

Virginia Freedom of Information Advisory Council

June 9, 2008

Richmond, Virginia

The Freedom of Information Advisory Council (the Council) held its second meeting of 2008.¹ The purpose of the meeting was to acknowledge the service of outgoing Council members John B. Edwards and W. Wat Hopkins, whose membership terms expire July 1, 2008.

Acknowledging the service of Council Members Edwards and Hopkins

Senator Houck stated that both Mr. Edwards and Mr. Hopkins are original members of the Council, having served since the Council's inception in 2000. Because both have served two successive four-year terms, they are ineligible for reappointment.² After noting these facts, Senator Houck thanked Mr. Edwards for his years of diligent service and presented a parting gift on behalf of the Council. Further accolades and thanks were expressed by Council members Delegate Griffith, Wiley, Fifer, and Axselle, as well as by Peter Easter (Virginia Association of Broadcasters), Phyllis Errico (Virginia Association of Counties), Ginger Stanley (Virginia Press Association), and Megan Rhyne (Virginia Coalition for Open Government). The speakers noted Mr. Edwards' thoughtful advocacy, his ability to understand multiple sides of an issue, that he always gives consideration to opposing viewpoints, and that his quality, manner, and style of service represents Virginia values and sets a standard that serves as an example to others. Mr. Edwards expressed his thanks, stating that it had been a pleasure and honor to serve, all that way back to a 1989 legislative study committee examining FOIA, on which he served with Mr. Axselle, and that he will miss serving on the Council. Senator Houck also expressed thanks for the diligent service of Mr. Hopkins, and stated that the Council had a parting gift for him as well, but Mr. Hopkins was not in attendance today.

Public Comment

At the March 31, 2008, meeting of the Council, James Lawrence, a citizen of Fredericksburg, indicated that he was prevented from attending a public meeting of the Fredericksburg Economic Development Authority in February by being prohibited from entering the public building where the meeting was held. Mr. Lawrence appeared before the Council again today to present an update on this matter. He indicated that he had filed suit in general district court against the City Manager for the City of Fredericksburg, but the judge dismissed the petition for

¹ All Council members were present except Wat Hopkins.

² As limited by subsection C of § 30-178 of the Code of Virginia ("No nonlegislative citizen member shall be eligible to serve for more than two successive four-year terms.").

lack of subject matter jurisdiction. Delegate Griffith asked staff whether FOIA petitions were included in the jurisdiction of general district courts in Title 16.1 of the Code of Virginia; staff confirmed that they were.³ Delegate Griffith stated that while understanding there could be special circumstances involved, he did not understand the dismissal for lack of subject matter jurisdiction (given that jurisdiction is explicitly granted in the Code). Senator Houck noted that the Council does not represent individuals in legal matters, but staff does answer questions and provides information about FOIA as part of the Council's duty to educate. Senator Houck thanked Mr. Lawrence for keeping the Council informed regarding this situation. Mr. Lawrence indicated that he intends to appeal to the circuit court, and will keep the Council informed of what happens in the case.

Next, Ginger Stanley of the Virginia Press Association presented articles that appeared in Virginia newspapers during Sunshine Week, which was March 16-22, 2008. Sunshine Week is an annual national effort to educate and inform the public about the importance of open government and freedom of information laws. Ms. Stanley's presentation included representative articles from the Richmond Times-Dispatch, the Roanoke Times, the Manassas Journal-Messenger, the Smithfield Times, the Potomac News, and the Free Lance-Star. The articles covered topics such as general overviews of the procedures involved in a records request, individual stories about using FOIA, the redaction of public records, access to Social Security Numbers, and the balance between access rights and privacy rights. Ms. Stanley expressed that there was excellent participation in Sunshine Week by the Virginia press, and that the efforts were again a success.

Other Business

John Edwards presented a revised version of a statement he presented for the Council's consideration last year concerning the conduct of electronic meetings promoting face-to-face meetings as the preferred standard.⁴ Mr. Edwards moved that the statement be adopted as the Council's position regarding electronic meetings; Delegate Griffith seconded the motion. Mr. Malveaux indicated that he largely agreed with the statement, but questioned whether it was the proper role of the Council to set forth such a principle, or whether that should be left to the General Assembly. Mr. Axselle questioned some of the particular language used, indicating he felt it might be too strongly worded. Mr. Fifer suggested the Council might want to make the statement part of its annual report to the General Assembly. Delegate Griffith indicated that he understood concerns regarding the statement, but that this version appears balanced and leaves room for exceptions. Delegate Griffith also observed that the statement cannot bind the legislature or

³ § 16.1-77 provides that general district courts shall have civil "[j]urisdiction to try and decide any cases pursuant to § 2.2-3713 of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.), for writs of mandamus or for injunctions."

⁴ The original statement was presented at the September 10, 2007, meeting of the Council.

future decisions of the Council. He also stated that he agreed that face-to-face meetings are better because even the best technology cannot fully convey body language and is unequal to participation in person; while such technology might exist in the future, it is not available now. Mr. Wiley stated that he set forth his opinion last year, but wanted to reiterate that FOIA covers a wide range of public bodies, many of which operate "below the radar" of public interest (i.e., members of the public do not attend the meetings of such bodies). For such bodies, it is important to make participation easier, given gas prices and existing recruiting difficulties; Mr. Wiley stated he would object to this statement as it does not provide enough leeway for all public bodies covered by FOIA. Mr. Miller indicated he would vote against adoption of the statement because the situations it addresses need to be reexamined every time they arise, and he felt that the statement would remove future flexibility. Mr. Axselle then moved to strike the first sentence of the second paragraph, which read as follows: "The dynamics of having policy makers, staff and the general public in the same room cannot be replaced by audio devices, and are limited even where full audio/visual connections are possible." The Council approved the motion to strike by vote of seven in favor, three against. Having amended the statement, the Council then voted to adopt it, as amended, by vote of six in favor, five against.⁵ The statement of principle, as amended and adopted by the Council, reads as follows:

The Freedom of Information Advisory Council believes that technology can expand public monitoring of and participation in the affairs of government. It also believes representative government is best served when public officials meet face-to-face in regularly scheduled public meetings.

One of the primary responsibilities of accepting public office is the regular participation in face-to-face public meetings. The Council believes such meetings should continue to be the rule rather than the exception.

As technology advances, the use of electronic meetings will accelerate. As that occurs, the FOIA Council will continue to balance the preference for face-to-face meetings against the emerging technology in light of the clear policy statement of FOIA to afford citizens every opportunity to witness the operation of government, "since at all times the public is to be the beneficiary of any action taken at any level of government."

Future Meetings of the Council

The next meeting of the Council is scheduled for Tuesday, August 5, 2008 at

⁵ Council members Delegate Griffith, Edwards, Axselle, Fifer, Treadway, and Whitehurst voted in favor of adopting the statement as amended. Council members Senator Houck, Miller, Wiley, Malveaux, and Spencer voted against it.

1:00PM in House Room D of the General Assembly Building, 910 Capitol Street, Richmond, Virginia 23219. Also, as a reminder, Council members need to go to the Capitol Police Gatehouse in Capitol Square to get a pass if they wish to park in the gravel lot at the corner of 9th and Broad Streets.

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