

## **Virginia Freedom of Information Advisory Council**

**August 5, 2008**

**1:00 PM**

**House Room D**

**General Assembly Building**

**Richmond, Virginia**

The Freedom of Information Advisory Council (the Council) held its third meeting of 2008.<sup>1</sup> The purpose of the meeting was to welcome two new Council members, Forrest M. "Frosty" Landon and John G. Selph; to elect a Chair and Vice-Chair; to receive reports from subcommittees; and to bring two other issues before the Council for consideration: (1) whether the Council should examine the database index requirements set forth in subsection J of § 2.2-3704, and (2) whether meeting minutes must be made available in written form.

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

After welcoming the new Council members, Senator Houck asked staff to present the statutory requirements regarding the positions of Chair and Vice-Chair of the Council. Subsection D of § 30-178 states that "[t]he members of the Council shall elect from among their membership a chairman and a vice-chairman for two-year terms. The chairman and vice-chairman may not succeed themselves to the same position." The Council then unanimously voted to elect Delegate Griffith as Chair and Senator Houck as Vice-Chair. For purposes of today's meeting, Senator Houck continued to preside as Acting Chair.

### ***Subcommittee Reports - Personal Identifying Information Subcommittee***

Staff reported that the Personal Identifying Information Subcommittee (PII Subcommittee) had met earlier this morning to continue its work regarding social security numbers (SSNs) and other personal identifying information. The meeting began as a joint meeting with the Joint Commission on Technology and Science (JCOTS) Subcommittee Studying SSNs (together with the PII Subcommittee, the Joint Subcommittee). The Joint Subcommittee received a presentation from Richard Varn, CIO of the City of San Antonio, Texas, and Executive Director of the Coalition for Sensible Public Records Access. Mr. Varn focused on the value of strengthened authentication procedures and heightened penalties for misuse as better approaches to prevent identity theft rather than redaction of SSNs or limitations on the use of SSNs. He emphasized that SSNs are already widely

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<sup>1</sup> All Council members were present except Dr. Treadway and Mr. Whitehurst. Due to a temporary medical condition that prevented him from physically attending today's meeting, Mr. Fifer participated from Alexandria, Virginia via telephone as allowed pursuant to subdivision A 2 of § 2.2-3708.1.

available in existing records, making redaction impractical and expensive, and that the majority of current identity theft crimes do not use SSNs at all. The Joint Subcommittee also heard an update on the survey regarding the collection of SSNs by state agencies, cities, counties, and certain towns, as mandated by SB 132/HB 634 (Chapters 843 and 840 of the 2008 Acts of Assembly). The survey forms and instructions have been sent out to the affected parties. It was reported that the responses so far have indicated that the survey process has already revealed valuable information to the affected public bodies about their own practices in regard to the collection of SSNs, including instances where SSNs may not need to be collected. The Joint Subcommittee also considered four bills<sup>2</sup> concerning the protection of SSNs that were referred by the General Assembly during its 2008 Regular Session. The Joint Subcommittee deferred any action regarding these bills, indicating that it wants to hear first about two other matters: (1) other states' experiences in regard to laws allowing access and use of partial SSNs (four or five digits), and (2) a report from the Department of Motor Vehicles regarding the federal Real ID requirements and their implementation in Virginia. The PII Subcommittee separately (without the JCOTS Subcommittee) considered SB 529 (Houck), concerning access to concealed carry handgun permits. The PII Subcommittee will further study this matter before taking action.

### ***Subcommittee Reports - Electronic Meetings Subcommittee***

Staff reported that the Electronic Meetings Subcommittee had met to discuss changes made by the 2008 Session of the General Assembly that would allow members of the State Air Pollution Control Board (Air Board) and the State Water Control Water Board (Water Board) to meet via teleconference under certain circumstances during the process of issuing permits (HB 1332 (Landes)/SB 423 (Puckett)). Certain of the provisions in these bills conflict with the electronic meetings requirements of FOIA. At its last meeting the Subcommittee agreed to a partial draft that addressed some of the issues raised, but did not want to bring it before the full Council until the draft is complete. The Subcommittee will meet immediately after adjournment of the FOIA Council meeting today. The Council also agreed that Senator Houck will serve as Acting Chair of the Subcommittee for today's meeting, and Craig Fifer will be Chair for future meetings of the Subcommittee.<sup>3</sup>

### ***Other Business***

Staff reported receiving inquiries from both citizens and state agencies regarding the requirements of subsection J of § 2.2-3704, which requires public bodies to

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<sup>2</sup> HB 1087, HB 1088, HB 1096, and HB 1102, all introduced by Delegate Sickles.

<sup>3</sup> John Edwards was the Chair of this Subcommittee, but his membership term expired July 1, 2008.

maintain an index of computer databases.<sup>4</sup> It appears there may be confusion about what this subsection requires and practical difficulties in meeting those requirements. This provision was intended to address issues that arose when agencies first began switching from paper records to electronic databases, and was intended to provide a means for citizens to see what type of records were kept by each agency. Tom Falat, on behalf of the Virginia Information Technologies Agency (VITA), indicated that VITA was willing to work with the Library of Virginia and the FOIA Council on this issue. Additionally, he stated that VITA's audit requirements include relevant definitions and reporting requirements for listing databases for security purposes. While VITA's security interests are likely different from the FOIA interest in providing citizen access to public records, it may be helpful to see if and how these different database provisions might overlap and be made consistent with each other. In order to further study this matter, the Council established a subcommittee consisting of members Landon (Chair), Axselle, and Spencer.<sup>5</sup>

Staff also raised the issue of public bodies using new technologies such as BoardDocs to record their meetings, and consequently not producing written minutes.<sup>6</sup> The BoardDocs technology appears to allow the publication online of navigable audio recordings of meetings with attached document links. FOIA itself speaks to the minimum contents of meeting minutes, but is silent regarding whether minutes must be written or in any particular format. Several Council members expressed the view that written minutes are the traditional and best form for historical and archival purposes, and that other technological formats are often rendered obsolete by newer formats. As examples, reel-to-reel audio tapes and 8-

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<sup>4</sup> In full, subsection J of § 2.2-3704 reads as follows: "Every public body of state government shall compile, and annually update, an index of computer databases that contains at a minimum those databases created by them on or after July 1, 1997. 'Computer database' means a structured collection of data or records residing in a computer. Such index shall be a public record and shall include, at a minimum, the following information with respect to each database listed therein: a list of data fields, a description of the format or record layout, the date last updated, a list of any data fields to which public access is restricted, a description of each format in which the database can be copied or reproduced using the public body's computer facilities, and a schedule of fees for the production of copies in each available form. The form, context, language, and guidelines for the indices and the databases to be indexed shall be developed by the Virginia Information Technologies Agency in consultation with the Librarian of Virginia and the State Archivist. The public body shall not be required to disclose its software security, including passwords."

<sup>5</sup> Because of the Library's statutory charge to develop guidelines for these indices jointly with VITA, Dr. Treadway will also be invited to join this subcommittee.

<sup>6</sup> More information about the BoardDocs technology is available at <http://www.boarddocs.com/> (last visited August 8, 2008). The information on the website states that "BoardDocs has been developed for school boards, local governments, private and public boards to help alleviate the enormous task of assembling, printing, distributing and revising agenda items and policies. With BoardDocs you not only have the ability to process agenda items, supporting documents, policies and procedures, but you also determine who has access to each document - such as board members and staff, or the general public. Plus, you can make last minute revisions, and redistribute your materials – in mere minutes."

track cassettes were formerly used to make audio recordings of meetings, but few retain the devices needed to play these recordings, even if the recordings themselves still exist. By contrast, written minute books are still as easily used as when they were first written, since no additional technology is needed to use them. Council members also expressed that having a summary and the ability to quickly navigate through minutes are helpful tools to improve citizen access by obviating the need to listen to an entire recording in order to find a particular topic of interest. Council members also observed that there is wide variety in the way minutes are kept by different public bodies: some use audio records merely to check the accuracy of a written summary, then discard the audio recordings; some keep the audio recordings indefinitely; some appear to use audio records without written minutes; some written minutes are nearly verbatim transcripts, while others are very brief summaries. The Council also had questions about the practical use of technologies such as BoardDocs, and suggested that staff arrange a presentation from a public body that has actual experience with BoardDocs. To further study these issues, the Council established a subcommittee consisting of members Wiley (Chair), Malveaux, Selph, and Miller.<sup>7</sup>

### ***Public Comment***

The Council invited further discussion and public comment; there was none.

### ***Future Meetings of the Council***

The next meeting of the Council is scheduled for Monday, October 6, 2008 at 1:00PM in House Room D of the General Assembly Building, 910 Capitol Street, Richmond, Virginia 23219.

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

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<sup>7</sup> Because of the Library of Virginia also administers the Virginia Public Records Act and its record retention schedules, Dr. Treadway will also be invited to join this subcommittee.