



VIRGINIA FREEDOM OF INFORMATION ADVISORY COUNCIL

COMMONWEALTH OF VIRGINIA

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April 11, 2016

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. Election of Chair.
3. Continue implementation of subcommittee work plan: old business. *Several exemptions and drafts were considered by the Subcommittee last year that have been carried over for further consideration this year as follows:*
 - 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 suggested amending the draft and making a global change in FOIA to refer to "not authorize the withholding" of records in places where FOIA now says that an exemption shall "not prevent" or "not prohibit" the release of records. However, it has been brought to staff's attention that this change, if made globally, may have unintended consequences.*
 - 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.*
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, July 21, August 18, and November 10, 2015, and again on March 24, 2016. The work group considered several drafts but did not reach consensus on a recommendation. At its most recent meeting the work group determined it was unlikely to reach consensus on a recommendation, and therefore recommended that the Subcommittee take up the various proprietary records and trade secrets exemptions for consideration one-by-one, in the same manner as it has studied all of the other exemptions to date. It was further suggested that these exemptions be considered later this summer so that all affected agencies may be contacted.

5. Continue implementation of subcommittee work plan: new business. *In addition to the exemptions carried over for further study from last year, the remaining sections to be studied include §§ 2.2-3705.4 (educational records and certain records of educational institutions), 2.2-3705.5 (health and social services records), and 2.2-3706 (Disclosure of criminal records; limitations). Staff recommends taking up these sections in numerical order. Following is a summary of exemptions from § 2.2-3705.4:*
 - *Scholastic records - § 2.2-3705.4(1);*
 - *Confidential statements & letters of recommendation - § 2.2-3705.4(2);*
 - *Certain records of the Brown v. Board of Education Scholarship Committee - § 2.2-3705.4(3);*
 - *Certain proprietary records re: study or research on medical, scientific, technical, or scholarly issues - § 2.2-3705.4(4);*
 - *Certain records of the University of Virginia or the University of Virginia Medical Center or Eastern Virginia Medical School re: proprietary, business-related information - § 2.2-3705.4(5);*
 - *Certain personal information provided to the Virginia College Savings Plan - § 2.2-3705.4(6);*
 - *Certain fundraising records re: identifiable or prospective donors to public institutions of higher education - § 2.2-3705.4(7);*
 - *Certain records of threat assessment teams of public institutions of higher education - § 2.2-3705.4(8)[Please note that House Bill 1013 (2016) would expand this exemption to include threat assessment teams established by local school boards. HB 1013 has passed the General Assembly and is awaiting action by the Governor.];*
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.
- 10.

Subcommittee Members

Christopher Ashby, Vice-Chair
Stephanie Hamlett
Ed Jones

Shawri King-Casey
Marisa Porto
Mark Vucci

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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