom of Information Advisory Council. This bill incorporates SB 730 and SB 759.

SB 647 (Ticer)

Freedom of Information Act (FOIA); exemption for certain publicly owned museum records. Exempts from FOIA records of a publicly owned museum that can be used to identify an individual who donates or loans one or more items of personal property to the museum.

HB 858 (Ebbin)

Freedom of Information Act (FOIA); exemption for certain publicly owned museum records. Exempts from FOIA records of a publicly owned museum that can be used to identify an individual who donates or loans one or more items of personal property to the museum.

HB 1087 (Sickles)

Public access to social security numbers; exceptions. Provides that the social security number of any individual contained in the public records of a local government shall be confidential and exempt from disclosure under the Freedom of Information Act. The bill provides, however, that a social security number may be released (i) in accordance with a proper judicial order; (ii) to any law-enforcement agency, officer, or authorized agent thereof acting in the performance of official law-enforcement duties; or (iii) to any data subject exercising his rights under the Government Data Collection and Dissemination Practices Act.

HB 1088 (Sickles)

Department of Game and Inland Fisheries; disclosure of official records; exceptions. Provides that records of the Department shall be subject to the disclosure provisions of the Freedom of Information Act, except that the social security number of individual applicants for or holders of any hunting, fishing, boating, or trapping license issued by an agent of the Department shall be withheld from public disclosure. The bill provides, however, that such information may be released (i) in accordance with a proper judicial order or (ii) to any law-enforcement

agency, officer, or authorized agent thereof acting in the performance of official law-enforcement duties.

HB 1096 (Sickles)

Protection of Social Security Numbers Act; penalties. Creates the Protection of Social Security Numbers Act, which prohibits every agency from releasing those portions of a public record that contain the social security number of any individual. The bill contains several exemptions from this general rule and also allows disclosure of the last four digits of a social security number to certain entities for the purpose of verifying identity. The bill provides for penalties for violation and contains technical amendments.

HB 1102 (Sickles)

Freedom of Information Act; records containing social security numbers. Exempts from the mandatory disclosure requirements of the Freedom of Information Act those portions of records containing an individual's social security number; except that access shall not be denied to the person who is the subject thereof. Any person who is the subject of any such record and who is 18 years of age or older may waive, in writing, these protections. If the protections are so waived, the public body shall open such records for inspection and copying.

APPENDIX B

SB 132 (Houck)

Government Data Collection and Dissemination Practices Act (GDCDPA); personal information; definition; collection of same; penalty for violation; jurisdiction of district courts. Provides that no agency shall require an individual to furnish or disclose his social security number (SSN) or driver's license number unless the furnishing or disclosure of such number is (i) authorized or required by state or federal law and (ii) essential for the performance of that agency's duties. The bill also strengthens the remedies provisions of the GDCDPA by adding civil penalties matching those in FOIA, and grants general district courts the authority to hear GDCDPA cases. Additionally, the bill has enactment clauses giving it a delayed effective date of July 1, 2009, and requires state agencies to study their own collection and use of SSNs and report to the FOIA Council and JCOTS on such collection and use by October 1, 2008. The bill also contains a fourth enactment clause providing for the gathering of similar information about the use and collection of SSNs by cities, counties and towns with a population greater than 15,000. The bill is a recommendation of the Freedom of Information Advisory Council and JCOTS. This bill is identical to HB 634.

Enactment clauses requiring the study of the collection and use of SSN's:

"2. That the provisions of this act shall become effective on July 1, 2009, except that the third and fourth enactments of this act shall become effective on July 1, 2008.

3. That every state agency subject to the provisions of the Government Data Collection and Dissemination Practices Act (§ 2.2-3800 et seq.) shall conduct an analysis and review of its collection and use of social security numbers, to be completed by October 1, 2008. Each such agency shall submit, no later than October 1, 2008, to the chairmen of the Freedom of Information Advisory Council and the Joint Commission on Technology and Science, on forms developed by the Council and the Commission, (i) a list of (a) all state or federal statutes authorizing or requiring the collection of social security numbers by such agency and (b) instances where social security numbers are voluntarily collected or (ii) in the absence of statutory authority to collect social security numbers, written justification explaining why continued collection is essential to its transaction of public business. In conducting such a review, each agency shall be encouraged to consider whether such collection and use is essential for its transaction of public business and to find alternative means of identifying individuals. The chairmen of the Council and the Commission may withhold from public disclosure any such lists or portions of lists as legislative working papers, if it deems that the public dissemination of such lists or portions of lists would cause a potential invasion of privacy.

4. That every county and city, and any town with a population in excess of 15,000 shall, no later than September 10, 2008, provide the Virginia Municipal League or the Virginia Association of Counties, as appropriate, information on a form agreed upon by the Virginia Municipal League, the Virginia Association of Counties and staff of the Freedom of Information Advisory Council and the Joint Commission on Technology and Science identifying (i) all state or federal statutes authorizing or requiring the collection of social security numbers by such county, city or town and (ii) instances where social security numbers are voluntarily collected or (iii) in the absence

of statutory authority to collect social security numbers, written justification explaining why continued collection is essential to its transaction of public business. In conducting such a review, each such county, city or town shall be encouraged to consider whether such collection and use is essential for its transaction of public business and to find alternative means of identifying individuals. The information required by this enactment shall be submitted no later than October 1, 2008 to the chairmen of the Freedom of Information Advisory Council and the Joint Commission on Technology and Science, on forms developed by the Council and the Commission."

#