

Virginia Freedom of Information Advisory Council

March 19, 2007

The Freedom of Information Advisory Council (the Council) held its first quarterly meeting of 2007.¹ The purpose of the meeting was to review legislative changes to the Freedom of Information Act (FOIA) made by the 2007 General Assembly, identify topics for study, including bills referred to the Council for further examination, and to develop a study plan for this year's work.

Legislative Update

The General Assembly passed a total of 19 bills amending the Virginia Freedom of Information Act (FOIA) in 2007. Four of the 19 bills were recommended by the Freedom of Information Advisory Council: HB 1791 (Griffith), adding an additional response to address situations when a public body receives a request for public records under FOIA but cannot find the requested records or the requested records do not exist; SB 1001 (Houck), addressing various provisions regarding electronic communication meetings; SB 1002 (Houck), concerning the release of certain records under the Public-Private Transportation Act of 1995 (PPTA) and the Public-Private Education Facilities and Infrastructure Act of 2002 (PPEA); and SB 1003 (Houck), concerning the venue for FOIA enforcement actions. Of the 19 bills, four bills added three new records exemptions and one new closed meeting exemption; the other 15 bills all amend existing provisions of FOIA. A complete listing and description of these and other related access bills considered by the 2007 Session of the General Assembly is available on the Council's website.

Bills Referred to the Council for Study

Nine bills were referred to the Council for study by the 2007 Session of the General Assembly, falling into two topic areas:

- **Electronic Communication Meetings:**
 1. HB 2293 (McClellan)
 2. HB 2553 (Ebbin)
 3. SB 1271 (Whipple)
- **Protection of Personal Identifying Information:**
 1. HB 2821 (Sickles)
 2. HB 2558 (Brink)

3. HB 3097 (Cole)/SB 1106 (Chichester)
4. HB 3118 (Carrico)/SB 883 (Deeds)
5. HB 3161 (Marshall, D.W.)/SB 1404 (Hanger)
6. SB 819 (Cuccinelli)

Rather than consider the specifics of each bill referred for study at today's organizational meeting, the Council noted that the bills fell into two more general topic areas as categorized above: (1) electronic meetings issues, and (2) personal identifying information issues. HB 2821, regarding records containing social security numbers, was referred to the Joint Committee on Technology and Science (JCOTS), as well as to the FOIA Council. The Council expressed its intention to work with JCOTS in studying this bill.

Public Comment

The Council noted that there had been a great deal of public concern regarding the recent online publication by the Roanoke Times of a list of all the holders of permits to carry concealed handguns in Virginia, and that several people had attended today's meeting to speak on that issue. In light of their attendance and concerns, and because the issue fell within the more general category of personal identifying information, it was decided to move the public comment period up on the agenda. Additionally, this topic was to be added as Other Business on the agenda for further discussion. Delegate David Nutter expressed his concern regarding this publication, informed the Council that he has requested a legal opinion from the Office of the Attorney General on the matter, and indicated that he would like to participate toward a resolution. James Kadison, representing the Virginia Citizens Defense League, expressed concern over the possible abuse of the list but also concern that it would not be appropriate to completely prohibit public access. B.J. Ostergren, representing the Virginia Watchdog, also expressed concern about this issue, particularly because concealed carry permit information is held by circuit court clerks as well as the State Police, and these same records may be available online through secure remote access systems on the circuit court clerks' websites.

Appointment of Subcommittees

The Council appointed two subcommittees to correspond to the two general topic areas of the bills referred for study. The members of the Electronic Meetings Subcommittee are John Edwards (Chair), Senator Houck, Roger Wiley, E. M. Miller, Craig Fifer, and Bill Axselle. The members of the Personal Identifying Information Subcommittee are Senator Houck (Chair), Delegate Griffith, Courtney Malveaux,

¹ All Council members were present except Nolan Yelich; Stephanie Hamlett, of the Office of the Attorney General, sat in by designation for Courtney Malveaux.

Stewart Bryan, John Edwards, Wat Hopkins, Mary Yancey Spencer, and Nolan Yelich. The subcommittees may be further subdivided to consider individual bills or issues. The concealed carry permit issue will be addressed by the Personal Identifying Information Subcommittee. Delegate Griffith also suggested that the Personal Identifying Information Subcommittee examine a bill that was sent to the Crime Commission concerning limiting access after trial to information about jurors. This subcommittee will also work with JCOTS, as previously mentioned in regard to HB 2821.

Other Business

The online publication of the concealed carry permit list was added to the agenda as Other Business. Staff provided a description of what had happened: the Roanoke Times published an editorial on Sunshine Week that used the concealed carry permit holder list as an example of a public record, and the list was published on the newspaper's website in conjunction with the editorial. The list was removed from the website shortly thereafter, after many complaints were received about the publication of the list. Various concerns about this topic were expressed by Council members Fifer, Griffith, and Houck, as well as Delegate Nutter and B.J. Ostergren. Lisa Wallmeyer, of the Division of Legislative Services, briefly discussed Code § 18.2-308, which governs issuance of the concealed carry permits. No decisions were made on this topic. Further deliberation of this issue will be conducted by the appropriate subcommittee.

Of Note

Staff reported that for the period December 1, 2006 through February 28, 2007, it had received a total of 423 inquiries. Of the 423 inquiries, 1 request was for a formal written opinion and the remaining 422 inquiries were by telephone and electronic mail. Citizens accounted for 200 of the informal inquiries, the government for 189 inquiries, and the media for 33 inquiries. The formal opinion was requested by a member of the news media.

Staff also advised that plans were being made for the Council-sponsored FOIA seminars, to be held in six locations across Virginia in the month of June. The seminars will address access to public records, access to public meetings, law-enforcement records, and FOIA topics of current interest, including the legislative update. Further details will be provided on the Council website and by electronic mail as the plans are made final.

Ginger Stanley, representing the Virginia Press Association, indicated that she would present information on Sunshine Week 2007 to the Council at its next meeting. This year Sunshine Week was March 11 through March 17, and so there

had not been enough time to compile complete information for a report before today's Council meeting.

Future Meetings of the Council

The Council set its next three meeting dates to be (1) Thursday, June 7, 2007, at 10:00AM, (2) Monday, September 10, 2007, at 1:00PM, and (3) Monday, December 3, 2007, at 1:00PM (which will include the annual legislative preview). All meetings are scheduled to be held in House Room D of the General Assembly Building, Richmond, Virginia.

The Honorable R. Edward Houck, *Chair*
Maria J.K. Everett, *Executive Director*