



***VIRGINIA FREEDOM OF INFORMATION  
ADVISORY COUNCIL***

***Annual Legislative Preview***

Thursday, November 17, 2005  
9:00 a.m. House Room D  
General Assembly Building

**SUGGESTED AGENDA  
*\*ANNOTATED\****

1. Call to Order and introduction of members.
2. Report on work of PPEA/PPTA Subcommittee:
  - ◆ **PPEA/PPTA Subcommittee (HB 2672 (Plum)).** *A Council appointed subcommittee consisting of Council members Axselle, Edwards, Wiley, and Houck reports on its 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.*
3. **Final Review of Council's legislative proposal:**
  - ◆ Review of draft relating to mandated fifth response to FOIA requests--"The requested records do not exist." *Background: At previous meetings, 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: Council deferred consideration of this draft until this meeting to give Council members and the public time to review and comment.*

#### **4. Annual Legislative Preview.**

- *Dr. Daniel J. LaVista, Executive Director, State Council of Higher Education for Virginia (SCHEV) and Alan L. Wurtzel, Chair of SCHEV; electronic meeting exemption for SCHEV.*
- *Patrick C. Devine, Jr., Esquire, Williams Mullen Hofheimer Nusbaum; general FOIA clean up concerning hospital authorities.*

#### **5. Other Business.**

- *Adequacy of FOIA remedies in light of Lee Albright versus Virginia Department of Game and Inland Fisheries (VDGIF). At its last meeting, the Council received a staff 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.*
- *Report on Virginia Information Technologies Agency (VITA) efforts to procure goods and services for Virginia's information technology needs under the Public-Private Education Facilities and Infrastructure Act of 2002 (PPEA); Lemuel C. Stewart, Jr., Chief Information Officer, VITA.*
- *Electronic meeting reports filed with the Council since July 2005. As part of its deliberations, the 2005 Electronic Meetings Subcommittee of the Council recommended that the Council receive staff briefings concerning electronic meetings conducted since the rewrite of § 2.2-3708 became effective. Under § 2.2-3708, any public body that meets by electronic communication means shall make a written report to the Virginia Freedom of Information Advisory Council and the Joint Commission on Technology and Science by December 15 of each year.*
- *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.*
- *Review of Council's draft 2005 annual report.*

#### **6. Of Note.**

- Latest statistics of inquiries to the Council.
- Recap of Annual FOIA Workshops.
- Update on Virginia Public Records Act, *Lisa Wallmeyer, Division of Legislative Services.*

7. Public comment.

8. Set first meeting of 2006.

9. Adjournment.

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**Council Members**

Senator R. Edward Houck, Chair	Delegate H. Morgan Griffith
Roger C. Wiley	John Stewart Bryan, III
Thomas M. Moncure, Jr.	John B. Edwards
Ralph L. "Bill" Axselle	W. Wat Hopkins
E. M. Miller, Jr.	Mary Yancey Spencer
Nolan T. Yelich	Craig T. Fifer

**Staff**

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

The FOIA Council's web site is: <http://dls.state.va.us/foiacouncil.htm>. To assist us in providing Internet dissemination of materials, presenters to the FOIA Council 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@leg.state.va.us](mailto:foiacouncil@leg.state.va.us).