



VIRGINIA FREEDOM OF INFORMATION ADVISORY COUNCIL

COMMONWEALTH OF VIRGINIA

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July 22, 2015

10:00 AM

Speaker's Conference Room, Sixth Floor
General Assembly Building, Richmond, Virginia

Meeting of the RECORDS Subcommittee of the FOIA Council

Proposed Agenda

1. Call to order and introduction of subcommittee members.
2. Old business: exemptions studied in 2014 but carried over for further study.
 - Working papers and correspondence of certain officials (§ 2.2-3705.7(2)). *As you will recall, the FOIA Council referred to the Subcommittee HB 1722 (Ramadan)/SB 893 (Petersen) from the 2015 Session of the General Assembly, identical bills which would have eliminated the working papers and correspondence exemption for the president or other chief executive officer of any public institution of higher education in Virginia. The Subcommittee began its consideration of this exemption at its last meeting, but took no action;*
 - Certain records maintained by the Department of the Treasury or participants in the Local Government Investment Pool (§ 2.2-3705.7(27)). *The Subcommittee deferred consideration of this exemption in order to determine whether it was still necessary given the exemption for account and routing numbers enacted in 2010 (§ 2.2-3705.1(13)). At the Subcommittee's May meeting, it was agreed that Treasury officials and local government representatives would discuss the possibility of eliminating the more specific exemption (§ 2.2-3705.7(27)) if the general exemption for account and routing numbers (§ 2.2-3705.1(13)) were amended to protect additional information, and if so, what additional information would need to be protected.*
3. Exemptions referred by the Meetings Subcommittee.
 - Certain Records of the Virginia Retirement System, a local retirement system, the Rector and Visitors of the University of Virginia, or the Virginia College Savings Plan relating to the acquisition, holding or disposition of a security or other ownership interest in an entity, where such security or ownership interest is not traded on a governmentally regulated securities exchange. *The Subcommittee considered this exemption last year and recommended leaving it unchanged. However, a*

proposal to amend the corresponding closed meeting exemption, § 2.2-3711(A)(20), was brought before and recommended by the Meetings Subcommittee. The amendment of the meetings exemption would require a corresponding amendment of the records exemption. The amendments would allow the existing exemptions to be used in the case of local boards that invest funds for post-retirement benefits other than pensions.

- *Personnel records. As you will recall, the Subcommittee last year voted to recommend combining the provisions of the personnel records exemption, § 2.2-3705.1(1), with the limitations to that exemption found at § 2.2-3705.8(A), so that all of the provisions concerning personnel records could be found in one statutory provision. In its consideration of the personnel exemption for closed meetings, the Meetings Subcommittee heard a proposal to open to the public performance reviews of local chief executives and school superintendents. The Meetings Subcommittee rejected this proposal, but after much discussion voted to ask staff to prepare a draft for consideration by the Records Subcommittee that would amend the personnel records exemption to open to the public the terms of dismissal of such chief executive officers unless ordered otherwise by a court.*
4. *Report on the progress of the proprietary records work group. As a reminder, the Subcommittee directed staff to meet with interested parties as a proprietary records work group to study the various exemptions for proprietary records and trade secrets in § 2.2-3705.6 and elsewhere in FOIA. It was suggested that the many specific exemptions in current law for various types of records containing trade secrets and proprietary information might be consolidated into one or more exemptions of general application. The work group met on June 18 and July 21, 2015.*
 5. *Continue implementation of subcommittee work plan. At its last meeting the Subcommittee agreed that once old business has been addressed, the Subcommittee will continue its work by studying the exemptions concerning public safety in § 2.2-3705.2. A summary of those exemptions follows, but please note it is not expected that the Subcommittee will have time to address all of them today:*
 - *Confidential records, including victim identity, provided to or obtained by staff in a rape crisis center or a program for battered spouses (§ 2.2-3705.2(1));*
 - *Certain portions of engineering and construction drawings and plans (§ 2.2-3705.2(2));*
 - *Certain records of security systems used to control access to or use of any automated data processing or telecommunications system (§ 2.2-3705.2(3));*
 - *Plans and information to prevent or respond to terrorist activity or cyber attacks, and certain records concerning antiterrorism and cybersecurity planning and protection (§ 2.2-3705.2(4));*
 - *Certain records of the security aspects of a railroad system safety program plan, and certain records of an ongoing investigation of a rail accident or other incident threatening railway safety (§ 2.2-3705.2(5));*

- *Certain records that would jeopardize the security of any governmental facility, building or structure or the safety of persons using such facility, building or structure if disclosed (§ 2.2-3705.2(6));*
- *Records of school safety audits (§ 2.2-3705.2(7));*
- *Expired exemption (§ 2.2-3705.2(8));*
- *Certain records of the Commitment Review Committee concerning the mental health assessment of an individual subject to commitment as a sexually violent predator (§ 2.2-3705.2(9));*
- *Certain subscriber data provided by a telecommunications carrier to a public body that operates a 911 or other emergency dispatch or notification system, if the data is in a form not made available by the telecommunications carrier to the public generally (§2.2-3705.2(10)).;*
- *Certain subscriber data collected by a local governing body, and other identifying information of a personal, medical, or financial nature provided to a local governing body in connection with a 911 or other emergency dispatch or notification system, if such records are not otherwise publicly available (§ 2.2-3705.2(11));*
- *Certain records of the Virginia Military Advisory Council or certain other public bodies concerning federal military and national security base closure, realignment, or relocation (§ 2.2-3705.2(12));*
- *Certain records as determined by the State Comptroller that describe the design, function, operation, or implementation of internal controls over the Commonwealth's financial processes and systems, and the assessment of risks and vulnerabilities of those controls (§ 2.2-3705.2(13));*
- *Certain records relating to the Statewide Agencies Radio System (STARS) or any other similar local or regional public safety communications system (§ 2.2-3705.2(14));*
- *Records of a Fire/EMS company or department that disclose the telephone numbers for cellular telephones, pagers, or comparable portable communication devices provided to its personnel for use in the performance of their official duties (§ 2.2-3705.2(15));*
- *Certain records of hospitals and nursing homes that reveal the disaster recovery plans or the evacuation plans for such facilities in the event of fire, explosion, natural disaster, or other catastrophic event (§ 2.2-3705.2(16)).*

6. Public Comment.

7. Discussion.

8. Set future meeting dates. *Reminder: Meetings may only be scheduled on Monday, Tuesday, and Wednesday of the first and third full weeks of the month. Please bring your calendars.*

9. Adjournment.

Subcommittee Members

Bob Tavenner, Chair

Christopher Ashby, Vice-Chair

Stephanie Hamlett

Ed Jones

Tim Oksman

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