



VIRGINIA FREEDOM OF INFORMATION ADVISORY COUNCIL

COMMONWEALTH OF VIRGINIA

Senator Mamie E. Locke, Chair
Delegate Marcus B. Simon, Vice-Chair

Alan Gernhardt, Esq., Executive Director
Ashley Binns, Esq., Attorney
foiacouncil@dls.virginia.gov

Pocahontas Building ~ 900 East Main Street, Pocahontas Building, 8th Floor ~ Richmond, Virginia 23219
804-698-1810 ~ (Toll Free) 1-866-448-4100 ~ (Fax) 804-698-1899 ~ <http://foiacouncil.dls.virginia.gov>



VIRGINIA FREEDOM OF INFORMATION ADVISORY COUNCIL

April 28, 2021 - 3:00 pm

Virtual Meeting

[Click HERE to Register to give Live Public Comment.](#)

[Click HERE for the Live Stream of the Meeting.](#)

SUGGESTED AGENDA

****ANNOTATED****

- 1. Call to Order, introduction of members.**
- 2. Introduction of new member.** *Pamela O'Berry replaced Shawri King-Casey as the FOIA representative for the Office of the Attorney General.*
- 3. Recap of FOIA and Related Access Bills from 2021 Session of General Assembly.**
- 4. Bills Referred to the FOIA Council:**
 - **[HB 1997](#)** (Murphy) **Virginia Freedom of Information Act; definition of "meeting."** Increases from three to four the number of members of a public body meeting as an informal assemblage that constitutes a meeting under the Virginia Freedom of Information Act.
 - **[HB 2000](#)** (Roem) **Virginia Freedom of Information Act; charges for production of public records.** Prohibits a public body from charging a requester for any costs incurred during the first two hours spent accessing or searching for requested records when such requester has made four or fewer individual records requests to such public body within 31 consecutive days. The bill provides that for

any additional time spent accessing or searching for such records, or when such requester makes five or more individual records requests to such public body within any 31-consecutive-day period, the public body shall not charge an hourly rate for accessing or searching for the records exceeding the lesser of the hourly rate of pay of the lowest-paid individual capable of fulfilling the request or \$33 per hour. The bill also requires public bodies to post on their website or otherwise publish a written policy (a) explaining how the public body assesses charges for accessing or searching for requested records and (b) noting the current fee charged, if any, by the public body for accessing and searching for the requested records.

- **[HB 2196](#) (Mullin) Virginia Freedom of Information Act; required release of law-enforcement disciplinary records; exceptions.** Requires the release of law-enforcement disciplinary records related to completed disciplinary investigations. The bill defines "law-enforcement disciplinary records" as any record created in furtherance of a law-enforcement disciplinary proceeding or any other administrative or judicial proceeding, whether such proceeding takes place in the Commonwealth or in another jurisdiction. The bill allows for the redaction of certain personal contact information of the law-enforcement officer, complainant, and witness or their families; social security numbers; and certain medical information of the law-enforcement officer and complainant.

5. Assignment of Subcommittees.

- **Meetings Issues Subcommittee.** *The Electronic Meetings Subcommittee was established last year to study HB 321 (Levine, 2020) and other issues regarding the conduct of electronic meetings. The Council indicated last year that because there were additional issues to address, the subcommittee would continue its work this year. The Council last year also indicated it would study the phrase "official public government website" as used in FOIA's meeting notice requirements, as a general district court last year held that only ".gov" websites would be considered "official public government websites." It is suggested that the Council continue the Electronic Meetings Subcommittee as the Meetings Issues Subcommittee this year to consider these issues as well as HB 1997.*
- **Records Issues Subcommittee.** *It is suggested that the Council establish an Records Issues Subcommittee to study HB 2000 (Roem), HB 2196 (Mullin), and any other issues concerning records that the Council wishes to address.*

6. Discussion.

7. Other Business.

- **State Council of Higher Education for Virginia (SCHEV) [HB 2120](#) Study. Update.** **HB 2120 (Keam) Public institutions of higher education; governing boards; meetings, input, and disclosures.** Requires the governing board of each public institution of higher education to establish and maintain on the institution's website (i) a listing of all board members, including the name of the Governor who made each appointment and the date of each appointment; (ii) a listing of all committees created by the board and the membership of each committee; (iii) a schedule of all upcoming meetings of the full board and its committees and instructions for the public to access such meetings; (iv) an archive of agendas and supporting materials for each meeting of the governing board and its committees that was held; and (v)

an email address or email addresses that allow board members to receive public communications pertaining to board business. The bill requires such boards to solicit the input of representatives of the institution's faculty senate or its equivalent (a) at least twice per academic year on topics of general interest to the faculty and (b) in advance of decisions to be made on the search for the institution's new chief executive officer. The bill also requires the State Council of Higher Education for Virginia, in consultation with the Virginia Freedom of Information Advisory Council, to work with each public institution of higher education and with technology experts to develop a minimal uniform standard, to the extent practicable, for providing the public with real-time electronic access to meetings of the governing boards of public institutions of higher education.

8. Public Comment.

9. Set Future Meeting Dates.

10. Adjournment.

Council Members

Senator Mamie E. Locke, Chair
Senator Richard H. Stuart
Sandra G. Treadway
Bruce Potter
Amigo Wade
William "Billy" Coleburn
Pamela O'Berry

Delegate Marcus B. Simon
Delegate William Wampler, III
Lee Bujakowski
Matthew Conrad
Michael Stern
Cullen Seltzer

Staff

Alan Gernhardt, Executive Director
Ashley Binns, Attorney

The FOIA Council's web site is: [http:// foiacouncil.dls.virginia.gov](http://foiacouncil.dls.virginia.gov). To assist us in providing Internet dissemination of materials, presenters are requested to submit written comments and handouts in electronic format by email to staff prior to 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@dls.virginia.gov.