



VIRGINIA FREEDOM OF INFORMATION ADVISORY COUNCIL

COMMONWEALTH OF VIRGINIA

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July 8, 2014

Meeting of the Records Subcommittee of the FOIA Council

Proposed Agenda

1. Call to order and introduction of subcommittee members.
2. Review of guidance memo from the Chair and Vice-Chair of the FOIA Council, House Joint Resolution No. 96, and Study Plan adopted by the FOIA Council. *As you will recall, HJR No. 96 directs the FOIA Council to conduct a three-year study of FOIA examining all of the exemptions in FOIA, as well as the organization and structure of FOIA. At its meeting in April the FOIA Council established the Subcommittee with the goal of studying all of the closed meeting exemptions in § 2.2-3711 during the 2014 Interim, as well as any other meetings issues that may arise. At its meeting on May 14, 2014 the Subcommittee indicated it wanted more detailed guidance regarding how to examine exemptions for applicability and appropriateness as directed by House Joint Resolution No. 96. The Chair and Vice-Chair sent a guidance memo to the members of the Subcommittee to help direct the work of the Subcommittee which suggested the following measures be used:*

For applicability, review of FOIA exemptions should be from a "zero-based FOIA approach" by assuming that all records are open to the public and requiring justification for any exemptions. For appropriateness, give consideration to the following factors:

- *Public good (protection of the public purse or of the public bargaining, negotiating, litigating position) vs private interest (privacy or proprietary interests);*
 - *Attorney/client privilege;*
 - *Application of the narrow construction rule found in FOIA at § 2.2-3700;*
 - *Updating and clarifying nomenclature;*
 - *Impact of court decisions and of opinions of the Attorney General and the FOIA Council;*
 - *Legislative history and intent, to the extent available; and*
 - *Review of comparable provisions in other states' FOIA laws.*
3. Review of exemption worksheet. *To facilitate the review of exemptions under the study and to document the analysis of each exemption, staff has developed a worksheet based on the guidance memo, House Joint Resolution No. 96, and the Study Plan*

discussed above that staff will use to document the Subcommittee's review and recommendations.

4. Implementation of subcommittee work plan. *At its meeting on May 14, 2014, the Subcommittee decided to hold approximately four more meetings this year. The Subcommittee stated that it would begin its work by studying the exemptions of general application and exceptions thereto found in §§ 2.2-3705.1 and 2.2-3705.8.*
5. Public Comment.
6. Discussion.
7. Set future meeting dates.
8. Adjournment.

Subcommittee Members

Bob Tavenner, Chair
Christopher Ashby, Vice-Chair
Stephanie Hamlett

Ed Jones
Tim Oksman

The FOIA Council's web site is: <http://foiacouncil.dls.virginia.gov/>. To assist us in providing Internet dissemination of materials, presenters are requested to submit written comments and handouts in electronic format by (i) e-mail to staff prior to meetings or (ii) diskette furnished to staff at meetings. Presenters are also requested to bring 20 copies of their remarks or handouts to meetings. These copies will be provided to FOIA Council Subcommittee members and the public.

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