

VIRGINIA FREEDOM OF INFORMATION ADVISORY COUNCIL

COMMONWEALTH OF VIRGINIA

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Litigation Policy

1. Issuing Opinions During or After Litigation

The Freedom of Information Advisory Council and its staff ("the Council") issues advisory opinions interpreting the provisions of the Virginia Freedom of Information Act ("FOIA") upon request by citizens, public officials and the media. However, if the requester is involved in FOIA litigation, either as plaintiff or defendant, the Council will decline to issue a new advisory opinion concerning issues to be settled in the case. The Council may also decline to issue an advisory opinion where the same issues that are the subject of a request for an opinion have been decided by a court of competent jurisdiction. The opinions of the Council are not binding on any court as precedent; therefore, once litigation is commenced, the court and not the Council, is the appropriate body to decide and settle a dispute as a matter of law.

In addition, if an issue of first impression (i.e., a controversy which generates or raises a new question of law) concerning FOIA has been accepted on appeal to the Supreme Court of Virginia, the FOIA Council will decline to issue any opinions on that issue.

2. Testifying as a Witness

The Executive Director of the Council will not accept a request by a citizen, public official or reporter to testify as an expert witness in any lawsuit involving FOIA issues. If subpoenaed to testify by either party, the Council delegates authority to the Executive Director to file, in her discretion, a motion to quash the subpoena.