



**VIRGINIA FREEDOM OF INFORMATION
ADVISORY COUNCIL**

**Wednesday, June 15, 2005
1:00 p.m. House Room D
General Assembly Building**

**SUGGESTED AGENDA
*ANNOTATED***

- 1. Call to Order; introduction of members.**
- 2. Progress Reports of subcommittees:**
 - **PPEA Subcommittee (HB 2672 (Plum)).** *You will recall that at our last meeting, the Council appointed a subcommittee consisting of Council members Axselle, Edwards, and Hallock to examine how the current record exemption for PPEA and PPTA proposals was being used to withhold more records than are authorized under the exemption. This concern was shared by the Virginia Press Association, the Virginia Coalition for Open Government and the Associated General Contractors of Virginia.*
 - **Electronic meetings subcommittee (HB 2760 (Reese)).** *Also at the last meeting, the Council appointed a subcommittee consisting of Council members Edwards, Fifer, Miller and Wiley to discuss the appropriateness of expanding authorization for the conduct of electronic meetings to local regional authorities and other local public bodies.*
- 3. Other Business.**
 - Mandated responses to FOIA requests; appropriateness of adding a fifth response--"The requested records do not exist." *Background: At the last meeting, we discussed whether a mandated fifth response to*

a FOIA request--the requested records do not exist-- was needed. Currently under FOIA, a public body is under no obligation to create records that do not exist in response to a specific request nor is a public body required to respond to a requester if the requested record does not exist. The lack of a required response in these instances leads to confusion and exacerbates any feelings of distrust. The Council, in a written opinion (AO-16-04) has previously opined that a public body should make this written response where applicable in order to avoid confusion and frustration on the part of the requester. The Council directed staff to examine this issue more fully and present a proposal for the Council's consideration.

*Status: This task is a little trickier than first anticipated and what may have seemed like a good idea may in fact be harder to accomplish without opening a can of worms, the least of which is examination of **why** the records do not exist. Certainly, "they were never were created or have been destroyed in accordance with law" are acceptable answers under both FOIA and the Virginia Public Records Act (the records retention statute). As a result, it may be preferable to let sleeping dogs lie and encourage clearer communication on this issue through our opinions and training, rather than a statutory mandate.*

- Production of public records--FOIA requests and licensing agreements under the Virginia Information Technologies Agency (VITA). *Background: When the Virginia Information Providers Network Authority (VIPNET)¹ was originally created, language was included that clarified the responsibilities of public bodies for the production of records made under FOIA and those "value added" records produced through VIPNET and subject to a licensing agreement with the requester. In 2003, when VITA was created, the referenced language was repealed because of the incorporation of VIPNET into VITA. During the 2005 Session, SB 1027 dissolved VIPNET as a separate division within VITA. Reinstating the original language relating to the responsibilities of public bodies to produce public records may help eliminate confusion and clarify obligations for the production of records. The Council agreed that clarification of the obligations of public bodies in responding to FOIA requests in light of any licensing agreements with VITA would be advisable. The Council requested staff to work with VITA on preparing such a guidance document for dissemination to the various state and local public bodies.*

¹ VIPNET is a division within VITA.

Status: In 2005, when VIPNET was incorporated into VITA in SB 1027, language was added during the process that may already speak to the issue of production of public records in response to a FOIA request. The relevant language in SB 1027 states that "Nothing ... shall be construed to prevent access to public records pursuant to Virginia Freedom of Information Act...under the terms and conditions set forth in § 2.2-3704." Staff has been working with VITA to develop a guidance document for publication on the Council's website that clarifies a public body's obligations under FOIA even in light of a licensing agreement with VITA. Work on the draft guidance document continues.

4. Of Note:

- Latest stats on services rendered by FOIA Council.
- Symposium on Children's Records scheduled for June 21, 2005. *The Council-sponsored symposium on children's records, where the various state and local agencies holding records concerning children would make presentations about their respective records and whether release is restricted has been scheduled. The ultimate goal of the symposium is the compilation and publication of the various statutes relating to access to children's records. To date there are approximately 40 persons registered representing law-enforcement agencies, educational institutions, and social services.*
- Planning begins for Annual Statewide FOIA Workshops.

5. Public Comment.

6. Adjournment.

Council Members

Senator R. Edward Houck, Chair
Roger C. Wiley
Thomas M. Moncure, Jr.
Ralph L. "Bill" Axselle
E. M. Miller, Jr.
Nolan T. Yelich

Delegate H. Morgan Griffith
John Stewart Bryan, III
John B. Edwards
W. Wat Hopkins
David H. Hallock, Jr.
Craig T. Fifer

Staff

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

The joint subcommittee's web site is: <http://dls.state.va.us/foiacouncil.htm>. To assist us in providing Internet dissemination of materials, joint subcommittee 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 joint subcommittee members and the public.
E-mail: foiacouncil@leg.state.va.us.