



# VIRGINIA FREEDOM OF INFORMATION ADVISORY COUNCIL

## COMMONWEALTH OF VIRGINIA

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October 7, 2015

1:30 PM

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.
  - Comparison draft re: public safety exemptions. *At its last meeting the Subcommittee considered 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 was to identify any redundancies and determine whether any of the exemptions can be consolidated or eliminated. The Subcommittee directed staff to prepare a draft based on the chart for further consideration at today's meeting.*
  - Terminology used in exemptions for 911 and E-911 subscriber data: "telecommunication carrier." *At its July meeting, the Subcommittee considered two exemptions for subscriber data provided or collected for use in 911 and E-911 emergency systems. The Subcommittee did not recommend any changes to these exemptions. However, at a subsequent FOIA Council meeting David Ogburn, representing Verizon, expressed a concern about the use of the term "telecommunications carrier" in these exemptions. He has suggested using the phrase "communications services provider" as defined in Code § 58.1-647 instead of "telecommunications carrier."*
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, July 21, and August 18, 2015. The work group considered several drafts but did not reach consensus on a recommendation.*

4. Continue implementation of subcommittee work plan. *At its last meeting the Subcommittee began studying the exemptions in § 2.2-3705.3 relating to administrative investigations. The remaining exemptions to be studied from that section are summarized below:*

- *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. 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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