



# VIRGINIA FREEDOM OF INFORMATION ADVISORY COUNCIL

## COMMONWEALTH OF VIRGINIA

Senator Richard H. Stuart, Chair  
Delegate Sal R. Iaquinto, Vice-Chair

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## **FOIA Council Meeting Summary**

**July 2, 2012**

**1:30 PM**

**House Room C**

**General Assembly Building**

**Richmond, Virginia**

The Virginia Freedom of Information Advisory Council (the Council) held its second meeting of 2012.<sup>1</sup> This meeting was held to elect a chair and vice-chair and to hear subcommittee reports.

### **Election of Chair and Vice-Chair**

As the first order of business, the Council elected Senator Stuart as Chair (all members present voted unanimously in favor, except Senator Stuart abstained) and Delegate Iaquinto as Vice-Chair (by unanimous vote).

### **Subcommittee Reports**

#### **Electronic Meetings Subcommittee**

Mr. Fifer, Chair of the Electronic Meetings Subcommittee, reported that the Subcommittee held its first meeting on Thursday, June 28, 2012 to consider HB 1105 (Greason) and HB 1149 (Dudenhefer).<sup>2</sup> He observed that the Subcommittee met

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<sup>1</sup> FOIA Council members Sen. Stuart, Del. Iaquinto, Ms. Hamlett, and Msrs. Fifer, Jones, Landon, Schliessmann, Selph and Tavenner were present; Ms. Dooley, Dr. Treadway, and Mr. Whitehurst were absent.

<sup>2</sup> **HB 1105 (Greason) Freedom of Information Act; electronic communication meetings.** Revises the rules for which meetings of state public bodies may be conducted by audio or video means. The bill provides that (i) at least one member of the public body must be physically assembled at the principal meeting location, (ii) the quorum of the public body is determined by members participating in person or by electronic means in the meeting, (iii) a member of the public shall pay for the documented marginal cost that a public body may incur in expanding public participation to the meeting, and (iv) the number of meetings a public body may conduct through electronic communications means is limited to 50 percent of its regular meetings in any calendar year. The bill contains technical amendments.

**HB 1149 (Dudenhefer) Freedom of Information Act; electronic communication meetings by local and regional public bodies.** Expands the authority for the conduct of electronic communication meetings to all

periodically to review questions regarding electronic meetings, and that there were two schools of thought, one favoring the status quo, the other favoring expansion of electronic meetings. In response to an inquiry from Delegate Iaquinto, Mr. Fifer elaborated that the first view reflects a preference for face-to-face meetings, while the second reflects practical considerations where technology may allow participation when it is difficult to get together physically. The Subcommittee asked staff to query stakeholders who used electronic meetings to identify problems based on their experience. The Subcommittee will meet again to continue its discussions. Mr. Landon noted that the Joint Committee on Technology and Science (JCOTS) also had a subcommittee on electronic meetings, but that the JCOTS subcommittee had not yet met.

### **Criminal Investigative Records Subcommittee**

Mr. Fifer, Chair of the Criminal Investigative Records Subcommittee, reported that the Subcommittee also held its first meeting on Thursday, June 28, 2012 to continue the work it began in 2010 and 2011 considering access to criminal investigative files and other law enforcement records. Mr. Fifer identified four major issues considered by the Subcommittee, in descending order of the likelihood of achieving a consensus: (1) rewriting existing § 2.2-3706 for clarity without substantive changes; (2) amending existing law to address 911 records explicitly; (3) establishing a clear time limit to produce criminal incident information, as there as conflicting interpretations of the current law; and (4) addressing whether criminal case files should ever be opened, and if so, under what circumstances and to what extent. He further reported that the Subcommittee had asked the interested stakeholders to poll their constituents for practical examples and suggestions regarding these issues, to be considered at the next meeting of the Subcommittee. Mr. Fifer also encouraged other Council members to consider participating in the work of the Electronic Meetings and Criminal Investigative Records Subcommittees, as his second term on the Council had expired July 1, 2012, and he was therefore term limited.<sup>3</sup> Mr. Selph thanked Mr. Fifer for his service.

### **Parole Board Subcommittee**

Mr. Landon, Chair of the Parole Board Subcommittee, reported that the Subcommittee held its first meeting this morning, July 2, 2012 to consider HB 397 (Hope).<sup>4</sup> The Subcommittee heard from representatives from the Parole Board, the Virginia Coalition for Open Government (VCOG), and the Virginia Press

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public bodies. Currently, local public bodies are prohibited from conducting public meetings in this manner, except when the Governor declares a state of emergency. The bill contains technical amendments.

<sup>3</sup> Mr. Fifer has served two successive four-year terms on the Council, and is therefore term limited pursuant to § 30-178. He remains a de facto member of the Council until the Governor appoints his successor.

<sup>4</sup>**HB 397 (Hope) Virginia Parole Board; exceptions to the Freedom of Information Act.** Requires guidance documents of the Board to be available as public records under the Freedom of Information Act. The bill has a delayed effective date to give the Freedom of Information Advisory Council an opportunity to review the legislation and report on its implementation.

Association (VPA), but the patron and advocates for HB 397 were not present. The Subcommittee decided it would be best if the patron, representatives of the Parole Board, and interested parties would meet together to discuss the goals and intent of the bill and then report back to the Subcommittee. Mr. Landon reported that based on today's meeting, it appears that there already is access to the Parole Board's policies and procedures, therefore the objectives of HB 397 are unclear. Additionally, the exemption for parole boards has existed since FOIA was first enacted in 1968, and it was not clear to the Subcommittee why change is needed now.

### **Other Business**

Staff noted that the 2012 version of FOIA which went into effect yesterday, July 1, 2012, has been posted on the FOIA Council website. Megan Rhyne stated that the new FOIA is also available on the VCOG website.

### **Public Comment**

Mark Flynn, of the Virginia Municipal League (VML), stated that he had spoken with Delegate Dudenhefer regarding HB 1149 and as a result, VML was working on a survey considering the electronic meetings provisions for regional public bodies. He indicated that VML did not support HB 1149 as written, but was considering an expansion for local public bodies similar to the existing provision that allows members of regional public bodies to participate electronically if they are 60 or more miles away from the central meeting location.<sup>5</sup> As an example, Mr. Flynn pointed out that a member of a local public body on a business trip 100 miles or more away from a meeting could not participate electronically under the current law, even if the means to do so were available. In response to inquiry from Senator Stuart, Mr. Flynn indicated he had not spoken with members of the Stafford Board of Supervisors, on whose behalf Delegate Dudenhefer had introduced HB 1149, but that he would do so.

Patrick Cushing of the Williams Mullen law firm stated that he was working with Stafford County and Delegate Dudenhefer, and that he would ensure someone representing Stafford County would come to the next Electronic Meetings Subcommittee meeting. He noted that the bill seeks to put local governments on parity with the state regarding the conduct of electronic meetings, and stated that he would work with VML and the Virginia Association of Counties (VACo) on it.

Ms. Hamlett observed that from her experience representing state agencies, there was a problem in the current electronic meetings law in that if an electronic meeting was

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<sup>5</sup> Current subdivision A 3 of § 2.2-3708.1 provides as follows: *If, on the day of a meeting, a member of a regional public body notifies the chair of the public body that such member's principal residence is more than 60 miles from the meeting location identified in the required notice for such meeting and the public body holding the meeting (a) approves such member's participation by a majority vote of the members present and (b) records in its minutes the remote location from which the member participated.*

scheduled, but a member did not call in from a remote location, it stops the meeting, based on advice from the Office of the Attorney General. Mr. Fifer noted that the issue had been raised at the Electronic Meetings Subcommittee meeting; he suggested asking staff for a formal opinion on the matter, as there may be some misunderstanding of the requirements of current law.

As a reminder, the next two meetings of the Council will be held on Wednesday, September 5, 2012 at 1:30 p.m. in House Room D of the General Assembly Building and Monday, December 17, 2012 at 1:30 p.m. in House Room C of the General Assembly Building.

There being no further business, the meeting was adjourned.

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