



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

**Monday, April 27, 2009
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 2009 Session of General Assembly.**
- 3. Bills referred to Council for study by 2009 Session of General Assembly:¹**
 - **Protection of Personal Identifying Information:**
 1. SB 880 (Stuart)
 2. HB 2471 (Hugo)
 3. HB 2630 (Crockett-Stark)
 - **Other bills:**
 4. SB 1332 (Cuccinelli)
 5. HB 2421 (May)
- 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 (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, Spencer, Treadway, Whitehurst, and Wiley. Subcommittee membership will be open to those who were members last year and other Council members who wish to participate.

- *Subcommittees to study SB 1332 (Cuccinelli) and HB 2421 (May) to be established.*

II. Study Plan for protection of SSNs.

- *Collection of SSNs: The Council has already indicated its intent to continue studying this area, which will coincide with the analysis of the results of last year's survey regarding collection and use of SSNs (see "Other Business," below). This aspect of the study will focus on identifying and eliminating the unnecessary collection of SSNs by government. It is hoped that by limiting collection in the first instance, the need for additional protections to be added later will be reduced or eliminated.*
- *Disclosure of SSNs: HB 2427 (May) establishes the Protection of Social Security Numbers Act (the Act), which will become effective July 1, 2009. In brief, the Act exempts from FOIA the first five digits of SSNs except under certain limited circumstances, and provides penalties for improper disclosure. The final four digits of SSNs found in public records will remain open to public disclosure under FOIA. In past meetings the Council has debated the merits of this and other protective schemes that would limit the disclosure of SSNs. The Act's passage this year raises the question of whether any further action regarding disclosure is necessary at this time, and if so, what form should that action take.*

5. Other Business.

- **SB 1318 (Houck)/HB 2426 (May)²**

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

² The summary and enactment clauses of SB 1318 referenced below appear as Appendix B to this agenda (the provisions of HB 2426 are identical).

Last year the General Assembly passed SB 132/HB 634 (May). These 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. The survey was conducted successfully with an unexpectedly large volume of responses that necessitate additional time for analysis. SB 1318/HB 2426 were passed this year as recommendations of the FOIA Council to extend the implementation date of the provisions of SB 132/HB 634 that would prohibit the collection of an individual's social security number unless collection of such number is (i) authorized or required by state or federal law and (ii) essential for the performance of that agency's duties. Note that in light of HB 2427 (May), establishing the Protection of Social Security Numbers Act, as discussed above, the Council needs to decide what further action, if any, needs to be taken.

6. Of Note:

- Latest stats on services rendered by FOIA Council.
- Report on Sunshine Week - Ginger Stanley, Virginia Press Association.
- Concealed Carry Handgun Permits. *You will recall that after studying issues concerning public access to concealed carry handgun permits, the Council recommended SB 529 (Houck) to the 2008 Session of the General Assembly. That bill was referred back to the Council for additional study, and the Council again recommended it to the General Assembly for the 2009 Session. This year the General Assembly passed HB 2144 (Nutter), which uses language identical to that found in SB 529. In summary, the bill 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 nonidentifying statistical information would be available to the general public.*

- *McBurney v. McDonnell* (Case No. 3:2009cv44, United States District Court for the Eastern District of Virginia). In this consolidated case, three out-of-state plaintiffs challenge on federal constitutional grounds (privileges and immunities) the provisions of FOIA granting access rights to Virginia citizens. The Court heard oral arguments on April 14, 2009, on the plaintiffs' motions for preliminary injunction. Staff will keep the Council apprised as the case develops.

7. Public Comment.

8. Set future meetings.

9. Adjournment.

Council Members

Delegate H. Morgan Griffith, Chair
 Roger C. Wiley
 E.M. Miller, Jr.
 Mary Yancey Spencer
 Sandra G. Treadway
 Forrest M. "Frosty" Landon

Senator R. Edward Houck, Vice-Chair
 Ralph L. "Bill" Axselle
 Courtney M. Malveaux
 Craig T. Fifer
 George T. Whitehurst
 John G. Selph

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 2009 SESSION OF GENERAL ASSEMBLY***

SB 880 (Stuart)

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 personal information, as defined in § 2.2-3801, 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, provided that such individuals have requested that the Department not disclose such information. However, statistical summaries, abstracts, or other records containing information in an aggregate form that does not identify individual applicants or licensees shall be disclosed. The bill provides, however, that such information 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 person who is the subject of the record.

SB 1332 (Cuccinelli)

Private entities operating, managing, or supervising any portion of the state highway system. Provides that a private entity that operates, manages, or supervises any portion of the state highway system and receives funding from the Commonwealth or any of its political subdivisions shall be considered a public body for purposes of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) of the Code of Virginia as it relates to that portion of the private entity's business operations responsible for operating, managing, or supervising the portion of the state highway system.

HB 2421 (May)

Freedom of Information Act; definition of public record. Clarifies that the definition of public record does not include correspondence, messages or other records or portions thereof created or received by a public employee, appointee or officer that relate to personal matters and do not address public business; however such records may be disclosed in the discretion of the custodian.

HB 2471 (Hugo)

Freedom of Information Act; salary records of teachers. Provides that the disclosure of the names of individual teachers is not required under FOIA in response to a request for the official salary or rate of pay of employees of a local school board.

HB 2630 (Crockett-Stark)

Law-Enforcement Officers' Privacy Protection Act. Allows a law-enforcement officer to request that personal information about the officer be withheld from

disclosure on public records. For purposes of the Act, "personal information" includes the officer's name, social security number, address, phone number, and any other information that could be used to physically locate the officer.

APPENDIX B

SB 1318 (Houck)

Government Data Collection and Dissemination Practices Act; collection of social security numbers. Extends from July 1, 2009, to July 1, 2010, the implementation of the prohibition against collecting an individual's social security number unless collection of such number is (i) authorized or required by state or federal law and (ii) essential for the performance of that agency's duties. This bill is a recommendation of the Freedom of Information Advisory Council.

Enactment clauses:

"2. That the second and fourth enactments of Chapter 840 of the Acts of Assembly of 2008 are amended and reenacted as follows:

2. That the provisions of this act shall become effective on ~~July 1, 2009~~ July 1, 2010, except that the third and fourth enactments of this act shall become effective on July 1, 2008.

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. *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 is deemed that the public dissemination of such lists or portions of lists would cause a potential invasion of privacy.*

3. That the second and fourth enactments of Chapter 843 of the Acts of Assembly of 2008 are amended and reenacted as follows:

2. That the provisions of this act shall become effective on ~~July 1, 2009~~ July 1, 2010, except that the third and fourth enactments of this act shall become effective on July 1, 2008.

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. *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 is deemed that the public dissemination of such lists or portions of lists would cause a potential invasion of privacy.*

4. That the provisions of the first enactment of this act shall become effective on July 1, 2010.
5. That an emergency exists and the second and third enactments of this act are in force from their passage."

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