



VIRGINIA FREEDOM OF INFORMATION ADVISORY COUNCIL
COMMONWEALTH OF VIRGINIA

Delegate James M. LeMunyon, Chair
Senator Richard H. Stuart, Vice Chair

Maria J.K. Everett, Esq., Executive Director
Alan Gernhardt, Esq., Staff Attorney
foiacouncil@dls.virginia.gov

General Assembly Building ~ 201 North 9th Street, Second Floor ~ Richmond, Virginia 23219
804-225-3056 ~ (Toll Free) 1-866-448-4100 ~ (Fax) 804-371-0169 ~ <http://foiacouncil.dls.virginia.gov>



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

**Wednesday, June 23, 2016 - 10:30 a.m.
House Room D, General Assembly Building**

SUGGESTED AGENDA

****ANNOTATED****

- 1. Call to Order, introduction of members.**
- 2. Bills referred to Council for study by 2016 Session of General**

Assembly:

To be considered by the FOIA Council:

- i. 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.
- ii. 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.

- iii. **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.
- iv. **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.

Referred to Records Subcommittee:

- i. **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.
- ii. **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.
- iii. **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.
- iv. **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.

Referred to Meetings Subcommittee:

- i. **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.
- ii. **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.

3. Subcommittee Reports, including review of legislative drafts recommended in 2016 by each Subcommittee.

- **Records Subcommittee.** *The Records Subcommittee has held three meetings so far in the 2016 Interim (April 11, May 9, and June 23, 2016), to continue its study of records exemptions as directed by HJR No. 96. NOTE: There will be a public comment period at the end of the Records Subcommittee report.*
- **Meetings Subcommittee.** *The Meetings Subcommittee has held three meetings so far in the 2016 Interim (April 11, May 4, and June 6, 2016) to continue its study of meetings law under FOIA. The Meetings Subcommittee is scheduled to hold its next meeting on July 18, 2016 at 10:30 a.m. NOTE: There will be a public comment period at the end of the Meetings Subcommittee report.*

4. Other Business.

- Chairman's list of HJR 96 Study issues under continuing review.
- FOIA Officer training (as per HB 818, c. 748 2016 Acts of Assembly).

- Review of the Outline for the suggested reorganization of FOIA.
- 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.

Both John Selph and Frosty Landon have served for eight years on the FOIA Council and have made significant contributions to the work of the Council. They will be sorely missed. We wish them the best in future endeavors and thank them for your service!
- Retirement of Ginger Stanley, Executive Director of the Virginia Press Association. *Ms. Stanley has been a staunch advocate for transparency in government and has participated in every FOIA Council study since its inception. The Council recognizes her efforts and thanks her for her support of the Council's work.*

5. Public comment.

6. Future meetings.

Next meetings of the FOIA Council are scheduled as follows:

- *Monday, July 18, 2016 at 1:30 p.m. in the General Assembly Building, Richmond, Virginia;*
- *Monday, September 19, 2016 at 1:30 p.m. in the General Assembly Building, Richmond, Virginia;*
- *Monday, October 17, 2016 at 1:30 p.m. in the General Assembly Building, Richmond, Virginia; and*
- *Monday, November 21, 2016 at 1:30 p.m. in the General Assembly Building, Richmond, Virginia.*

7. Adjournment.

Council Members

**Delegate James M. LeMunyon, Chair
Sandra G. Treadway**

**Senator Richard H. Stuart, Vice-Chair
Christopher Ashby**

Forrest M. "Frosty" Landon
Ed Jones
Kathleen Dooley
Shawri King-Casey

John G. Selph
Stephanie Hamlett
Mark Vucci
Marisa Porto

Staff

Maria J.K. Everett, Executive Director and Senior Attorney
Alan Gernhardt, Senior 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 (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.