



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

Annual Legislative Preview

Friday, December 15, 2006
1:00 p.m. House Room C
General Assembly Building

**SUGGESTED AGENDA
*ANNOTATED***

1. Call to Order and introduction of members.
2. Subcommittee Reports and Legislative Recommendations
 - ◆ PPEA/PPTA Subcommittee
 - ◆ Electronic Meetings Subcommittee
 - ◆ Fifth Response Subcommittee
 - ◆ VRS Subcommittee (no recommendation)
3. Review of Other Council legislative proposals:
 - **Venue** *Background:* You will recall that at the last meeting, the Council was briefed on the latest Supreme Court of Virginia decision in the case of *William F. Shaw v. John T. Casteen, et al*, a case concerning proper venue for enforcement of FOIA violations. Prior to this case, it has appeared that the University of Virginia is a state entity for FOIA purposes, and venue against the University is therefore found under subsection B of § 2.2-3713. Subsection A of § 2.2-3713 provides a venue for petitions against local public bodies; it seems clear that the University is not a local public body, and that subsection A of § 2.2-3713 is inapplicable to it. However, the trial court ruled

otherwise and the Supreme Court, in refusing Mr. Shaw's petition for appeal, found no reversible error in that judgment. Staff brought this matter to the attention of the Council as it appears there may be a need to revise the definition of public body and/or the venue provisions of FOIA in order to prevent such a situation from arising in the future. The Council discussed the issue and directed staff to recommend the necessary statutory amendments to clarify the venue provisions for FOIA petitions, including actions involving regional public bodies.

4. Annual Legislative Preview.

- *Robert Schultze, Virginia Retirement System; VRS FOIA exemptions*
- *John G. "Chip" Dicks, Esquire; FOIA and requests for court records*
- *Craig Fifer, City of Alexandria; exemption for franchises for wireless service*
- *Virginia Municipal League/City of Fredericksburg; closed meeting for discussion of security of public buildings*
- *Frosty Landon, Virginia Coalition for Open Government; eliminating citizenship requirement in VA FOIA*
- *Dennis P. Gallagher, Virginia Taxi Cab Association; financial reports*
- *Colleen Miller, Virginia Office of Protection and Advocacy (VOPA); closed meeting exemption for appeals committee of VOPA Board concerning discussions of records exempted under § 2.2-3705.3 (8)*

5. Other Business.

- Review of Council's draft 2006 annual report.

6. Of Note.

- Holding of the Supreme Court of Virginia in the case of White Dog Publishing v. Culpeper County Board of Supervisors. *Background: The Virginia Supreme Court found that in closing a meeting to the public, the Culpeper County Board of Supervisors had improperly invoked the open meeting exemption for contract negotiations found at § 2.2-3711 A 30. This exemption was added by the 2003 General Assembly at the recommendation of the FOIA Council. The Court's decision is the first interpreting this exemption and sets precedent regarding the scope of the exemption and the type of contract negotiation discussions allowed to be held in closed meeting.*
- Holding of the U.S. Court of Appeals for the Third Circuit concerning Delaware's Freedom of Information Act limiting access to Delaware residents only. *Background: The U.S. Court of Appeals for the Third Circuit has ruled recently that a provision in the Delaware Freedom of Information Act is unconstitutional on the basis that it limits access to public records only to residents of Delaware. The case is*

considered to be precedent-setting, according to legal experts, because there is little case law on the issue. Virginia's FOIA by its terms is limited to Virginia citizens; but unlike Delaware, also includes access rights to media representatives with circulation in or out of Virginia and who broadcast in or out of Virginia. It will be interesting to follow what if any impact this case will have on other states' FOIA law and in Virginia in particular.

- Year by year comparison of services rendered by FOIA Council. *Background: At the last meeting, the Council requested staff to present statistics on the services rendered by the Council on a year-to-year basis so that trends could be ascertained.*
- Latest statistics of inquiries to the Council.

7. Public comment.

8. Set first meeting of 2007.

9. Adjournment.

Council Members

Senator R. Edward Houck, Chair
Roger C. Wiley
John B. Edwards
Nolan T. Yelich
Ralph L. "Bill" Axselle
Mary Yancey Spencer

Delegate H. Morgan Griffith
John Stewart Bryan, III
W. Wat Hopkins
E.M. Miller, Jr.
Craig T. Fifer
Courtney M. Malveaux

Staff

Maria J.K. Everett, Executive Director
Alan 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 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.