

Personal Identifying Information Subcommittee
of the Freedom of Information Advisory Council
Meeting Summary
Friday, November 6, 2009
10:00 AM
General Assembly Building
Richmond, Virginia

The Personal Identifying Information Subcommittee (PII Subcommittee) of the Freedom of Information Advisory Council held its third meeting of the 2009 interim.¹ At the last meeting of the PII Subcommittee, the Subcommittee requested staff to work on a redraft of SB 880² given the passage of HB 2427 (Protection of SSN Act) and to prepare two drafts: (i) creating a general exclusion under FOIA to protect credit card and other bank card information and (ii) creating an exclusion for telephone numbers and email addresses of individual applicants for or holders of any hunting, fishing, boating, or trapping license issued by an agent of the Department as well as such individuals' credit card and bank card information.

After the meeting was called to order, staff presented three alternative drafts for the subcommittee's consideration.³ The first draft would have provided an exemption only for certain records held by the Department of Game and Inland Fisheries (DGIF). The exemption would have been in Title 29.1 of the Code, with other laws pertaining to DGIF, rather than in FOIA. The second draft was similar to the first in providing an exemption only for certain DGIF records, but it would place the exemption within FOIA. The third draft differed in that it would provide a general exemption within FOIA to protect credit card, bank account, and other financial data, and would not be limited only to DGIF records. The subcommittee decided to proceed by first deciding which concept(s) to pursue, then to address the specific language to be used.

¹ Delegate Griffith and members Malveaux, Spencer, Whitehurst, and Wiley were present. Senator Houck (Chair) and Sandra Treadway were absent.

² **SB 880 (Stuart); Department of Game and Inland Fisheries; disclosure of official records; exceptions.** Provides that records of the Department shall be subject to the disclosure provisions of the Freedom of Information Act, except that personal information, as defined in § 2.2-3801, of individual applicants for or holders of any hunting, fishing, boating, or trapping license issued by an agent of the Department shall be withheld from public disclosure, provided that such individuals have requested that the Department not disclose such information. However, statistical summaries, abstracts, or other records containing information in an aggregate form that does not identify individual applicants or licensees shall be disclosed. The bill provides, however, that such information may be released (i) in accordance with a proper judicial order, (ii) to any law-enforcement agency, officer, or authorized agent thereof acting in the performance of official law-enforcement duties, or (iii) to any person who is the subject of the record.

³ These drafts are available on the FOIA Council website 2009 Subcommittees section (http://foiacouncil.dls.virginia.gov/subcom_mtgs/2009/subcom09.htm). Note, however, that the subcommittee considered the drafts in reverse order from the order in which they appear online.

It was generally agreed by the subcommittee to proceed with consideration of the third draft, which would provide a general exemption for financial account numbers, and then to consider whether a separate exemption based on the first or second draft was also needed. As initially presented to the subcommittee, the third draft would have added an exemption to § 2.2-3705.6 of FOIA that would allow the following records to be withheld in the discretion of the custodian:

As it pertains to any person, credit card or bank account data. Nothing in this subdivision shall be construed to prohibit the release of such records (i) in accordance with a proper judicial order; (ii) to any law-enforcement agency, officer, or authorized agent thereof acting in the performance of official law-enforcement duties; or (iii) to the person who is the subject of the record.

The subcommittee discussed possible changes to this language with the goal being to protect account numbers while leaving financial transaction information accessible to the public. As a matter of policy the public should be able to see who has a government account, as well as how and how many taxpayer dollars are spent. Mr. Wiley made a motion to strike and replace the first sentence of the draft exemption, which motion was then subject to friendly amendments and further discussion. After discussing various possible changes to the language, the final motion was made to strike the first sentence as quoted above and replace it with the following: *Those portions of records that contain account numbers or routing information for any credit card, debit card, or other account of any person or public body with a financial institution.* It was noted that the term *financial institution* is defined elsewhere in the Code.⁴ The motion carried by unanimous voice vote.

The subcommittee then discussed the second sentence of the draft exemption, as quoted above. It was noted that when local government instigates an investigation or audit, it is generally presumed the records will be shared with the investigating agency or auditor. Further, it was noted that law enforcement agencies acting on official business typically can get subpoenas and warrants as needed. Similarly, it is presumed that records will be released in accordance with a proper judicial order, as the courts may impose penalties for any failure to comply. Therefore, it appears that clauses (i) and (ii) of the quoted language may be unnecessary. However, the subcommittee indicated it did not want to change the language regarding law-enforcement access without hearing from representatives of law enforcement agencies. Also, a question was raised regarding what constitutes a proper judicial order; for example, a court-issued subpoena is a judicial order, but what about an attorney-issued subpoena duces tecum? In consideration of these issues, the

⁴ Section 2.2-3101 states that "*Financial institution*" means any bank, trust company, savings institution, industrial loan association, consumer finance company, credit union, broker-dealer as defined in § 13.1-501, or investment company or advisor registered under the federal Investment Advisors Act or Investment Company Act of 1940.

subcommittee did not change the second sentence of the draft. The subcommittee then voted by unanimous voice vote to recommend the draft as amended to the full FOIA Council.

The subcommittee then discussed whether an exemption specific to DGIF records would also be necessary. It was agreed that because social security numbers were addressed in the Protection of SSN Act, and the proposed exemption for financial information would address that area of concern, the only personal information left at issue would be home addresses and telephone numbers of licensees and registrants. The subcommittee noted that such information is widely available both in print telephone directories and through online resources, and questioned whether any incidents had occurred that indicated a specific need to exempt such information. No information regarding any such incident was forthcoming. The subcommittee generally agreed that the most pressing issues, social security numbers and financial account numbers, had been addressed as stated. As acting chair, Delegate Griffith asked if there was any motion to be made regarding the other two draft exemptions. Hearing none, the subcommittee invited other business and public comment. There was none, and the meeting was adjourned.

Senator Houck, Chairman
Maria J.K. Everett, Senior Attorney

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