



VIRGINIA FREEDOM OF INFORMATION ADVISORY COUNCIL
COMMONWEALTH OF VIRGINIA

Senator R. Edward Houck, Chair
Delegate H. Morgan Griffith, Vice Chair

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**MEETING OF THE
*VIRGINIA FREEDOM OF INFORMATION
ADVISORY COUNCIL***

**Monday, November 8, 2010 - 1:30 p.m.
House Room D, General Assembly Building**

**ANNUAL LEGISLATIVE PREVIEW, Part II
SUGGESTED AGENDA
ANNOTATED**

- 1. Call to Order and Introduction of members.**
- 2. Subcommittee Reports:**
 - **Rights and Remedies Subcommittee**
 - **Criminal Investigative Records Subcommittee**
- 3. Action of Legislative Drafts:**
 - **Draft offered by Roger Wiley, without recommendation from the Rights and Remedies Subcommittee;**
 - **Reorganization of § 2.2-3706--Access to criminal records; recommendation of the Criminal Investigative Records Subcommittee.**
- 4. Annual Legislative Preview.**

5. Other Business:

- **VITA charges to state agencies for retrieval of public records maintained by VITA. Experience of DEQ re same. NOTE:** *Effective July 1, 2010, § 2.2-3704 J provides that "In the event a public body has transferred possession of public records to any entity, including but not limited to any other public body, for storage, maintenance, or archiving, **the public body initiating the transfer of such records shall remain the custodian of such records for purposes of responding to requests for public records made pursuant to this chapter and shall be responsible for retrieving and supplying such public records to the requester...** (emphasis added).*

DEQ received a FOIA request for records maintained by VITA. Under FOIA, DEQ remains the custodian of these records and was initially charged \$14,000 by VITA to make the records available to DEQ in response to the FOIA request. Ultimately, this charge was reduced by VITA to \$3,800. VITA's initial estimate came one month after the records were requested by DEQ, and the last estimate was almost two months after DEQ's request.

- **Use of the word "archive" in § 2.2-3704 J; implications to the Library of Virginia and the VA Public Records Act. NOTE:** *The word "archive" is a term of art as used by the Library of Virginia in respect to its responsibilities under the VA Public Records Act (VPRA) and the archiving of public records. Under the VPRA, the Library becomes the custodian of records archived there. The legislative history of subsection J, which was added in 2010, was to capture VITA and DLAS, which agencies provide IT support for the executive and legislative branches, respectively. The use of the term "archive" in this section of FOIA was not meant to capture the Library of Virginia within this provision.*

6. Public Comment.

7. Adjournment.

Council Members

Senator R. Edward Houck, Chair
Roger C. Wiley*
E.M. Miller, Jr.
Craig T. Fifer
George T. Whitehurst
John G. Selph

Delegate H. Morgan Griffith, Vice-Chair
Mary Yancey Spencer
Sandra G. Treadway
Forrest M. "Frosty" Landon
Eric Gregory
Ed Jones

Staff

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

The FOIA Council's web site is: <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.

*Roger Wiley will be participating via teleconference pursuant to §2.2-3708.