



VIRGINIA FREEDOM OF INFORMATION ADVISORY COUNCIL

COMMONWEALTH OF VIRGINIA

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FOIA Council Meeting Summary

September 5, 2012

1:30 PM

House Room D

General Assembly Building

Richmond, Virginia

The Virginia Freedom of Information Advisory Council (the Council) held its third meeting of 2012.¹ This meeting was held to welcome a new member to the Council, to hear subcommittee reports, and to hold the annual legislative preview.

Senator Stuart began the meeting by welcoming Christopher Ashby, Esq., as the newest member of the Council. Mr. Ashby replaces Craig Fifer, who has served two full four-year terms on the Council and is therefore term-limited. Senator Stuart thanked Mr. Fifer for his service and without objection, the Council agreed to prepare a resolution to that effect. As Mr. Fifer was present, Senator Stuart invited him to speak. Mr. Fifer welcomed Mr. Ashby to the Council and thanked the Council, access advocates, and staff for the opportunity to serve. He gave special thanks to Frosty Landon, Ginger Stanley of the Virginia Press Association, and Maria Everett, Executive Director of the Council.

Subcommittee Reports

Electronic Meetings Subcommittee

Ms. Dooley, Chair of the Electronic Meetings Subcommittee, reported that the Subcommittee had met three times to consider HB 1105 (Greason) and HB 1149 (Dudenhefer)² and planned to meet again in October.³ The Subcommittee had no

¹ FOIA Council members Sen. Stuart, Ashby, Dooley, Hamlet, Jones, Landon, Payne (sitting by designation of the Attorney General in place of Mr. Schliessmann), Selph, Treadway, and Whitehurst were present; Del. Iaquinto and Mr. Tavenner were absent.

² **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

recommendation at this time, but had asked staff to prepare a draft for consideration at its next meeting.

Criminal Investigative Records Subcommittee

Mr. Selph, Chair of the Criminal Investigative Records Subcommittee, reported that the Subcommittee had met twice and planned to meet again in October.⁴ The Subcommittee had a thorough discussion of the issues and had asked staff to prepare a draft for consideration at its next meeting, but had no recommendation at this time. Mr. Selph indicated the draft did not intend to change the substance of current law, but was to reorganize and clarify the law for better understanding and compliance.

Parole Board Subcommittee

Mr. Landon, Chair of the Parole Board Subcommittee, reported that the Subcommittee held its first meeting on July 2, 2012 to consider HB 397 (Hope).⁵ The Subcommittee then recommended that the patron and supporters of the bill meet with representatives of the Parole Board, as it was unclear to the Subcommittee what was the purpose of the bill in light of current law requiring certain disclosures from the Parole Board.⁶ Delegate Hope and Bill Muse, Chair of the Parole Board, met on August 6, 2012, and agreed that they could work together to craft future legislation. In light of that agreement, there appears to be no further reason for the Subcommittee to meet.

Annual Legislative Preview

No proposed legislation was brought before the Council.

Public Comment

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 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.

³ The next meeting of the Electronic Meetings Subcommittee is scheduled to be held at 10:00 AM on Wednesday, October 17, 2012, in the Fourth Floor West Conference Room of the General Assembly Building.

⁴ The next meeting of the Criminal Investigative Records Subcommittee is scheduled to be held at 1:30 PM on Tuesday, October 2, 2012, in the Speaker's Conference Room, Sixth Floor, General Assembly Building.

⁵ **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.

⁶ See Va. Code § 53.1-136.

Senator Stuart invited public comment, but there was none.

Other Business

Senator Stuart asked the Council how the members felt regarding the use of subcommittees to study bills referred to the Council. Dr. Treadway related that the subcommittee system worked well, especially for matters where a large number of interested parties wish to speak on complex topics, such as access to criminal records. She indicated having such in-depth discussions in full Council meetings might be unwieldy. Mr. Landon indicated the subcommittee process has worked well as an informal give and take. Mr. Jones stated that there is a lot of good and detailed work done at the subcommittee level, but the full Council should not give too much deference to subcommittee recommendations, as all members of the Council should be ready and informed on the issues. Mr. Whitehurst expressed support for the detailed work done at the subcommittee level. Mr. Selph stated that the subcommittee system works well, especially due to its informality and the freer give and take which helps lead to consensus moving forward.

Staff brought the issue of license plate readers to the Council's attention. There have been numerous news articles on the topic, which indicate various law enforcement agencies across the state and the nation have technology which automatically reads and stores information about passing vehicles, including license plate numbers, location, time, and sometimes other data. Staff noted that the concern is more about over-collection of information, length of retention, and potential misuse, rather than access under FOIA.

Megan Rhyne, Executive Director of the Virginia Coalition for Open Government, informed the Council that last week a judge had imposed fines for a knowing and willful violation of FOIA. She indicated that this was only the second such imposition in the past 15 years, and that in the prior case, the fines were overturned on appeal to the circuit court.

Senator Stuart stated that he had received an inquiry from a constituent as to the status of the State Corporation Commission (SCC) under FOIA. Staff related a brief history of the case law in the Virginia Supreme Court which culminated in the recent holding that the SCC is not subject to FOIA.⁷

As a reminder, the next meeting of the Council will be held on 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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⁷ *Christian v. State Corporation Commission*, 282 Va. 392, 718 S.E.2d 767 (2011)(holding that FOIA is inapplicable to the SCC); see also *Gannon v. State Corporation Commission*, 243 Va. 480, 416 S.E.2d 446 (1992) and *Atlas Underwriters, Ltd. v. State Corporation Commission*, 237 Va. 45, 375 S.E.2d 733 (1989).