



VIRGINIA FREEDOM OF INFORMATION ADVISORY COUNCIL

**Wednesday, August 31, 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/PPTA Subcommittee (HB 2672 (Plum)).** *A Council appointed subcommittee consisting of Council members Axselle, Edwards, and Hallock continues to look at public access issues for PPEA/PPTA project records and to consider whether amendments to FOIA and the PPEA/PPTA are needed to increase access while fostering competition.*
- ◆ **Electronic Meetings Subcommittee (HB 2760 (Reese)).** *A Council appointed subcommittee consisting of Council members Edwards, Fifer, Miller and Wiley have held two meetings 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:

- ◆ Review of draft relating to mandated fifth response to FOIA requests--"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. Status: Staff will present a legislative draft for the Council's consideration.

- ◆ *Review of Guidance Document on Charges. Staff has prepared a guidance document for assessing charges for public records and will present it for the Council's consideration. Although public bodies have the authority to assess charges for the production of records under FOIA, there is still considerable misunderstanding among public bodies and citizens alike on this issue. Hopefully, the guidance document will clarify rights and responsibilities and lead to enhanced compliance.*
- ◆ *FOIA Case Study: Lee Albright versus Virginia Department of Game and Inland Fisheries (VDGIF). At its last meeting, the Council requested staff to prepare a report chronicling Mr. Albright's efforts to obtain records from the VDGIF and, ultimately, Mr. Albright's FOIA suit against VDGIF. The members of the Council shared Mr. Albright's concern that citizens should not have to endure what Mr. Albright has, especially in light of the mandatory disclosure requirements of FOIA. The Council agreed to examine the issue of whether FOIA should be amended to provide additional remedies for violation.*
- ◆ *Planning for "Sunshine Week" in March 2006. At its meeting in March 2005, the Council expressed an interest in taking an active part in "Sunshine Week" in 2006. The Council will begin consideration of the method and nature of its involvement. Hopefully, more specific plans will be developed at the Council's last meeting of 2005 to allow ample time for implementation as the Council does not usually meet during the General Assembly Session.*

4. Of Note:

- ◆ *Demonstration: VDOT "FOIA Tracker," Frankie R. Giles, Assistant Policy Director, VDOT. VDOT, on its own initiative, has developed a centralized system to track and respond to FOIA requests, and has agreed to demonstrate this new system.*
- ◆ *Latest stats on services rendered by FOIA Council.*

- ◆ Update--2005 FOIA Workshops scheduled for October. *Locations for the workshops are Abingdon, Harrisonburg, Fairfax, Richmond, and Norfolk.*

5. Public Comment.

6. Set next meeting date. *We need set the date and time for the final meeting of 2005. Please remember to bring your calendars.*

7. 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.