



VIRGINIA PORT AUTHORITY
600 WORLD TRADE CENTER, NORFOLK, VA 23510
(757) 683-8000

February 16, 2016

The Honorable James M. LeMunyon, Chair
Virginia Freedom of Information Advisory Council
201 North 9th Street, Second Floor
Richmond, VA 23219

Re: Review of Virginia Port Authority's FOIA exemptions RE: Proprietary Records and Trade Secrets

Dear Delegate LeMunyon:

Thank you for the opportunity to provide comments as part of the Virginia Freedom of Information Advisory Council's (FOIA Council) review of exemptions to Virginia's Freedom of Information Act (FOIA) pursuant to 2014 House Joint Resolution 96. The Port of Virginia staff has reviewed the information provided and offers the following comments.

The FOIA exemption granted to the Virginia Port Authority (VPA) in § 2.2-3705.6 subsection 1 is narrowly applied to specific proprietary information as identified in § 62.1-132.4 and § 62.1-134.1.

§ 62.1-132.4 addresses port operations and contracts with ship lines and other third parties. The port's rates with these parties are not uniform and can be negotiated individually based on volumes and other considerations. Port operations drive the need for the different rates. Furthermore, § 62.1-132.4 includes specific prohibition against disclosing proprietary information provided by customers and terminal operators.

Similarly § 62.1-134.1 includes proprietary information from railroads, mining companies, ship lines, and others and even prohibits disclosure of information to the Board of Commissioners; information covered under § 62.1-134.1 is for use exclusively by the port's Executive Director and staff. § 62.1-134.1 does require disclosure of information within 45 days of request for information kept in the regular course of business.

The Port of Virginia operates in many aspects as a business with a public mission with a unique construction of a public agency (VPA) owning marine terminals which are operated by a Limited Liability Corporation (Virginia International Terminals, LLC or VIT). Efficient operations of the port are predicated on the use of a shared services agreement between VPA and VIT, which was vetted and approved by both the Governor and Attorney General. The use and availability of proprietary records are essential to the effective implementation of the shared services agreement. Private sector partners (importers, exporters, manufacturers, ship lines, etc.)

expect protection of proprietary records, and their confidence in the port's protection of their information is imperative to the port's ability to compete against other ports and not negotiate against itself.

Given the port's unique construction and operation, it is important and appropriate that VPA's proprietary information FOIA exemption remain and as a specific exemption rather than being included under a general exemption.

Should you have any questions, please do not hesitate to contact me at 757-683-2129 or asinclair@portofvirginia.com. Thank you again for the opportunity to comment on the FOIA Council's review of the Virginia Port Authority's FOIA exemptions.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrew M. Sinclair". The signature is written in a cursive, flowing style.

Andrew M. Sinclair
Director, Government Affairs