



VIRGINIA FREEDOM OF INFORMATION ADVISORY COUNCIL
COMMONWEALTH OF VIRGINIA

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

**Wednesday, May 4, 2016 - 10:30 a.m.
House Room C, General Assembly Building**

SUGGESTED AGENDA

****ANNOTATED****

- 1. Call to Order, introduction of members; welcome to Mark Vucci, Acting Director of the Division of Legislative Services.**
- 2. Recap of FOIA and Related Access Bills from 2016 Session of General Assembly.**
- 3. Review of legislative drafts recommended by the Meetings and Records Subcommittees:**
 - A. Meetings Subcommittee:**
 - Open Meeting exemptions-- 2.2-3711:**
 - LD 0276--Separates legal advice and litigation meeting exemption into two distinct exemptions (instead of combined into 1 exemption)

- LD 0002--Technical changes for clarification of existing exemptions; specifically
 - A9--State museum exemption--clarified that specific gifts, bequests, and grants "from private sources" exempt from mandatory disclosure
 - A17--Eliminated exemption for discussions by local crime commission b/c there are no local crime commissions.
 - A20--VRS and local retirement systems--expanded to include local finance boards for post-retirement benefits under Title 15.2.
 - A32--Deleted expired exemption (VMAC)
- LD 0201--VCUHSA rewrite of A 23 to remove redundancies with other existing meeting exemptions.

B. Records Subcommittee:

- General Exemptions-- 2.2-3705.1:
 - LD 0326--No. 1 and 2.2-3705.8--personnel records--merged these two provisions into No. 1 for clarity; also clarified that names of public employees is public information as per OAG opinion.
 - LD 0325--No. 10--email subscriptions--eliminated definition of "personal information as defined in 2.2-3801 and added definition of "personal contact information."
- Specific Public Bodies --2.2-3705.7
 - LD 1102--No 1--"scholastic" deleted from exemption b/c already exemption for scholastic records (2.2-3705.4)
 - LD 1103--No. 7--customer account information--clarified that disclosure required for amount paid "or charged" for utility service.
 - LD 1104--No. 13--Eliminated exemption for names and addresses of subscribers to "VA Wildlife" Magazine.
 - LD 1105--No. 30--Eliminated exemption for " Names, physical addresses, telephone numbers, and email addresses contained in correspondence between an individual and a member of the governing body, school board, or other public body of the locality in which the individual is a resident, unless the correspondence relates to the transaction of public business. However, no record that is otherwise open to inspection under this chapter shall be deemed exempt by virtue of the fact that it has been attached to or incorporated within any such correspondence" b/c unnecessary--definition of "public record."
 - LD 199--No. 2--Limited Working papers and correspondence exemption to just working papers; but included correspondence in the definition of a working paper.

4. Review of staff draft for the reorganization of FOIA.

5. Public Comment.

At this meeting, the FOIA Council is soliciting comment on the drafts recommended to date by the Meetings and Records Subcommittee. You will recall that the FOIA Council reviewed these drafts at its September 30, 2015 meetings, but took no action on these legislative recommendations. Because this is the final year of study, the FOIA Council will be taking action on the legislative recommendations of its two Subcommittees.

6. Suggested plan for the completion of the FOIA study pursuant to HJR No. 96 (2014)(LeMunyon).

As a reminder, HJR No. 96 directs the FOIA Council to study all exemptions contained in FOIA to determine the continued applicability or appropriateness of such exemptions and whether FOIA should be amended to eliminate any exemption from FOIA that the FOIA Council determines is no longer applicable or appropriate. HJR No. 96 also requires the FOIA Council to examine the organizational structure of FOIA and make recommendations to improve the readability and clarity of FOIA. The bill requires the FOIA Council to report its findings and recommendations by December 1, 2016.

7. Subcommittee Reports.

- **Records Subcommittee.** *The Records Subcommittee held its first meeting of the 2016 Interim on April 11, 2016, to continue its study of records exemptions as directed by HJR No. 96. The Records Subcommittee is scheduled to hold its next meeting on Monday, May 9, 2016.*
- **Meetings Subcommittee.** *The Meetings Subcommittee held its first meeting of the 2016 Interim on April 11, 2016, to continue its study of meetings law under FOIA. The Meetings Subcommittee is scheduled to hold its next meeting today (May 4, 2016) at 1:30 p.m.*

8. Bills referred to Council for study by 2016 Session of General Assembly:

- i. **HB 61** (ANS) Morris--Knowing and willful FOIA violations; penalty;

- ii. **HB 280** Marshall RG-- any proposed plat, site plan, or plan of development that is officially submitted to the local planning commission for approval shall be considered a public record subject to disclosure under the Virginia Freedom of Information Act.
- iii. **HB 281** Marshall, RG--Removes any building permit submitted to a locality for final approval from an exclusion from the provisions of the Freedom of Information Act (FOIA) that otherwise protects confidential proprietary records of a private business pursuant to a nondisclosure agreement made with a public body.
- iv. **HB 282** Marshal, RG--Requires that a nondisclosure agreement by a public body be approved at an open meeting if it is to serve as the basis for an exclusion from the provisions of the Freedom of Information Act (FOIA) of confidential proprietary records of a private business. Such an approval must be renewed at least every three months at further open meetings if it is to continue to supply the basis for the FOIA exclusion.
- v. **HB 334** Pogge--Provides that in an enforcement action, if the court finds the public body violated certain meeting notice requirements, the court may invalidate any action of the public body taken at such meeting.
- vi. **HB336** Pogge--Protects from mandatory disclosure library records that can be used to identify any library patron under the age of 18 years. The bill provides that access shall not be denied to the parent, including a noncustodial parent, or guardian of such person, unless the parent's parental rights have been terminated or a court of competent jurisdiction has restricted or denied such access. For records of persons under the age of 18 years who are emancipated, the right of access may be asserted by the subject thereof. Any parent or emancipated person under the age of 18 years who is the subject of the record may waive, in writing, the protections afforded by the bill. If the protections are so waived, the public body shall open such records for inspection and copying.
- vii. **HB 383** Marshall, RG--Removes any building permit submitted to a locality for final approval from an exclusion from the provisions of the Freedom of Information Act (FOIA) that otherwise protects confidential proprietary records of a private business pursuant to a nondisclosure agreement made with a public body and provides that any proposed plat, site plan, or plan of development that is officially submitted to the local planning commission for approval shall be considered a public record subject to disclosure under FOIA.
- viii. **HB 432** Villanueva--Limits the application of the exemption for criminal investigative files to active criminal investigative files. As a result, closed or inactive criminal investigative files would be subject to mandatory disclosure, if requested.

- ix. **HB 698** Kory--Requires that every public body afford an opportunity for public comment during any open meeting. A public body may adopt reasonable rules governing the public comment portion of the meeting, including imposing reasonable restrictions on time, place, and manner.
- x. **HB 757** Bell, RB--Requires a local or regional public body to disseminate to the public an agenda for a public meeting at least seven days prior to the meeting or 24 hours prior to an emergency meeting. The bill also requires such body to provide at least five minutes for public comment on each agenda item at the public meeting.
- xi. **HB 819** LeMunyon--Requires the release of any audio or video recording or combination thereof made by a correctional officer, jail officer, or deputy sheriff of an individual imprisoned in a penal institution in the Commonwealth being subdued by the correctional officer, jail officer, or deputy sheriff in a manner that results in the death of the individual being subdued or rendering him unconscious. The bill defines "correctional officer," "jail officer," and "deputy sheriff." The requirement applies to any audio or video recording that exists on or after July 1, 2016, regardless of when the audio or video recording was made.
- xii. **SB 202** Stuart--Provides that public access to records of the official salaries or rates of pay of public employees whose annual rate of pay is the annual equivalent of twice the federal minimum wage or less is not required under FOIA. Currently, public access to salary information is required for public employees whose annual rate of pay is more than \$10,000. The bill also provides that publicly available databases of public employees' salaries shall not include the name of any public officer, appointee, or employee.
- xiii. **SB 492** Surovell--Limits the application of the criminal investigative file exemption by providing that nothing in FOIA shall be construed to authorize the withholding of information from the records of completed unattended death investigations from immediate family members of the victim, provided that (i) such information is in a form that does not reveal the identity of persons supplying information or other individuals involved in the investigation and (ii) the immediate family members of the victim have been ruled as suspects.
- xiv. **SB 552** Cosgrove--Provides that the names and training records of law-enforcement officers as defined in § 9.1-101 and fire marshals as defined in § 27-30 shall be considered personnel records and excluded from mandatory disclosure under the Virginia Freedom of Information Act.
- xv. **SB 678** Garrett--Allows any county, city, or town with a population of less than 10,000 to have an additional 30 working days to respond to a FOIA request in cases where it is practically

impossible to provide the requested records or to determine whether they are available within the initial five-work-day period. Currently, in such cases, a public body has seven additional working days to respond

9. Other Business.

- **HB 817, FOIA redaction bill, enacted as Chapter 620 Acts of Assembly of 2016.**
- **Expiring FOIA Council Membership terms:**
 - **John Selph: second full 4-year term ends July 1, 2016; and**
 - **Frosty Landon: second full 4-year term ends July 1, 2016.**

10. Set future meetings.

Next meeting of the FOIA Council is scheduled for Wednesday, June 22, 2016 at 1:30 p.m. in the General Assembly Building, Richmond, Virginia. (Reminder: Meetings may only be scheduled on Monday, Tuesday, and Wednesday of the first and third full weeks of the month.)

11. Adjournment.

Council Members

Delegate James M. LeMunyon, Chair	Senator Richard H. Stuart, Vice-Chair
Sandra G. Treadway	Christopher Ashby
Forrest M. "Frosty" Landon	John G. Selph
Ed Jones	Stephanie Hamlett
Kathleen Dooley	Mark Vucci
Shawri King-Casey	Marisa Porto

Staff

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Alan Gernhardt, Senior Attorney

The FOIA Council's web site is: <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 (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@dls.virginia.gov.