

**Personnel Records Subcommittee  
July 18, 2011 Meeting Summary  
Immediately following FOIA Council Meeting  
House Room C, General Assembly Building  
Richmond, Virginia**

The Personnel Records Subcommittee<sup>1</sup> (the Subcommittee) created by the Virginia Freedom of Information Advisory Council (the Council) held its first meeting on Monday, July 18, 2011 to consider SB 812 (Martin), which bill was referred to the Council for further study.<sup>2</sup>

The Subcommittee discussed the legislative history of the specific provision which requires access to salary information. In 1978 SB 67 (c.810 of the 1978 Acts of Assembly), the provision was added that read "Neither any provision of this chapter...shall be construed as denying public access to records of position, job classification, official salary or rate of pay of, and to records of the allowances or reimbursements for expenses paid to any public officer, official or employee at any level of State, local or regional government in this Commonwealth whatsoever; provided however, that the provisions of this subsection shall not apply to records of the official salaries or rates of pay of public employees whose annual rate of pay in ten thousand dollars or less." Staff reported that the \$10,000 threshold was the subject of discussion by the Joint Subcommittee Studying the Virginia Freedom of Information Act in 1999. At that time, \$10,000 in 1978 was analogous to \$27,500 in 1999. In 2010 that amount was approximately \$34,000.

The Subcommittee discussed their specific charge in examining SB 812. Chairman Jones stated that it was the issues raised by the bill--disclosure of names of public employees and the \$10,000 threshold, and any relevant issues related thereto. Staff reminded the Subcommittee that Senator Martin told the Council that even though SB 812 would have excluded the names of public employees, his interest was in keeping the names, position descriptions, and salary of high level and/or key positions in state or local government open to the public. Mr. Landon opined that this was not a new issue and not simply a cost of living issue. He stated that it is not always the higher salary employees that generate public interest, citing a teacher who is also a coach in the school system. Ms. Dooley noted that current law requires release of salary information for any public employee, officer or official; but with regard to the \$10,000 threshold, release is limited only to public employees making more than \$10,000.

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<sup>1</sup> Subcommittee members Ed Jones, Chair, Frosty Landon, and Kathleen Dooley were all present at the meeting.

<sup>2</sup> SB 812 (Martin) 2011 Session, Freedom of Information Act; access to salary information, etc., of public employees. Allows public access to the records of only the job position, official salary, or rate of pay of, and the allowances or reimbursements for expenses paid to, any officer, official, or employee of a public body. The bill specifically excludes the name of any such officer, official, or employee from disclosure.

The Subcommittee then provided an opportunity for public comment. Roger Wiley, representing the Virginia Association of Counties (VACO) stated that SB 812 was not workable and was internally inconsistent. Mark Flynn for the Virginia Municipal League (VML) told the Subcommittee that VML was opposed to the bill as introduced and the amendment suggested by Senator Martin. He stated that in today's dollars \$10,000 would equate to \$34,600. He also noted that the hourly rate of a public employee making \$10,000 per year would be \$4.81 per hour, which is below the federal minimum wage. Craig Merritt, representing the Virginia Press Association (VPA) advised the Subcommittee that VPA opposed SB 812 during the Session and continues in its opposition. He stated that the bill is a policy change, is unworkable, and defeats the purpose of disclosure. He cautioned the Subcommittee not to take an inflation-based approach as he suspected that state government salaries have not inflated at the same rate. He stated that the issue is disclosure and equity among similarly situated employees. Megan Rhyne, Executive Director, Virginia Coalition for Open Government, echoed the comments of VPA and added that disclosures of allowances and reimbursement should not be rolled into the issue of disclosure of salaries of named public employees. Staff advised the Subcommittee that disclosure of salary information was not just for the public. Disclosure of salary information is also for the protection of public employees to ensure fairness that those making decisions concerning a public employee's compensation do it on the basis of knowledge, skills, and ability.

As part of its deliberations, the Subcommittee requested staff to ascertain the following information:

- How other states address this issue;
- Legislative history of this provision, including a review of prior FOIA study committees; and
- Available legislative intent with regard to the \$10,000 threshold.

The Subcommittee, by consensus agreed not to recommend SB 812 as introduced or the amendment suggested by Senator Martin. Roger Wiley told the Subcommittee that the problem was not in the revelation of a particular employee's salary, but the mass publication of the entire list of public employees and their salaries. He suggested that perhaps consideration could be given to allowing access on a per employee basis. Megan Rhyne advised that the Tampa Tribune has published a salary database for the last two years and localities there are asking to be added to the database. Jim Council, on behalf of Prince William County Schools, advised that the local newspaper printed the salaries of all teachers and the teachers were outraged. He opined that mass publication was the issue and suggested that there should be limits on mass publication. Staff raised the issue of the constitutionality of any effort to stem secondary publication of public records. Both Ms. Dooley and Mr. Wiley agreed.

The next meeting of the Subcommittee is scheduled for Tuesday, October 4, 2011 at 1:30 p.m.

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