



VIRGINIA FREEDOM OF INFORMATION ADVISORY COUNCIL

COMMONWEALTH OF VIRGINIA

Senator Richard H. Stuart, Chair
Delegate Luke E. Torian, Vice-Chair

Alan Gernhardt, Esq., Executive Director
Chad Ayers, 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
Wednesday, August 22, 2018 - 1:00 p.m.
House Room 3, Capitol Building

SUGGESTED AGENDA

ANNOTATED

1. Call to Order, introduction of members. *Welcome to new members Delegate Glenn R. Davis, Jr. (appointed by the Speaker of the House to fill the vacant seat for a member of the House of Delegates), and Mr. Lee Bujakowski (appointed by the Speaker of the House to fill the seat that was held by Mr. Ed Jones, as Mr. Jones has served two full four-year terms and is therefore ineligible for reappointment).*

2. Subcommittee Reports. *At its meeting on April 4, 2017, the FOIA Council assigned the bills referred by the 2018 Session of the General Assembly to three subcommittees for further study as listed below. A brief synopsis of each subcommittee's activities to date appears below. Please see Appendix A for a full list of the bills, with summaries, in numerical order.*

Records Subcommittee

The Records Subcommittee has met three times on May 21, June 27, and August 8, 2018, to consider the bills listed below. The Subcommittee voted to recommend amended versions of HB 904 and HB 1329 to the Council for its consideration. The Subcommittee voted to send an amended version of SB 730, without a recommendation, to the Council for further discussion. The remainder of the bills were stricken at the request of the patrons.

- HB 504 (Mullin); Virginia Freedom of Information Act; definition of "custodian."
- HB 664 (Kilgore); Virginia Freedom of Information Act; transfer of public records; definition of "custodian."
- HB 904 (Robinson); Virginia Freedom of Information Act (FOIA); general exclusion for trade secrets submitted to a public body.

- HB 957 (Yancey); Virginia Freedom of Information Act; definition of "custodian."
- HB 958 (Yancey); Virginia Freedom of Information Act (FOIA); records containing both excluded and nonexcluded information; duty to redact.
- HB 959 (Yancey); Virginia Freedom of Information Act; transfer of public records.
- HB 1329 (Tran); Government Data Collection and Dissemination Practices Act; dissemination of information concerning religious preferences and affiliations.
- SB 730 (DeSteph); Virginia Freedom of Information Act. Clarifies that the definition of "public record" does not include records that are not prepared for or used in the transaction of public business.
- SB 876 (Mason); Virginia Freedom of Information Act; transfer of public records; definition of "custodian."

Remedies Subcommittee

The Remedies Subcommittee met twice, on May 21 and June 4, 2018, to consider the bills listed below. The Subcommittee voted to recommend amended versions of each bill to the Council for its consideration.

- HB 213 (Mullin); Virginia Freedom of Information Advisory Council; formal advisory opinions; immunity from civil penalty.
- SB 630 (Surovell); Virginia Freedom of Information Act (FOIA); civil penalty.

Meetings Subcommittee

The Meetings Subcommittee was scheduled to meet on June 5, July 18, and August 22. At the June 5 meeting, a quorum was not present but the Subcommittee members who were present heard from interested parties on the issue of requiring public comment periods at public meetings. Because this issue has been studied in prior years and views are divided, the members present recommended bringing this issue before the full Council and cancelling the remaining Subcommittee meetings, as they felt it required a policy discussion by the full Council. The members also considered the issue of members using text messages to communicate during a public meeting, and suggested that this issue be addressed through a guidance document, rather than in legislation.

- HB 1101 (Robinson); Virginia Freedom of Information Act; right to speak at open meetings.
- SB 336 (Peake); Virginia Freedom of Information Act; right to speak at open meetings.

3. Discussion.

4. Public Comment.

5. Other Business.

- *The Council asked that staff share any public comment forms received at each meeting of the Council. Two such public comment forms were received since the Council's last meeting.*
- *Update: FOIA training.*
- *Update: Declaratory judgment; update on circuit court cases decided after the Council last considered this issue in 2017.*

6. Public Comment.

7. Discussion.

8. Reminder: The next meetings of the Council are scheduled to be held on October 17 and December 5, 2018. Both meetings are scheduled to be held at 1:00 PM in House Room 3 of the Capitol Building.

9. Adjournment.

Council Members

Senator Richard H. Stuart, Chair
 Senator Mamie E. Locke
 Sandra G. Treadway
 Stephanie Hamlett
 Mark Vucci
 Marisa Porto
 William "Billy" Coleburn

Delegate Luke E. Torian, Vice-Chair
 Delegate Glenn R. Davis, Jr.
 Lee Bujakowski
 Kathleen Dooley
 Shawri King-Casey
 Michael Stern
 Cullen Seltzer

Staff

Alan Gernhardt, Executive Director
 Chad Ayers, 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.