



# VIRGINIA FREEDOM OF INFORMATION ADVISORY COUNCIL

## COMMONWEALTH OF VIRGINIA

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November 18, 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. Comparison draft re: public safety exemptions. *At its last meeting the Subcommittee considered a draft prepared by staff based on 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 draft was written to consolidate similar language and eliminate redundancies. The Subcommittee deferred making any recommendation on the draft at its last meeting in order to give interested parties time to consider it.*
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, August 18, and November 10, 2015. The work group considered several drafts but did not reach consensus on a recommendation.*
4. Report on the progress of the DHRM records work group. *You will recall that the Subcommittee considered an administrative investigation exemption specific to the Department of Human Resources Management (DHRM) that addresses employment dispute resolution proceedings (§ 2.2-3705.3(8)). It was suggested that matters addressed might already be covered by the general personnel records exemption (§ 2.2-3705.1(1)). The Subcommittee asked interested parties to meet to discuss whether the*

*DHRM-specific exemption might be eliminated. The work group met on October 28, 2015.*

5. Continue implementation of subcommittee work plan. *At its last two meetings 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). At the last meeting of the Subcommittee this exemption was deferred so that affected parties could prepare a draft to clarify exactly what types of "investigations" are covered.*
- *Certain records of the Department of Human Resource Management with respect to employment dispute resolution - § 2.2-3705.3(8). At its last meeting the Subcommittee asked staff and interested parties to form the DHRM Records Work Group to consider eliminating this exemption (agenda item #4 above).*
- *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). At its last meeting the Subcommittee heard from interested parties that this exemption is used often in situations involving feuding neighbors, but others stated they felt it was inappropriate because one should have a right to confront someone making a complaint. The Subcommittee deferred it for further consideration.*
- *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). At its last meeting the Subcommittee asked staff to prepare a draft to change the language regarding prohibiting disclosure, as the exemption is discretionary, not prohibitory.*
- *Certain records of the Board of Education related to the denial, suspension, or revocation of teacher licenses - § 2.2-3705.3(12). At its last meeting the Subcommittee asked staff to prepare a draft to change the language regarding prohibiting disclosure, as the exemption is discretionary, not prohibitory.*

6. 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. *At its last meeting the Subcommittee asked that this exemption be considered by the Proprietary Records Work Group.*

- 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. *At its last meeting concerns were raised over the breadth of application of the bill, and the lack of a stated venue for enforcement. The Subcommittee deferred making a recommendation as the patron was not able to attend the previous meeting.*

7. Public Comment.

8. Discussion.

9. Set future meeting dates. *Reminder: The next Subcommittee meeting will be held in March or April of next year after the conclusion of the 2016 Session of the General Assembly.*

10. Adjournment.

#### Subcommittee Members

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

**Ed Jones**  
**Marisa Porto**  
**Shawri King-Casey**

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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