



VIRGINIA FREEDOM OF INFORMATION ADVISORY COUNCIL

COMMONWEALTH OF VIRGINIA

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August 18, 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, at the last Subcommittee meeting a motion was made to recommend the language of 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, but that motion died for lack of a second. In addition to the subject matter of these bills, the Subcommittee also considered the working papers and correspondence exemption generally, and directed staff to draft an amendment that would move the term "correspondence" to be included in the definition of "working papers;"*
 - 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;*
 - Certain records of internal controls of the Commonwealth's financial processes and systems (§ 2.2-3705.2(13)). *The Subcommittee deferred consideration of this exemption at its last meeting so that staff could contact an appropriate official to address the subject before the Subcommittee;*
 - Records exemption for the Virginia Military Advisory Council or certain other public bodies concerning federal military and national

security base closure, realignment, or relocation. *The Subcommittee deferred consideration of this exemption at its last meeting so that staff could contact an appropriate official to address the subject before the Subcommittee;*

- *Comparison chart re: public safety exemptions. At its last meeting the Subcommittee directed staff to prepare a chart comparing several public safety exemptions found in § 2.2-3705.2, including subdivisions 2 (portions of engineering and construction drawings and plans), 4 (terrorism and cybersecurity plans), 6 (security of governmental facilities, buildings, and structures, and safety of persons using them), and 14 (Statewide Agencies Radio System (STARS) or any other similar local or regional public safety communications system). The goal is to identify any redundancies and determine whether any of the exemptions can be consolidated or eliminated.*
3. *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; it is scheduled to hold its third meeting at 1:30 PM today.*
 4. *Continue implementation of subcommittee work plan. As a reminder, following the established work plan the next section to be studied is § 2.2-3705.3, records relating to administrative investigations. 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:*
 - *Investigations of applications for licenses and permits, and of licensees and permittees, of certain agencies - § 2.2-3705.3(1);*
 - *Active investigations being conducted by the Department of Health Professions or by any health regulatory board in the Commonwealth - § 2.2-3705.3(2);*
 - *Active investigations of individual employment discrimination complaints - § 2.2-3705.3(3);*
 - *Active investigations being conducted by the Department of Medical Assistance Services - § 2.2-3705.3(4);*
 - *Investigations or conciliation processes involving an alleged unlawful discriminatory practice under the Virginia Human Rights Act - § 2.2-3705.3(5);*
 - *Certain studies and investigations by the Virginia Lottery - § 2.2-3705.3(6);*
 - *Certain audit investigation records - § 2.2-3705.3(7);*
 - *Certain records of the Department of Human Resource Management with respect to employment dispute resolution - § 2.2-3705.3(8);*
 - *The names, addresses and telephone numbers of complainants furnished in confidence with respect to an investigation of individual zoning enforcement complaints or complaints relating to the Uniform Statewide Building Code or*

the Statewide Fire Prevention Code made to a local governing body - § 2.2-3705.3(9);

- *Active investigations being conducted by the Department of Criminal Justice Services regarding private security services, special conservators of the peace, bail bondsmen, and bail enforcement agents - § 2.2-3705.3(10);*
- *Board of Education review or investigation of any alleged breach in security, unauthorized alteration, or improper administration of tests by local school board employees - § 2.2-3705.3(11);*
- *Certain records of the Board of Education related to the denial, suspension, or revocation of teacher licenses - § 2.2-3705.3(12);*
- *Records, notes and information provided in confidence and related to an investigation by the Attorney General regarding the Tobacco Master Settlement Agreement and related matters - § 2.2-3705.3(13).*

5. Reminder: Bills referred by the FOIA Council. *You will recall that at its May meeting, the Council referred a total of five bills to the Subcommittee for study. HB 1722 (Ramadan)/SB 893 (Petersen) have been addressed with the study of the working papers and correspondence exemption. The following bills remain to be studied:*

- HB 1776 (Albo)/SB 1032 (McDougle) - Eliminates the Alcoholic Beverage Control (ABC) Board and replaces it with the Virginia Alcoholic Beverage Control Authority, created by the bill. The bill contains numerous technical amendments. The bill has a delayed effective date of July 1, 2018, except that the provisions of the thirteenth and fourteenth enactments become effective July 1, 2015. The thirteenth enactment clause directs the FOIA Council to study the provisions of the bill that would amend § 2.2-3705.7 by creating a new records exemption for certain records of the Authority.
- SB 1166 (Hanger) - Public service corporations; access to public records. Makes a public service corporation subject to the public records provisions of the Virginia Freedom of Information Act with respect to any project or activity for which it may exercise the power of eminent domain and has filed or prefiled for a certificate or other permitting document.

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

Marisa Porto

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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