



# VIRGINIA FREEDOM OF INFORMATION ADVISORY COUNCIL

## COMMONWEALTH OF VIRGINIA

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

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### *VIRGINIA FREEDOM OF INFORMATION ADVISORY COUNCIL*

**Monday, September 19, 2016 - 1:30 p.m.  
House Room C, General Assembly Building**

#### **SUGGESTED AGENDA**

***\*ANNOTATED\****

1. Call to Order, introduction of members.
2. Welcome to new FOIA Council members:
  - ✓ William "Billy" Coleburn, Editor of the Courier Record in Blackstone, appointed by the Senate Committee on Rules for a term of four-years.
  - ✓ Michael Stern, citizen member appointed by the Speaker of the House of Delegates for a term of four-years.
3. Bills referred to Council for study by 2016 Session of General Assembly:

To be considered by the FOIA Council at today's meeting, following presentations by the following patrons concerning their respective bills:

- i. **HB 61** (ANS) Morris--Knowing and willful FOIA violations; penalty;
- ii. **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.
- iii. **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 out as suspects.

- iv. **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.

#### 4. Subcommittee Reports.

- o **Records Subcommittee.** *The Records Subcommittee has held seven meetings so far in the 2016 Interim (April 11, May 9, June 1, June 23, July 20, August 18, and September 7, 2016), to continue its study of records exemptions as directed by HJR No. 96. This interim, the Records also a formed workgroup to examine issues related to personnel records. At its August meeting, the Records Subcommittee considered four bills referred to it by the Council. The patron of the four bills, Delegate Robert G. Marshall, participated by telephone in that meeting, as did representatives of Prince William County. After hearing the presentations and public comment, the Subcommittee decided to return the bills to the Council for further consideration, without a recommendation for action. **Consideration of these bills will be deferred because Delegate Marshall is unable to attend today's meeting.** The bills are as follows:*

- 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.

*NOTE: HB 280 would amend § 15.2-2259.*

- 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.

*NOTE: HB 281 would amend § 2.2-3705.6.*

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.

*NOTE: HB 282 would amend §§ 2.2-3705.6 and 2.2-3711.*

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.

*NOTE: HB 383 would amend §§ 2.2-3705.6 and 15.2-2259.*

*NOTE: There will be a public comment period at the end of the Records Subcommittee report.*

- **Meetings Subcommittee.** *The Meetings Subcommittee has held five meetings so far in the 2016 Interim (April 11, May 4, June 6, July 18, and August 11, 2016) to continue its study of meetings law under FOIA and the general provisions of FOIA. Note: The Meetings Subcommittee has completed its work on the meetings provision of FOIA and has begun consideration of the general provisions of FOIA in order to complete the HJR 96 study. The Meetings Subcommittee held a meeting at 10:30 a.m. today.*

*NOTE: There will be a public comment period at the end of the Meetings Subcommittee report.*

## 5. Other Business.

- Comments on the Chairman's List of Issues generally.
- Council review of:
  - Consolidation draft of certain public safety FOIA exemptions (LD 17100035), referred from the Records Subcommittee without recommendation;
  - Working papers draft recommended previously by Records Subcommittee (LD 16100199); and
  - Proprietary records and trade secrets draft proposed by the Virginia Press Association.

- Council review of additional legislative drafts recommended by the Records and Meetings Subcommittees:
  - Records Subcommittee drafts:
    - Existing Open Records Exclusions:
      - Virginia College Savings Plan (LD 17100033D)
      - Department of Health Professions and certain social services records (LD 17100067D)
  - Meetings Subcommittee drafts:
    - Open meeting exclusions; "Context Draft" (LD 17100049D)
    - Electronic Communications Meetings Draft (LD 1710176D)
- Review of Parole Board FOIA exemption, following presentation of issues by a representative of Delegate Hope.

6. Public Comment.

7. Discussion.

8. Future meetings.

*Next meetings of the FOIA Council are scheduled as follows:*

- Monday, October 17, 2016 at 1:30 p.m. in House Room D of the General Assembly Building, Richmond, Virginia; and
- Monday, November 21, 2016 at 1:30 p.m. in House Room C of the General Assembly Building, Richmond, Virginia.

9. Adjournment.

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**Council Members**

<b>Delegate James M. LeMunyon, Chair</b>	<b>Senator Richard H. Stuart, Vice-Chair</b>
<b>Sandra G. Treadway</b>	<b>Christopher Ashby</b>
<b>Ed Jones</b>	<b>Stephanie Hamlett</b>
<b>Kathleen Dooley</b>	<b>Mark Vucci</b>
<b>Shawri King-Casey</b>	<b>Marisa Porto</b>
<b>William "Billy" Coleburn</b>	<b>Michael Stern</b>

**Staff**

Maria J.K. Everett, Executive Director and Senior Attorney  
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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](mailto:foiacouncil@dls.virginia.gov).