

Virginia Freedom of Information Advisory Council  
Records Subcommittee  
May 9, 2016  
10:30 AM  
Speaker's Conference Room, Sixth Floor  
General Assembly Building  
Richmond, Virginia  
Meeting Summary

The Records Subcommittee of the FOIA Council (the Subcommittee) held its second meeting of the 2016 Interim on May 9, 2015, to continue the three-year study of FOIA directed by House Joint Resolution No. 96 (HJR 96). Subcommittee members Mr. Jones (Vice-Chair), Ms. Porto, and Mr. Vucci were present; Mr. Ashby (Chair), Ms. Hamlett, and Ms. King-Casey were absent.

The members of the Subcommittee introduced themselves, with Mr. Jones acting as Chair. Recognizing that the Subcommittee lacked a quorum and therefore could not vote to take any actions, but that many agency representatives and other interested parties were in attendance, Mr. Jones opened the floor to receive public comment. Craig Merritt, representing the Virginia Press Association, observed that many of the exclusions in the health and social services section, § 2.2-3705.5, are cross-references to other statutes that set out the rules of confidentiality for the records at issue, which makes the FOIA exemptions hard to understand without reading the referenced statutes. He also noted many of these exclusions use repetitious language dealing with two general concepts: (1) the confidentiality of individual patient information, and (2) public access to statistical and aggregate information is not limited. He also observed that there appeared to be some "issue creep" in the use of proprietary and trade secrets language in this section.

Staff reminded the Subcommittee that it had recommended a global change in the language of FOIA to replace exclusion language that currently states that "nothing shall be construed to prohibit" the release of certain records with language requiring affirmative disclosure. Staff related that the proposed global change may have unintended consequences and suggested adding it to the agenda for the next meeting. Staff also reminded the Subcommittee that at its last meeting it had suggested that staff and interested parties meet as a work group on the audit records exclusion found at subdivision 7 of § 2.2-3705.3. Staff informed the Subcommittee that it had heard from one interested party who was contacting others to propose amendments to the exclusion, and that a work group meeting should happen before the June 22, 2016 meeting of the Subcommittee.

There being no further comment, the meeting was then adjourned. The next meeting of the Subcommittee is scheduled to be held at 10:30 AM on Wednesday, June 1, 2016.

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