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Mr. Tim Oksman
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900 E. Main St.
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7 July 2015

Dear Mr. Oksman:

Thank you for the opportunity to share with you and the FOIA Council's subcommittee on records examples of the way the working papers exemption has been used over the past 12 years.

I have included a chart of examples taken from the Virginia Coalition for Open Government's archives of news stories and of questions submitted to us by citizens, press and government through our website. I've also included examples shared with me by a handful of reporters, examples taken from their own archives or from their personal recollections. I have noted the source for each story beside each general description and can provide specific links to stories upon request (though it must be noted that some links have since expired on the media outlets' websites).

As you correctly noted at the last subcommittee meeting, the problem is not in the complete misapplication of the working papers exemption. The problem has been in the over-extension of the exemption to cover more than what the drafters of the 1999 rewrite intended.

I hope these examples will aid in creating a better understanding of the wide-ranging circumstances in which the exemption is used and how the public is harmed by being left in the dark about important decisions, especially those decisions involving the expenditure of taxpayer dollars.

Again, thank you for making for our input. I look forward to further discussions on how we can strengthen the state's public records and meetings law.

All the best,

Megan Rhyme, Executive Director
Virginia Coalition for Open Government

www.opengovva.org

Table 1

Date &/or year	Use of exemption	Source	Note
January 2002	A state investigation of Eastern Virginia Medical School concluded that scientists did not break the state's anti-cloning law by using state funds for embryonic stem-cell research. The findings, however, will not be released to the public, said state Secretary of Health and Human Resources Louis F. Rossiter, who gave the report to then-Gov. Jim Gilmore on Sept. 10. After the terrorist attacks, "priorities shifted significantly, so it didn't seem necessary to release the report," Rossiter said Friday, one day before Gilmore left office. "It was a draft, it's considered the governor's working papers and, in fact, it no longer exists."	Daily Press archives	
May 2002	Former Gov. Jim Gilmore's administration ignored a study that showed privatizing aspects of highway construction were costing the state millions of dollars. Although the Virginia Department of Transportation report was completed in December 1999, it wasn't released until last month. When it was first completed, the Gilmore administration labeled it working papers of the governor, which prevented it from becoming a public document. A spokesman for the former governor said the report never reached Gilmore's office. Critics say somebody in the administration shelved the study because they disagreed with its findings.	Daily Press archives	
September 2002	Christopher Newport University would lose up to \$4.4 million in state money this school year and \$5.2 million next year under the worst-case scenario of the cost-cutting plans the school will submit today to the governor. And the worst is what CNU President Paul Tribble is expecting. ... He provided no details about the different cost-cutting plans, saying they are considered working papers and confidential -- the same response officials had when agencies submitted these kinds of plans in the past.	Daily Press archives	
April 2005	"Colonial Beach Council voted last Thursday evening to authorize Mayor and acting Town Manager Pete Bone to negotiate the sale of 1.5 acres of municipally owned boardwalk property to Monroe Point's CRV developers for the minimum price of \$755,000....When asked for copies of the three developers' proposals, Manager and Mayor Bone purported that the documents were working papers of the town and would not, accordingly, be made available for the public to review."	Journal Press news article	

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February 2006	"The Times-Democrat...spent a substantial portion of Thursday afternoon and Friday -- even stretching into Tuesday -- trying to obtain the same documents that were presented to Fauquier Planning Commission members, as well as a copy of the PowerPoint presentation . . . The citation in law is loosely called the "working papers" exemption."	Times-Democrat news article	The paper is now defunct
June 2006	Old Dominion University cited the working papers exemption in response to a FOIA request for a report evaluating the continued viability of an environmental course the school had praised as innovative but students had said was "dull and preachy." The report was withheld in its entirety since it was prepared for the university president's personal or deliberative use	Virginian-Pilot news article	
April 2007	"Woodward filed suit in early March against the city for documents he requested related to an independent financial analysis the city commissioned late last year. Rather than initially providing the entirety of those requested documents to Woodward, city manager Jim Vacalis denied about 20 pages citing an exemption in the state open records law for "working papers." However, after some consideration by city officials, who said they wanted to go ahead and end the situation, they agreed to pay Woodward's legal fees."	Suffolk News Herald editorial	
October 2007	"Three Republican delegates have filed a request with the governor under the state's open records law for information on how he chose members of the Virginia Commission on Immigration. Dels. Todd Gilbert, R-Woodstock, Clifford L. "Clay" Athey Jr., R-Front Royal, and Bob Marshall, R-Manassas, wrote to Democratic Gov. Timothy M. Kaine on Friday, filing a Virginia Freedom of Information Act request asking for "copies of all letters, e-mails, phone messages" and other documents given to Kaine's office "to recommend candidates for appointment to the Commission on Immigration, regardless of whether they were finally appointed or not."...."I don't even know if that information is information that's covered under FOIA," [Delacey] Skinner said. "There's a great deal that goes on [in the secretary of the commonwealth's office] under the confidential governor's working papers.'"	Northern Virginia Daily news article	
November 2007	"William & Mary President Gene Nichol rejected an FOI bid to release e-mails between him and former President Timothy Sullivan because they are classified as "working papers.'"	Virginia Gazette news article	

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November 2007	"The King George School Board has made a written request asking for a copy of the current draft revisions to an agreement between it and the Board of Supervisors that addresses the use of school buildings by the Parks & Recreation Department when classes are not in session.....David has said he is reviewing the proposed document. He has refused requests from The Journal to release the draft proposal to the public under the "working papers" exemption of the Virginia Freedom of Information Act."	Journal Press news article	
January 2008	William and Mary President Gene Nichol came under pressure late last year, after he rejected requests for copies of his e-mail correspondence with former President Timothy J. Sullivan. News media outlets and some alumni requested the information to determine when Nichol knew that a major donor decided to revoke \$12 million in pledges to the school. The donor told Sullivan of his decision and Sullivan e-mailed Nichol in December 2006, several months before Nichol announced the success of a \$500 million fundraising campaign. After that announcement, news of the donor's revoked pledges surfaced, and Nichol acknowledged that the withdrawn pledges had dropped the campaign below \$500 million. William and Mary officials cited the current exemption to state law in denying requests for Nichol's correspondence. In an attempt to quell the controversy, they eventually agreed to release the e-mail after receiving permission from Sullivan and the donor. Requests for additional presidential correspondence, however, were denied.	Daily Press archives	
February 2010	"Virginia Tech officials are declining to release initial findings of a U.S. Department of Education investigation into the university's Clery Act compliance during the April 16, 2007 campus shootings. According to documents obtained by the Collegiate Times, the Department of Education sent a request for documents to President Charles Steger on Sept. 4, 2007. The university complied on Oct. 3, 2007. Hincker said the university received initial findings from the Department of Education, "a couple weeks ago,"but will not release them, citing a Freedom of Information Act exception."	Collegiate Times news article	
August 2010	"I am trying to get email correspondence between the Virginia Department of Forestry and Governor McDonnell's office concerning a rulemaking procedure that's stalled. Their answer was that all the emails that pertained to this matter were Working Papers."	Citizen inquiry through VCOG's website	

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March 2011	"The working papers exemption was intended to permit withholding public records necessary if releasing them would interfere with government function - not to give officials an excuse to deny requests, explained former Del. Chip Woodrum, a Roanoke-area Democrat."	Virginian-Pilot news article	
March 2011	"Rather than reacting with alarm to the excessive use of the working papers exemption, state lawmakers have chosen to expand it. Last year, they granted the exemption to clerks for the House of Delegates and the state Senate. The exemption has become a catch-all category for public officials looking for an easy way to say no to a Freedom of Information Act request. Virginia legislators need to tighten the exemption. Workable models are available in other states."	Virginian-Pilot editorial	
August 2011	"I asked for deliverable financial advisor service documents regarding the refinancing of a bond in the county of Goochland and was told that it fell under section 2.2-3705.7 (2) "Working Paper"."	Citizen inquiry through VCOG's website	
January 2012	"When does the "Governor's working papers" cease being "Governor's working papers." Various state agencies submitted 2%, 4% and 6% proposed budget reductions to the governor last year. The Governor has completed his budget and released. So, when do these submissions by the various agencies become available to the public?"	Citizen inquiry through VCOG's website	post-decision request
March 2012	"Gov. McDonnell's recently-formed Uranium Working Group is claiming the "working papers" exemption in 2.2-3705.7(2) to keep from disclosing the documents they're considering, at least until their recommendations go to the G.A. in December. But they are also only opening four of their meetings to the public between now and December, when they'll disclose their final report."	Citizen inquiry through VCOG's website	The working group was not subject to FOIA's meeting provisions because it was created by the governor. By using the working papers exemption here, the work group had no oversight.
March 2012	"In January, McDonnell formally announced his support for postponement and created a working group to study the issue further. In his announcement, he said, "I have directed the group ... to allow thorough opportunity for public participation in its work." The work group has other ideas. It invokes the oft-abused governor's working papers exemption to the Virginia Freedom of Information Act to keep its work out of the public eye."	Roanoke Times editorial	

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March 2012	The Attorney General's office cited the working papers exemption as it related to the state's contract with Elizabeth River Crossings - a public-private deal that brought tolls to the Midtown Tunnel and Downtown Tunnel in Norfolk/ Portsmouth for transportation projects. The public was and remains widely opposed to this deal, and some argue the impact of the tolls has damaged the economy in Portsmouth.	Reporter's FOIA request correspondence	
April 2012	"Dan Holmes, director of state policy for the Piedmont Environmental Council, which opposes uranium mining, said the lack of transparency is most apparent when it comes to seeking correspondence between agencies working on the rules. Those communications are protected from public view because they are considered the governor's working papers."	Martinsville Bulletin news article	
October 2012	"I recently requested a document via a FOIA request, but was denied based on the "working papers" exemption. My request was for a copy of a report created by a consulting firm after interview and assessment of the Information Technology technology, in which I participated. We have never been made aware of the outcome or how our interviews have been used. I believe the clause above makes it possible for me to receive a copy as there have been several changes made which directly correlate to the information provided in the interviews. As well, these changes were not handled by the City Manager, thus, she must have shared the information within the local public body."	City employee's inquiry through VCOG website	Exemption used after material was disseminated.
December 2012	"Gov. Bob McDonnell told all state agencies last month to propose potential 4 percent cuts to their own fiscal 2014 budgets, citing economic uncertainty surrounding the so-called "fiscal cliff," along with Medicaid and state employee health-care costs that eat up a greater proportion of taxpayer dollars each year. A few short weeks later, agencies submitted their ideas, and the Department of Planning and Budget posted them online. But McDonnell's office made no such proposal for cutting its own budget — at least not publicly. Those details are rolled into a "working internal paper," McDonnell spokesman Paul Logan told Watchdog.org. The Virginia Freedom of Information Act conveniently guards "working papers" of the governor's office from the public."	watchdog.org news article	

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March 2013	<p>"Advocates for lower Richmond water and sewer charges have thus far been stonewalled by the city administration in attempts to obtain a consultant's study that will be central to the utility rates the mayor will propose this month as part of the city budget. The city's Public Utilities Department has denied a Freedom of Information Act request from Charles Pool, an Oregon Hill resident who is among a chorus of city utility customers calling for lower base charges for water and wastewater, for the report by Raftelis Financial Consultants. Pool originally requested the information the city provided to Raftelis for the rate study but changed tack after the utilities told him the cost for preparing the report would be \$287.17. The cost of preparing the request would have included five hours of work, at \$46.31 per hour, by a utilities comptroller and two hours by a systems analyst at \$27.81 per hour. Daunted by the sticker price of his public records request, Pool asked for a copy of the report or a draft and was sent a letter signed by Mayor Dwight C. Jones. The letter, dated Jan. 8, nearly eight months after the city put out a request for proposals for the study, directed the city utilities department to "perform a cost of services study" and declared that "this study and all documents and correspondence associated with its creation shall be deemed confidential working papers of the mayor, intended for the personal and deliberative use of my staff and me."</p>	Richmond Times-Dispatch news article	
March 2013	<p>For more than 20 years, the City of Hampton and the Virginia Air and Space Center have had a unique relationship. An independent volunteer board runs the facility, but it does so inside a city-financed building using exhibits loaned and, in some cases, owned by NASA and the city. ... The center, like all nonprofit organizations, must file an "outside agency funding request" each year to receive city grants. The city provided applications filed by the center for fiscal years 2010, 2011, 2012 and 2013. Citing the "working papers" exemption to the state Freedom of Information Act, the city denied a request for the center's 2014 funding application.</p>	Daily Press news article	
March 2013	<p>Hampton declined a request for environmental studies of the former School for the Deaf Blind and Multi-disabled (a "Summary of PCB Findings and Recommendations for the VSDBH Facility" and "Draft Limited Air Quality Assessment Report.") on the grounds that they were working papers. The argument was that the reports "are subject to change," and so could be withheld until they are finalized.</p>	Reporter's personal experience	

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May 2013	"I sent a FOIA to a County Supervisor asking for documents backing up his accusation that citizens were being simply obstructionist. The Supervisor refused response under the "thought process" exemption. He is not chairman of the board."	Citizen inquiry through VCOG's website	
November 2013	MEANWHILE, IN UTAH: "Utah lawmakers are taking a proactive approach to government transparency by opening their email accounts to the public. The state will launch an online repository in January that will house legislator correspondence on the Utah Legislature's website, giving citizens a closer look at the daily communications of their elected officials. The increased access was authorized by legislation signed by Utah Gov. Gary Herbert in March."	Governing magazine news article	
May 2014	"I submitted a request to the Attorney General's office for e-mail and phone records of AG Cuccinelli and his chief of staff for a period of about a week in 2012. I'm attaching the response I received. I have two main concerns about it. . . . b) The letter also tells me that most AG records are exempt from disclosure, including categorically all correspondence, and that 'this Office likely will exercise its discretion to withhold all such records.'"	Citizen inquiry through VCOG's website	
September 2014	CNU president Paul Tribble declined to release university documents about proposed budget cuts, saying they were working papers of the Governor.	Reporter's personal experience	
October 2014	On Oct. 30, the Daily Press submitted a request to City Manager Jim Bourey under the Freedom of Information Act seeking the full list of capital projects by Newport News city departments. City spokeswoman Kim Lee sent a reply rejecting the request in its entirety on Nov. 6, the last of the five business days the law gives the city to respond. Lee said the documents are "working papers" of the city manager, an exemption allowed under the state's FOIA law. Bourey said rejecting the request was his decision.	Daily Press news article	
December 2014	[In reference to the Rolling Stone article about gang rape at UVA]: "President Sullivan has asserted the blanket exemption protecting her from having to disclose any correspondence."	Reporter inquiry through VCOG's website.	

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March 2015	"An application for funding for a multimodal transportation facility in downtown Roanoke identifies three potential sites for the combination train and bus station, but city officials caution that the information is highly preliminary and based on a cursory review by a consultant. Roanoke's application to the Virginia Department of Rail and Public Transportation seeks \$3.2 million to acquire land for the facility, which would in part serve as a hub for passengers traveling to and from Roanoke on Amtrak when passenger rail service returns to the city in 2017. The Roanoke Times obtained the application from DRPT. The city declined to release it, citing the Virginia Freedom of Information Act's exemption for making "working papers" public."	Roanoke Times news article	
May 2015	The Hampton City Attorney's Office declined to release four consultants' reports that could provide information about a proposed aquatics center, including documents identified as "Crossroads Initiative Update, Aquatics Facility Study, Hotel Market Study and Coliseum Central Market Study." Angenette Pase, Hampton's Freedom of Information Act coordinator, cited the law's "working papers" exemption for withholding the studies.	Reporter's personal experience	
June 2015	Gov. Terry McAuliffe commissioned a state report last year on the costs of in-sourcing versus hiring private contractors, with a particular focus on IT. It was due Oct. 1, 2014, but McAuliffe spokesman Brian Coy said the governor asked for more information before the report is finalized. The administration has refused to release the initial report, citing the working papers exemption in Virginia's Freedom of Information Act.	Reporter's FOIA request correspondence	