



VIRGINIA FREEDOM OF INFORMATION ADVISORY COUNCIL

COMMONWEALTH OF VIRGINIA

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June 23, 2016

1:30 PM

House Room D

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. Continue implementation of subcommittee work plan: old business. *The following agenda items are carried over from the last meeting of the Subcommittee:*
 - Comparison draft re: public safety exemptions. *Last year 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. At its last meeting the Subcommittee stated that it would like to hear from representatives of the Secretariat of Public Safety and Homeland Security before making a recommendation.*
 - Letters of recommendation - *At its last meeting the Subcommittee identified a discrepancy between the way letters of recommendation are treated in regard to students or employees of educational agencies or institutions (subdivision 2 of § 2.2-3705.4), other public employees under the personnel records exemption (subdivision 1 of § 2.2-3705.1), and all data subjects under the Government Data Collection and Dissemination Practices Act (subsection B of § 2.2-3806). The Subcommittee directed staff to prepare a draft that would reconcile these provisions such that letters of recommendation would be exempt from mandatory disclosure in all cases. The Subcommittee also directed staff to prepare a definition of "personnel records."*
 - Reconsideration of global language change. *Last year the Subcommittee recommended replacing language that appears in multiple existing exemptions*

that states that "nothing ... shall prohibit" disclosure or release of records. Recognizing that FOIA generally does not prohibit release, the Subcommittee recommended replacing that phrasing with language stating that "nothing ... shall authorize withholding" or other language indicating an affirmative duty to disclose. However, it has come to the attention of staff that such a global change may have unintended consequences, and therefore reconsideration of this recommendation is necessary. The Subcommittee at its last meeting asked staff to research any prior opinions interpreting this language.

- Consolidation of Department of Health Profession's exclusions found in § 2.2-3705.5 (2, 8, 11, and 15) and certain other changes in § 2.2-3705.5. *At the last meeting, the Records Subcommittee requested staff to revise § 2.2-3705.5 to reflect Subcommittee discussions, including consolidating multiple exclusions for the same entities into one exclusion and to make other clarifying changes to this section.*

3. Public Comment.

4. Discussion.

5. Continue implementation of subcommittee work plan: topics for next meeting on Wednesday, July 20, 2016. *In addition to the exemptions carried over for further study, the remaining sections to be studied include §§ 2.2-3705.6 (proprietary records and trade secrets), and 2.2-3706 (Disclosure of criminal records; limitations). At its last meeting the Subcommittee agreed to study these sections in numerical order. As you will recall, the Subcommittee last year asked staff and interested parties to meet as a work group to discuss the proprietary records and trade secrets exemptions, with the goal of drafting one or more general exemptions for these types of records. The Proprietary Records Work Group met four times in 2015 and once in 2016 to consider the issues involved and reviewed several draft proposals, but did not reach consensus on a recommendation for any new draft(s). At its last meeting, the Work Group recommended returning the subject matter to the Subcommittee for review of the exemptions one-by-one.*

6. Future meeting dates. *Reminder: Next meeting of the Subcommittee is set for 10:30 AM on Wednesday, July 20.*

Additional meeting dates need to be set. Please bring your calendars.

7. Adjournment.

Subcommittee Members

Christopher Ashby, Chair
Ed Jones, Vice-Chair
Stephanie Hamlett

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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