

Database Index Subcommittee of the FOIA Council  
Meeting Summary  
October 6, 2008  
Richmond, Virginia

The Database Index Subcommittee held its first meeting on October 6, 2008<sup>1</sup> to consider the requirement of subsection J of § 2.2-3704 that every public body of state government shall compile, and annually update, an index of computer databases.<sup>2</sup> The Subcommittee discussed the history of this provision, whether it served its intended purpose, and whether it should be amended or eliminated.

The Subcommittee expressed that the original purpose of the database index requirement, which took effect July 1, 1997, was to insure that there would be no secret government databases, and that information would not disappear when government agencies converted from paper to electronic records. Additionally, there was concern over inconsistent policies among different agencies regarding how they would charge for copies of electronic records. The Library of Virginia receives annual agency reports regarding these indices, and indicated that many agencies report the same thing year-to-year, and many more report nothing at all. As a practical matter, there appears to be widespread non-compliance with the database index requirement. An additional consideration is that the rights and responsibilities statement, required under § 2.2-3704.1 since it was enacted in 2004, appears to address at least some of the issues the database index requirement was originally intended to address. As such, it was suggested that perhaps the database index requirement might be eliminated and the rights and responsibilities section be amended instead. The Subcommittee then opened the meeting to public comment.

Phil Smith, representing the Department of Game and Inland Fisheries (DGIF), reported that DGIF had just completed its report regarding 62 databases. In looking deeper, he indicated that the definition of "database" may actually encompass a far greater number of items. One problem is that the definition of "database" used by information technology professionals may be different from that in the statute, for example, when databases may be created as by-products of producing webpages or when individual employees create databases that are not necessarily shared or used agency-wide. Mr. Smith further illustrated many practical difficulties in complying with the database index requirement, due to the sheer number and volume of databases and data fields involved. Mr. Smith further

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<sup>1</sup> Subcommittee Members Landon (Chair), Spencer, and Clark were present; Mr. Axselle was absent. Note that Mary Clark sat as a member of the Subcommittee by designation of Dr. Sandra Treadway, Librarian of Virginia.

<sup>2</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."

distributed his observations to the Subcommittee and the public in written form, a copy of which is available on the FOIA Council website.<sup>3</sup>

Subcommittee Member Clark stated that she agreed with Mr. Smith's observations, based upon her own experience at the Library of Virginia. She further noted that when the database index requirement was first adopted, the Library was one of the few state agencies with its own website, and that was one of the reasons it was chosen to receive and post the annual reports about the databases. In all, the Library reported 51 database indices in the first year the law took effect, and has never added to that number. She also stated that since 2001, the Library has received a total of six inquiries regarding these database indices. She observed that there is essentially no compliance and no enforcement of these requirements.

Megan Rhyne, Executive Director of the Virginia Coalition for Open Government (VCOG), indicated that the indices are helpful to the public to help citizens understand what types of records a public body has. She suggested leaving the definitions of what a database is and what it contains. She stated that VCOG often hears from citizens that they have no idea what information is available or how to ask for it.

Subcommittee Member Spencer agreed with Mr. Smith's observations, based upon her experiences with database indexing at the Virginia State Bar. She observed that it is now understood that electronic records are generally subject to disclosure just as paper or any other public record, regardless of format, and that if a public body does not have a requested record, it must say so. She opined that given that understanding, the database index requirement is one whose time has come and passed; there appears no reason to keep it.

Tom Falat of the Virginia Information Technologies Agency cautioned against using language that may have a different meaning when used by information technologies professionals, particularly as there may be disagreement on the meaning of particular terms. He also suggested that given the lack of compliance and lack of inquiries about the database indices, it may be better to include instead a statement that if a requester is unsure what records an agency has, he or she should ask the agency. He noted that the Government Data Collection and Dissemination Practices Act already mandates that government may not keep any secret personal information systems.<sup>4</sup>

After further discussion, the Subcommittee directed staff to prepare a draft bill that would eliminate the database index requirement of subsection J of § 2.2-3704 and amend the language of the rights and responsibilities statement of § 2.2-3704.1 to address the original intent of the database index requirement - i.e., to insure that the public has the means to find out what types of records a public body has. The draft will be considered at the next meeting of the Subcommittee, to be held at 11:00 AM on December 1, 2008.

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<sup>3</sup> Mr. Smith's written comments are available on the FOIA Council website under the 2008 Subcommittees link at [http://dls.state.va.us/groups/foiacouncil/subcom\\_mtgs/2008/observations.pdf](http://dls.state.va.us/groups/foiacouncil/subcom_mtgs/2008/observations.pdf).

<sup>4</sup> Subdivision C 1 of § 2.2-3800 ("There shall be no personal information system whose existence is secret.").