



VIRGINIA FREEDOM OF INFORMATION ADVISORY COUNCIL

COMMONWEALTH OF VIRGINIA

Senator Mamie E. Locke, Chair
Delegate Marcus B. Simon, Vice-Chair

Alan Gernhardt, Esq., Executive Director
Ashley Binns, 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

November 10, 2021 - 1:00 p.m.
Senate Room A, Pocahontas Building
Richmond, VA

[Register to Provide Public Comment via Zoom](#)
[Click HERE for the Live Stream of the Meeting.](#)

SUGGESTED AGENDA

ANNOTATED

1. Call to Order, introduction of members.

2. Subcommittee Reports. *At its meeting on April 28, 2021, the FOIA Council assigned bills referred by the 2021 Session of the General Assembly along with another issue related to proper meeting notice under FOIA to two subcommittees for further study as listed below. A brief synopsis of each subcommittee's activities to date appears below.*

Records Issues Subcommittee

The Records Issues Subcommittee met on September 2, 2021, to consider HB 2000 and HB 2196. After extensive discussion the Subcommittee recommended amended versions of HB 2000 and HB 2196 to the full council.

- **[HB 2000](#) (Roem) Virginia Freedom of Information Act; charges for production of public records.** Prohibits a public body from charging a requester for any costs incurred during the first two hours spent accessing or searching for requested records when such requester has made four or fewer individual records

requests to such public body within 31 consecutive days. The bill provides that for any additional time spent accessing or searching for such records, or when such requester makes five or more individual records requests to such public body within any 31-consecutive-day period, the public body shall not charge an hourly rate for accessing or searching for the records exceeding the lesser of the hourly rate of pay of the lowest-paid individual capable of fulfilling the request or \$33 per hour. The bill also requires public bodies to post on their website or otherwise publish a written policy (a) explaining how the public body assesses charges for accessing or searching for requested records and (b) noting the current fee charged, if any, by the public body for accessing and searching for the requested records.

- **[HB 2196](#) (Mullin) Virginia Freedom of Information Act; required release of law-enforcement disciplinary records; exceptions.** Requires the release of law-enforcement disciplinary records related to completed disciplinary investigations. The bill defines "law-enforcement disciplinary records" as any record created in furtherance of a law-enforcement disciplinary proceeding or any other administrative or judicial proceeding, whether such proceeding takes place in the Commonwealth or in another jurisdiction. The bill allows for the redaction of certain personal contact information of the law-enforcement officer, complainant, and witness or their families; social security numbers; and certain medical information of the law-enforcement officer and complainant.

Meetings Issues Subcommittee

At its meeting on July 19, 2021, the FOIA Council voted 10-2 to have the Meetings Issues Subcommittee continue studying electronic meetings options for public bodies with appointed members. The Subcommittee met on October 5, 2021, but was unable to vote or take any action because there was not a quorum present. However, the Subcommittee heard presentations and public comment on a concept draft presented on behalf of Virginia Coalition for Open Government (VCOG), Virginia Press Association (VPA), Virginia Municipal League (VML), Virginia Association of Counties (VACo), and Elizabeth Bennett-Parker, Vice Mayor of the City of Alexandria. The concept draft would change electronic meetings laws by eliminating the distinctions between different types of public bodies and instead providing procedures for "hybrid public meetings" (where some members participate virtually but the rest meet in person) and "all-virtual public meetings" (where all of the members use electronic communications) that apply to all public bodies. The Subcommittee also heard concerns about the definition of "public body" presented by Phil Abraham of the Vectre Corporation. The Subcommittee was unable to set another meeting date before today's meeting of the full Council.

3. Discussion.

- 4. Legislative Preview.** *Each year the Council makes itself available to interested parties as a forum for legislative proposals involving FOIA or other access-related issues. By acting as a forum, the FOIA Council hopes that all persons interested in proposed FOIA amendments will be informed of these proposed amendments well in advance of the next session of the General Assembly and have the opportunity to address any disagreements or other issues before the next session.*

- Electronic Meetings Concept Draft. *As mentioned above, a concept draft was presented to the Meetings Issues Subcommittee on October 5, 2021. After further consultation with the interested parties, a revised version of that draft has been prepared for consideration by the Council.*

5. Other Business.

- SCHEV HB 2120 (Kearney, 2021) Workgroup Report (Beverly Rebar, State Council of Higher Education for Virginia) (report available [here](#))
- Staffing Proposal (Amigo Wade, Director of the Division of Legislative Services)

6. Public Comment.

7. Set Future Meeting Dates.

8. Adjournment.

Council Members

Senator Mamie E. Locke, Chair
Senator Richard H. Stuart
Sandra G. Treadway
Bruce Potter
Amigo Wade
William "Billy" Coleburn
Pamela O'Berry

Delegate Marcus B. Simon, Vice-Chair
Delegate William Wampler III
Lee Bujakowski
Matthew Conrad
Michael Stern
Cullen Seltzer
Lola Rodriguez Perkins

Staff

Alan Gernhardt, Executive Director
 Ashley Binns, Attorney

The FOIA Council's website 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.