

FOIA Council Meeting Summary
May 15, 2017
1:30 PM
House Room 1
Capitol Building
Richmond, Virginia

The Virginia Freedom of Information Advisory Council (the Council) held its second meeting of the 2017 Interim on May 15, 2017.¹ The meeting was held to consider bills referred by the 2017 Session of the General Assembly to the Council for further study, to receive a progress report from the Proprietary Records and Trade Secrets Subcommittee, to review draft legislation recommended by the Subcommittee, and to discuss other issues of interest to the Council.

Review of Bills Referred by the 2017 Session of the General Assembly

Senator Bill DeSteph, patron of SB 972², appeared before the Council to discuss his bill and the reason for its introduction. He explained that he introduced the bill because he had made several FOIA requests to public bodies for certain records and that when he received the records they had been redacted. He stated that after receiving the redacted records, he and his staff went online and were able to find the records online in unredacted form. He explained that the bill seeks to prevent public bodies from making "baseless" redactions in responses to FOIA requests made by members of the General Assembly, who need the information they have requested in order to fulfill their legislative duties.

Staff then explained the bill line-by-line. Staff stated that the bill requires state agencies to provide unredacted records, notwithstanding the provisions of the Virginia Freedom of Information Act, in response to a request for information made by a member of the General Assembly acting in the performance of such member's official legislative duties. Staff stated that the bill provides exceptions that allow the state agency to redact (i) records or portions of records the disclosure of which is prohibited by law and (ii) records which are excluded under § 2.2-3705.2 (public safety), subdivision 2 of § 2.2-3705.7 (working papers), and § 2.2-3706 (certain criminal/law-enforcement records). Staff also explained that the bill prohibits, with certain limited exceptions, the member of the General Assembly from further disclosing such information. Staff emphasized that the right of access granted to members of the General Assembly by this bill is outside of and separate from the provisions of FOIA, and that General Assembly members have no special status under FOIA.

¹ Council members Coleburn, Dooley, Hamlett, King-Casey, LeMunyon (Chair), Porto, Seltzer, Treadway, and Vucci were present; members Senator Stuart (Vice Chair), Jones, and Stern were absent.

² **SB 972** DeSteph - Bill Summary: Requires all departments, agencies, and institutions of the Commonwealth and staff and employees thereof to respond to a request for information made by a member of the General Assembly. The bill further provides that notwithstanding the Virginia Freedom of Information Act (§ 2.2-3700 et seq.), a response to a request for information made by a member of the General Assembly shall not be subject to redaction.

Mr. Coleburn expressed concern that the bill gives elected officials a greater right of access to information than the citizens of Virginia. Ms. Dooley commented that the bill limits the application of the law to "a member of the General Assembly acting in the performance of such member's official legislative duties" and questioned how that is to be interpreted. Senator DeSteph deferred to staff, who responded that the term "official legislative duty" is not defined, but that the intent in including that qualification was to limit the application of the law to legislators acting in their official capacity as opposed to their role as a citizen. Ms. Treadway then asked if a legislator would have to explain why he or she needs the requested information as part of his or her official duties. Senator DeSteph responded affirmatively and stated that legislators know their role as a legislator versus their role as a citizen. Ms. King-Casey asked Senator DeSteph whether the FOIA redaction law was in effect at the time the examples he cited occurred, in which he received records from a public body in response to a FOIA request that were redacted and in which he subsequently went online and found unredacted versions of the records. Such law would have required the public body to cite the specific Code section that permits the redaction. Ms. King-Casey commented that she was just trying to see if this was a bigger issue relating to noncompliance with FOIA. Senator DeSteph responded that the issue is that the public body redacted the records when they provided them to him, but that they had clearly been released publicly in unredacted form. He stated that he did not know whether this was due to educational issues, arrogance, or perhaps whether he had phrased the question improperly.

The Council then heard public comment on the bill. Megan Rhyne with the Virginia Coalition for Open Government commented that she understands why members of the General Assembly want this information, but stated that she is very troubled by what the bill sets forth in that it grants a general right to information for members of the General Assembly that is not granted to citizens or local officials. She stated that there are noble reasons why citizens want this information also. She emphasized that FOIA provides the remedy for all persons, and such remedy is to file suit to obtain the information.

After asking the other members of the Council for their thoughts on the bill, Chairman LeMunyon told Senator DeSteph that the Council did not appear ready to make a decision on the bill at the current time, and that the Council would like some additional time to think about it.

The Council then moved on to consider HB 2316³, another bill referred to the Council by the 2017 Session of the General Assembly. Evan Feinman, Executive Director of the Tobacco Region Revitalization Commission, appeared on behalf of Delegate Marshall to discuss the bill with the Council. Mr. Feinman stated that many public bodies are not served as well as they could be by FOIA because technology has advanced faster than the law. He stated that the Tobacco Region Revitalization Commission's membership is spread broadly across the state, and that the bill seeks to eliminate the requirement that when a member of the Commission participates in a meeting of the Commission through electronic communication means, the remote location must be open to the public. Mr. Feinman stated that both he and Delegate Marshall feel as though § 2.2-3708 in FOIA should be amended to remove that requirement for

³ **HB 2316** Marshall, D.W. - Bill Summary: Provides that the remote locations from which additional members of the Commission participate in a Commission meeting that is conducted through electronic communication means shall not be required to be open to the public.

all public bodies instead of simply amending the Commission's statute to remove the requirement just for members of the Commission, as the bill currently does.

Mr. Coleburn expressed concern that the bill as written is picking and choosing a specific public body to release from the requirement that the remote location be open to the public. He also stated that he feels as though having the requirement that the remote location be open to the public incentivizes members of the public body to go to the physical meeting location of the full public body.

Megan Rhyne with the Virginia Coalition for Open Government stated that if the Council is going to look into this issue, her suggestion is that all public bodies be released from the requirement. She suggested further study of the issue, as she expressed uncertainty as to whether technology has improved enough to dispose of the requirement that the remote location be open to the public.

Chairman LeMunyon directed staff to create a draft bill amending § 2.2-3708 that would remove the requirement that the remote location be open to the public for all public bodies. He also asked staff to provide, at the next meeting of the Council, some background information as to what the Code currently requires.

Proprietary Records and Trade Secrets Subcommittee Report

Staff reported that the Proprietary Records and Trade Secrets Subcommittee met twice, on April 4, 2017 and May 1, 2017, and that a work group of the Subcommittee met on April 25, 2017.

Staff stated that at the April 4, 2017 meeting of the Subcommittee, staff reviewed work to-date on the topic of proprietary records and trade secrets under HJR No. 96 (2014-2016). During the review, staff emphasized that there had been 23 meetings on the topic at the Council, Subcommittee, and Work Group levels, with no resolution of the issues. Staff presented two drafts to the Subcommittee for its consideration on the topic of trade secrets - one based upon a proposal previously put forth in a white paper by the Virginia Press Association and one prepared by staff. After considering the drafts and receiving public comment, the Subcommittee directed staff to create a new draft and to meet with interested parties as a work group to consider the new draft. Staff reported that the Subcommittee raised the issue of the definition of the word "proprietary" and that a draft on the topic had been prepared on the topic by staff for the Subcommittee's consideration, however there was no discussion of or action taken on the draft and the issue was deferred to the next Subcommittee meeting.

Staff reported that the Subcommittee work group met on April 25, 2017 and considered a new draft of legislation that would create a general exclusion for trade secrets submitted to a public body. Staff related that no members were appointed to the Work Group, however all interested parties had been invited to join the discussion. Staff explained that after public comment on the draft, staff went through the draft line-by-line with the interested parties to identify areas of consensus. Staff related that at the conclusion of the Work Group meeting and after considerable discussion, the interested parties recommended amendments to the draft to be

incorporated into a new draft for presentation to the Proprietary Records and Trade Secrets Subcommittee at its meeting on May 1, 2017.

At its second meeting on May 1, 2017, staff reported that the Proprietary Records and Trade Secrets Subcommittee considered the Trade Secrets draft that was recommended to it by the work group. After discussion and hearing public comment on the draft, the Subcommittee recommended the draft with amendments to the FOIA Council; however, the Subcommittee decided to leave the issue of payment of costs and attorney fees on the table for further discussion at the next FOIA Council meeting.

Staff also reported that the Subcommittee considered the issue of proprietary records and reviewed a draft that had been prepared by staff defining proprietary records and creating a general exclusion from mandatory disclosure for proprietary records. Staff explained that after reviewing the draft and listening to public comment, the Subcommittee rejected the definition of "proprietary" set forth in the staff draft and instead directed staff to create a new draft using and defining the words "confidential information". Staff noted that the Subcommittee asked staff to model the definition on the applicable language in the exclusion set forth in subdivision 11 of Va. Code § 2.2-3705.6.⁴ Staff reported that the Subcommittee also asked staff to include in the new draft language stating that the public body may determine whether the requested exclusion from disclosure is necessary to protect the confidential information of the submitting entity, as well as the apportionment language from the trade secrets draft. Staff reported that they had this new draft available for the Council to review during the current meeting.

Review of Trade Secrets Draft Recommended by the Proprietary Records and Trade Secrets Subcommittee

Staff then presented the newest version of the Trade Secrets draft (Trade Secrets Draft #5)(LD#18100022D), which included the amendments requested by the Proprietary Records and Trade Secrets Subcommittee at its meeting on May 1, 2017⁵. Staff emphasized that Trade Secrets Draft #5 made the following changes to Trade Secrets Draft #4:

1. On line 13, changed the word "chapter" to "subdivision" (thereby avoiding making trade secrets exclusions that are outside of Va. Code § 2.2-3705.6, such as those of VRS and the Virginia College Savings Plan, subject to the provisions of the general trade secrets exclusion created in Draft #4);
2. On line 20, changed the word "shall" to "may" (thereby making the joinder provision optional as opposed to mandatory);
3. On line 22, changed the language "improperly designated as a trade secret" to "improperly withheld pursuant to this subdivision as a trade secret"; and

⁴ Subdivision 11 provides protection for (i) trade secrets of the private entity as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.); (ii) financial information of the private entity, including balance sheets and financial statements, that is not generally available to the public through regulatory disclosure or otherwise; and (iii) other information submitted by the private entity where if such information was made public, the financial interest or bargaining position of the public or private entity would be adversely affected.

⁵ The full text of Trade Secrets Draft #5 is available on the FOIA Council's website at <http://foiacouncil.dls.virginia.gov/>.

4. Added a cross-reference in § 2.2-3713(D) stating that "The court may apportion any [such] award of reasonable costs and attorney fees in accordance with the provisions of subdivision 1 of § 2.2-3705.6."

Staff noted that the Subcommittee recommended the draft with amendments to the full FOIA Council; however, the Subcommittee had decided to leave the issue of payment of costs and attorney fees on the table for further discussion at the next FOIA Council meeting.

Mr. Vucci, referencing lines 18-19 of the draft, which state that "The public body may determine whether the requested exclusion from disclosure is necessary to protect the trade secrets of the submitting entity under [the general trade secrets exclusion].", drew the Council's attention to the fact that the threshold question should simply be whether or not the submitted information qualifies as a trade secret of the submitting entity as defined in the Uniform Trade Secrets Act, and therefore there need not be any further discretion on the part of the public body as to whether the submitted information should receive protection under the general trade secrets exclusion. Mr. Seltzer stated that he agrees and that he wishes to see lines 18-19 deleted from the draft.

Public Comment

The Council then heard public comment on Trade Secrets Draft #5. Phil Abraham with the Vectre Corporation, who represents a number of construction clients, stated that he is comfortable with the bulk of the draft, but that he has some concerns about the provisions relating to apportionment of attorney fees. He stated that the language in the bill relating to apportionment of attorney fees represents a major change and stressed that this is the first instance in which a private entity can be held liable with regards to a public body's decision to withhold records. He drew the Council's attention to the fact that it could very easily be a competitor of the submitting entity that is suing to obtain the submitting entity's trade secrets. He stated that at the last meeting of the Proprietary Records and Trade Secrets Subcommittee a compromise was suggested that would have given the court the authority to require the requestor to pay reasonable costs and attorney fees in the event that the requestor did not prevail in court, thereby making the responsibility for payment of reasonable costs and attorney fees a two-way street; however, he noted that that compromise idea was strongly rejected. As a result, he requested that the Council maintain the status quo with regards to payment of reasonable costs and attorney fees (which would require the Council to remove the language in the draft permitting the court to require the submitting entity to pay the requestor's reasonable costs and attorney fees). He reminded the Council that in the end, the public body is not required to withhold the records and can at any point decide to release the requested records and avoid being sued. Ryan Fierst with the Virginia Chamber of Commerce echoed Mr. Abraham's comments and stated that she wants to see the law on attorney fees remain the same.

Roger Wiley, representing the Virginia Association of Counties (and filling in for Phyllis Errico), commented that he wanted to explain the other side's (the public body's) perspective in wanting the submitting entity to be held responsible for paying the requester's reasonable costs and attorney fees. He stated that public bodies often receive boilerplate form contracts from entities with which they are contracting, and that those contracts frequently state that everything

that the entity submits to the public body is confidential trade secrets and that if the public body reveals any of that information the contract will be voided. Mr. Wiley stated that often it is a competitor of the submitting entity that is requesting the information. He stated that the public body must make a decision as to whether it wants to defend the submitting entity's trade secrets and run the risk of paying the requestor's attorney fees if the requester prevails in court, or whether it wants to release the information and therefore allow the submitting entity to void the contract. Mr. Wiley suggested that the court should be able to look at the equities and decide who (whether the public body or the submitting entity) should be responsible for paying the requestor's attorney fees. He stated that to require the public body to bear all of the risk in that situation does not make sense, and he would like for there to be some way for the responsibility for the decisions to be shared by the public body and the submitting entity.

Rob Bohannon, representing the Northern Virginia Technology Council, echoed Mr. Abraham's comments and pointed out that the earmarking provisions in lines 12-17 of the draft do not permit the submitting entity to make a blanket statement that all of the information that they have submitted to the public body is trade secrets and should therefore be withheld from public disclosure. The earmarking provisions require the submitting entity to identify with specificity the trade secret information for which protection is sought.

The Council then proceeded to discuss the draft. Mr. Seltzer stated that on the issue of attorney fees, his inclination is to ensure that the submitting entity that seeks the exclusion bear the cost of defending the exclusion. He requested that the Council add language requiring the submitting entity to submit to service in a court of competent jurisdiction in the event of a FOIA challenge. He stressed that it is easy for you (the submitting entity) to say that everything is a trade secret until you (the submitting entity) know that you will have to defend it in court. He stated that with that amendment, he supports the draft. In response, Chairman LeMunyon asked if submitting entities could be deterred from bidding for government contracts if there is a possibility that they may be faced with having to pay a requestor's attorney fees in the event that a requester challenges a denial of a FOIA request for the submitting entity's trade secret information in court. Mr. Seltzer answered that this may indeed be a deterrent, but it is a hazard of doing business.

Ms. Dooley stated that she supports the proposal to strike lines 18-19 of the draft. She stated that in her experience, public bodies are not good at figuring out what is a trade secret and that they normally are not experts in proprietary information. Referring to line 21 of the draft, she made the observation that the draft gives the *requester* the authority to name the submitting entity or its successor in interest as an additional defendant in the action, however the draft does not give the *public body* the same authority to name the submitting entity or its successor in interest as an additional defendant. She stressed that if the public body is sued for the submitting entity's trade secret information and the public body has to defend the withholding of the information, the public body has no idea how to defend the information. She stated that it seems as though the submitting entity is a necessary party, as it is the submitting entity's rights that the public body is seeking to protect. Moving on to the issue of attorney fees, Ms. Dooley stated that she feels that requiring the public body to pay the requester's attorney fees in this circumstance would be unjust. She stated that she does, however, like the idea of giving the court the authority

to apportion any award of attorney fees to the requester between the public body and the submitting entity as the court sees appropriate.

After further discussion, the Council agreed to move lines 20-26 of the draft to Va. Code § 2.2-3713, the remedies section of FOIA. Ms. Dooley stressed that the provisions in those lines are really something special about the enforcement of the general trade secrets exclusion, and that the Council should keep the remedies with the remedies section of FOIA, rather than in the exclusion.

Lastly, staff drew the Council's attention to lines 23-24, which state "If, as a result of the action, the court requires the public body to produce such information because it was *improperly withheld* pursuant to this subdivision as a trade secret ..." (emphasis added). Staff noted that the threshold question that the judge is deciding is whether the information was improperly withheld because it is not a trade secret as defined in the Uniform Trade Secrets Act, not whether the information was improperly withheld under the general trade secrets exclusion. Staff requested to make this technical amendment, and the Council agreed.

Chairman LeMunyon directed staff to create a new draft incorporating the amendments agreed upon by the Council and to have it available for presentation and discussion at the next FOIA Council meeting.

Review of Proprietary Records Draft

Staff explained that at the last meeting of the Proprietary Records and Trade Secrets Subcommittee, the Subcommittee directed staff to create a definition, but to define the terms "confidential information" instead of "proprietary". Staff then briefly went through the draft line-by-line with the Council, though in the interests of time and efficiency, staff recommended that the Council send the draft back to the Subcommittee for further refinement. Staff explained that lines 9-13 of the draft define "confidential information" to mean financial information, including balance sheets and financial statements, or other information of a submitting entity that is not (i) generally available to the public through regulatory disclosure or otherwise or (ii) trade secrets as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), where if such information was made public, the financial interest or competitive position of the submitting entity would be adversely affected. Staff then explained that lines 68-74 create an exclusion from the mandatory disclosure provisions of FOIA for "confidential information" and provide an earmarking process for invoking the exclusion. Lastly, staff explained that lines 75-81 contain the same permissive joinder and apportionment of attorney fees provisions as were included in Trade Secrets Draft #5. Staff reminded the Council that there is a two-part process involved in attempting to resolve the issue of proprietary records - the first step being to decide upon a definition (either "proprietary", "confidential", or something else) and the second step being to conform each of the individual exclusions in Va. Code § 2.2-3705.6 to the terminology and definition adopted by the Subcommittee. As such, staff explained that this draft focuses solely on the definitional issue and does not attempt to strike or amend any of the existing exclusions in Va. Code § 2.2-3705.6.

Public Comment

The Council then heard public comment on the definition created in the draft. Megan Rhyne with the Virginia Coalition for Open Government expressed concern with the phrase "financial information, including", stating that she feels as though it implies that more financial information than simply that information enumerated in the definition could be withheld. She requested that information related to the financing of projects remain open, as sources of money for public projects would not be something that we would want to hide from the public. Such information could reveal relationships with banks, conflicts with members of boards, etc. She requested that the Council tighten up the definition to avoid making it overly broad.

Kay Heidbreder, representing Virginia Tech, Karah Gunther, representing Virginia Commonwealth University and the Virginia Commonwealth University Health System Authority, and Kara Hart, representing the Virginia Economic Development Partnership Authority, each asked for more time to review the draft and look for areas of concern.

Chairman LeMunyon then asked the Council for any thoughts they may have on the draft. Mr. Seltzer commented that he looked at the specific exclusions in Va. Code § 2.2-3705.6 and, in his opinion, the words "confidential" and "proprietary" do not really have any meaning in the context of the specific exclusions. He stated that in most cases the specific exclusions either cross-references another statute or they limit their own scope through additional words contained in the exclusion. As such, because the words "confidential" and "proprietary" do not add anything to the statute and simply serve to confuse, Mr. Seltzer recommended simply deleting them from the statute.

Chairman LeMunyon recommended sending the draft back to the Subcommittee for further consideration. He directed staff to poll for dates on which to schedule the next Subcommittee meeting.

Other Business

The Council then revisited Del. Massie's HB 1971⁶, which it had previously considered at its March 7, 2017 meeting. Staff explained that the bill does two things. First, it creates a records exclusion for information reflecting the substance of meetings in which individual child abuse or neglect cases or sex offenses involving a child are discussed by multidisciplinary child abuse teams (MDTs) (established pursuant to § 15.2-1627.5). Second, it creates two meetings exclusions for discussion or consideration of: (i) individual sexual assault cases by a sexual assault response team (SARTs) (established pursuant to § 15.2-1627.4) [A records exclusion previously existed for SARTs, so the meetings exclusion was added by the bill] and (ii) individual child abuse or neglect cases or sex offenses involving a child discussed by a multidisciplinary child abuse team (established pursuant to § 15.2-1627.5).

⁶ **HB 1971** Massie - Bill Summary: Excludes the records of a multidisciplinary team as they relate to individual child abuse or neglect cases or sex offenses involving a child from mandatory disclosure under the Virginia Freedom of Information Act. The bill also provides an exemption from open meeting requirements to such teams and sexual assault response teams.

Staff explained that Del. Massie's bill passed the General Assembly this year, however a question arose during committee proceedings as to whether SARTs and MDTs are more akin to Family Assessment and Planning Teams (FAPTs), which are exempt from all provisions of FOIA. Staff stated that as they currently stand, even though SARTs and MDTs now have meetings exclusions that cover the vast majority of what is discussed during their meetings, they still must comply with all of FOIA's meetings requirements, including giving notice of their meetings, and first convening an open meeting and then immediately certifying and entering into closed session. Staff emphasized that therefore, the question before the Council is whether SARTs and MDTs should be categorized like FAPTs for the purposes of FOIA and exempted from all provisions of FOIA.

Staff reminded the Council that at its March 7, 2017 meeting Mike Doucette, the Commonwealth's Attorney for the City of Lynchburg, spoke with the Council about this issue. Staff introduced Nancy Oglesby, the Deputy Commonwealth's Attorney for Fluvanna County, who was present at the current meeting on behalf of Del. Massie to speak with the Council about the bill. Staff explained that Ms. Oglesby is an expert on these issues and can provide the Council with terrific insight into the issues.

Ms. Oglesby told the Council that she has been a prosecutor in Virginia for 20 years. She stated that SARTs and MDTs are similar, but different in subject matter. She explained that both types of meetings are convened by the local Commonwealth's Attorney and that during both types of meetings most of the meeting time is spent discussing specific cases. She stated that MDTs focus on child abuse cases and that SARTs focus on sexual assault cases. She stated that many of the players on both types of teams are the same. She stated that MDT meetings are oftentimes driven by child advocacy centers and that one of the goals of the meeting is to ensure that the players are not duplicating the services provided to the child victim (i.e. not conducting multiple interviews, etc.). She stated that the cases discussed by MDTs often originate from Child Protective Services. She further explained that one of the goals of SART meetings is to ensure that victims are receiving comprehensive services on a systemic level. She stated that the cases that are discussed during SART meetings generally originate from criminal investigations and hospitals.

Mr. Seltzer commented that in his opinion, anything referring to a specific case, such as records or discussion concerning a specific complaint, investigation, prosecution, victim, etc., should clearly be excluded from the mandatory disclosure provisions of FOIA, however he stated that he was curious about any systemic policy questions that may be addressed in the meetings. He stated that the public might be interested in those discussions. Ms. Oglesby responded that there is a difference in the nature of the two types of meetings. She stated that during MDT meetings systemic policy issues are never discussed and that such meetings are entirely case-driven. She stated that during SART meetings, however, there are two levels of discussion, one systemic and one case-driven. Ms. Oglesby further explained that the systemic discussion is driven entirely by discussion of individual cases.

Staff summarized that the issue is whether SARTs and MDTs should be subject to FOIA at all, given that most of what they discuss is already excluded from FOIA, however staff noted that there is a clear concern that perhaps the public should be privy to any systemic policy

discussions that occur during the meetings. Ms. Oglesby stated that the concern of Commonwealth's Attorneys is that they must give notice of the meeting and publicize that it is going to occur, but once the meeting begins they then immediately go into closed session, shutting out the public.

Ms. Dooley expressed a concern that the FOIA may unfairly limit the discussion of the team due to the requirement that at the conclusion of the closed meeting the public body holding the meeting must immediately reconvene in an open meeting and certify that it only discussed matters exempted from the open meeting requirements. She stressed that it is most likely very hard for the members of the team to stay on topic and to discuss individual cases without diverging into discussing changes to policy. She stated that in her opinion it might be better to exempt these teams from FOIA altogether.

Ms. Porto commented that she understands and agrees with providing exemptions for discussions of individual cases, but she stated that she is concerned about discussions regarding systemic policy and procedure, and that she thinks the public should be allowed to hear those discussions.

Ms. Oglesby further clarified that any decision to change policy or procedure would not be made at the SART meeting. She explained that each agency that is involved in the meeting is independent and that the team does not have the power or authority to make a *joint* change for any of the agencies. She reiterated that any discussion of systemic policy issues that takes place is very specific to the intricacies of the individual cases being discussed at the meeting. She stated that each of the agencies would have to later make the decision on its own whether to implement any of the suggestions for changes to policy or procedure that were discussed at the meeting.

Mr. Coleburn commented that he thinks it is always good policy to err on the side of requiring notice of meetings, even if almost the entirety of the meeting will take place in closed session.

Staff suggested drafting a compromise bill that would exempt MDTs and SARTs from FOIA, but would still require SARTs to release any information related to policy discussions. The Council asked staff to prepare such a draft and have it available for consideration at the next FOIA Council meeting.

Staff then briefly discussed with the Council the implementation of HB 2143, Chairman LeMunyon's bill that passed the 2017 Session of the General Assembly that provides, among other things, that training through an online course offered by the Council shall satisfy the annual training requirement for FOIA officers. Staff reminded the Council that a free online training program for FOIA Officers has been made available through the Commonwealth of Virginia Learning Center website maintained by the Department of Human Resource Management, however, staff shared with the Council that the process of making the online training operational has been problematic and frustrating for both users and staff.

Staff next asked the Council for guidance in issuing formal advisory opinions in circumstances in which the Council has been contacted by two parties asking for an opinion on the same issue, but wherein each party has provided different, conflicting facts. The Council advised staff that since the Council is not a fact-finder and has no subpoena power or other investigative tools, in such situations staff should issue one advisory opinion that outlines the law on point and then gives two different conclusions based upon the two different sets of facts that were presented.

Finally, in anticipation of her upcoming retirement, the Council commended and thanked Maria J. K. Everett, the Council's Executive Director since the Council's inception in 2000, on her dedicated service to the Council.