

Virginia Freedom of Information Advisory Council
Meetings Subcommittee
June 6, 2016
1:00 PM
Speaker's Conference Room, Sixth Floor
General Assembly Building
Richmond, Virginia
Meeting Summary

The Meetings Subcommittee of the FOIA Council (the Subcommittee) held its third meeting of the 2016 Interim on June 6, 2016. All Subcommittee members were present, except Mr. Landon and Ms. King-Casey.¹ The purpose of the meeting was to continue the study of FOIA in accordance with House Joint Resolution No. 96 (HJR 96). As per the study plan adopted by the Council, with the completion of the review of (i) open meeting exemptions found in § 2.2-3711, (ii) § 2.2-3712 (closed meeting procedures), (iii) § 2.2-3707 (notice of meetings, etc.), and § 2.2-3707.1 (posting of minutes for state boards and commissions) and § 2.2-3710 (voting) the Subcommittee began review of § 2.2-3707.01 (meeting of the General Assembly), and §§ 2.2-3708 (electronic communication meetings) and 2.2-3708.1 (participation in meetings in event of emergency or personal matter, etc.).

Staff advised the Subcommittee of the legislative history of § 2.2-3707.01 (meetings of the General Assembly), which was enacted in 2004 (c. 768) and amended again in 2005 (c. 352). Ginger Stanley, Executive Director of the Virginia Press Association (VPA) advised the Subcommittee that this section was highly negotiated, especially the codification of public access to joint committees of conference. She indicated that as a result of the enactment of § 2.2-3707.01, the budget conference committee was no longer a matter of hide and seek, and advised that in practical terms, access to this and other conference committees works very well. Roger Wiley, Esq., stated that the process has improved considerably with regard to the budget conference committee; but mentioned that recently, access to the conference committee for the ethics bills, was more difficult, notwithstanding the requirements of the FOIA. Megan Rhyne, Executive Director of the Virginia Coalition for Open Government (VCOG) told the Subcommittee that Virginia is unusual in a good way in that the Virginia General Assembly is subject to FOIA, while in the majority of states, the legislature is not subject to FOIA. Based on the discussions, the Subcommittee took no action to revise § 2.2-3707.01.

The Subcommittee next turned its attention to § 2.2-3708 (electronic communication meetings). Staff again provided the legislative history for this section noting that it was enacted in 1984 (c.252) and amended numerous times since then.² Staff advised that the Joint Commission on Technology and Science felt it unnecessary to receive annual electronic communication meeting (e-meetings) report because the FOIA Council already receives them and the filing of two reports is unnecessary. Megan Rhyne of VCOG again raised the issue of continued meetings and renewed her request that continued meetings be

¹ Dooley (Chair), Selph, and, Porto.

² See Appendix A to this summary, which sets forth the legislative history of § 2.2-3708.

noticed in the same way as any other meeting. The Subcommittee had previously recommended that required notice under § 2.2-3707 should apply to continued meetings and therefore directed staff to make the corollary changes to the e-meeting provisions in § 2.2-3708. The Subcommittee will review staff-prepared drafts on these issues at its next meeting on July 18, 2016.

The Subcommittee then reviewed the provisions of § 2.2-3708.1(participation in meetings in event of emergency or personal matter, etc.). Several issues were raised through public and staff comment. These issues related to (i) the redundancy of the terminology "emergency or personal matters," as personal matters subsumes emergency, (ii) FOIA's definition of a regional public body, which was felt to be imprecise and confusing, and (iii) the limitation on the number of e-meetings a member could participate in in any calendar year (two or 25 percent of the meetings, whichever is less), which was difficult to apply numerically. The Subcommittee discussed these issues at length and directed staff to prepare a draft to correct these deficiencies for review at the July 18, 2016 meeting of the Subcommittee.

The Subcommittee turned its attention to the next agenda item--the "context draft." At previous meetings, the Subcommittee discussed whether the current meeting exemptions that reference existing FOIA record exemptions should be amended to contain more information, to include the identity of the public body(s) to which the exemption applies and a general description of the subject matter of the excluded records/topic for discussion in a closed meeting in addition to the citation to the applicable records exemption. A draft was prepared by staff, discussed by the Subcommittee, and posted on the Council website to receive further comment. At today's meeting, the Subcommittee again action was deferred on this draft to allow ample time for review and reflection by interested parties. As a result, no action to date on this approach has been taken by the Subcommittee. The Subcommittee, however, directed staff to ensure that in the report of the FOIA Study pursuant to HJR 96 to the Governor and the General Assembly, that a note of explanation of why the context draft, if recommended by the Subcommittee and ultimately by the FOIA Council, was done. The report should note that it was not to expand or contract any authority granted pursuant to corollary FOIA record exclusion, but merely to provide context to the reader of generally what and to whom the exclusion applied.

The Subcommittee next reviewed the draft prepared by staff amending § 2.2-3707, as directed by the Subcommittee at its April 11 and May 4, 2016 meetings. The Subcommittee voted unanimously to recommend the draft, as amended.

Next, the Subcommittee reviewed proposed amendments to § 2.2-3707.1, website posting of meeting minutes. By way of reminder, at its May 4 ,2016 meeting, the Subcommittee directed staff to prepare a draft amending this section to require posting of meeting minutes for all state public bodies and local governing bodies, including school boards; however, for such local governing bodies, posting is required only for approved minutes. This limitation for local governing bodies and school boards was acknowledgment of the fact that such local governing bodies and school boards meet monthly and as a practical matter, draft minutes are prepared in time for approval at the next meeting. The discussion at today's meeting included the potential difficulty for legislative branch agencies to comply with

posting minutes within the statutory time frame, due to the substantial difference in staffing levels for legislative branch agencies as compared to executive branch agencies, as well as the fact that minutes are generally not approved by legislative agencies. Staff provided a listing of all legislative bodies subject to FOIA's meetings provisions for the Subcommittee's review. The Subcommittee discussed keeping the current posting requirement to executive branch agencies and, for other branches of government, requiring posting of final minutes on their respective public websites. Further, the Subcommittee considered increasing the time period for posting final minutes from three to five working days. Alternatively, the Subcommittee considered a delayed effective date of 2020 for posting of minutes by local governing bodies and legislative branch agencies. Ginger Stanley, VPA, stated that VPA's preference was for the delayed effective date. The Subcommittee directed staff to sync up the posting of notices with the posting of minutes for the Subcommittee's review at the July 18, 2016 meeting. However, the Subcommittee took no further action on the proposed amendments.

The next meetings of the Subcommittee are scheduled for Monday, July 18, 2016, and August 11, 2016, all in Richmond. There being no further business, the meeting was adjourned.

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APPENDIX A



Legislative History of § 2.2-3708 Electronic Communications Meetings under FOIA

Year	Chapter/Act of Assembly	Effect of Amendment	Comment
1984	c. 252	Electronic communication meetings prohibited (§ 2.1-343.1)	Enacted as result of <i>Roanoke City School Board v. Times-World Corp.</i> , 226 VA 185, September 9, 1983.
1989	c. 538	State public bodies authorized to conduct two-year pilot program (expiring July 1, 1991) for electronic communication meetings in accordance with statutorily mandated procedures; such meetings for political subdivisions and local public bodies prohibited. (§ 2.1-343.1)	
1991	c. 473	Two-year pilot program expanded to three-year program, expiring July 1, 1992. (§ 2.1-343.1)	
1992	c. 153	Authorization for state public bodies to conduct electronic communication meetings made permanent (i.e., three-year sunset repealed). (§ 2.1-343.1)	
1993	c. 270	Clarification of application of law (i.e., what public bodies may conduct electronic communication meetings. (§ 2.1-343.1)	
1995	c. 278	Language "Nothing in this section shall be construed to prohibit the use of interactive audio or video means to expand public participation" added. (§ 2.1-343.1)	
1996	c. 289	Requirement for quorum physically assembled at one location added. (§ 2.1-343.1)	
1999	c.703/726	Technical changes as result of 1999 rewrite of FOIA. (§ 2.1-343.1)	Recommendation of the HJR 187/501 Joint Subcommittee Studying FOIA
2001	c. 844	Technical changes as result of Title	No substantive

		2.1 revision into Title 2.2. (§ 2.2-3708)	changes made; renumbering of existing Code sections in Title 2.2
2003	c. 981/102	Technical changes as result of creation of the Virginia Information Technologies Agency (VITA). (§ 2.2-3708)	
2005	c. 352	Substantive rewrite of § 2.2-3708 to relax procedural requirements	Recommendation of FOIA Council and JCOTS
2007	cc. 512, 945	<ul style="list-style-type: none"> • Reduces the notice requirement for electronic communication meetings from 7 to 3 working days; • Clarifies that political subdivisions, other than units of local government, may conduct electronic communication meetings; • Allows an <i>individual</i> member of a state or local public body to participate in a meeting through electronic communication means from a remote location that is <i>not open</i> to the public in the event of an emergency, temporary or permanent disability or other medical condition, or when a member of a regional public body's principal residence is more than 60 miles from the primary meeting location. • For a member to participate in the above described manner, the bill requires that a quorum of the public body be physically assembled at the primary or central meeting location and that the public body make arrangements for the voice of the remote participant to be heard by all persons at the primary or central meeting location. • Adds definition of "regional public body." 	<p>Recommendation of FOIA Council</p> <p>Adds § 2.2-3708.1 to FOIA</p>
2008	cc. 233, 789	Allows local public bodies to meet electronically in event of Governor declared emergency w/o quorum.	Recommendation of FOIA Council
2013	c.694	The 2013 amendment by c. 694, in the first paragraph of subsection B, inserted "subsection G or H of this section or" near the beginning of the first sentence, and deleted the last sentence, which read: "State public	Recommendation of FOIA Council

		<p>bodies, however, may meet by electronic communication means without a quorum of the public body physically assembled at one location when (a) the Governor has declared a state of emergency in accordance with 44-146.17, (b) the meeting is necessary to take action to address the emergency, and (c) the public body otherwise complies with the provisions of this section"; in subsection F, added subdivision 3 and renumbered the remaining subdivisions accordingly, and added the last paragraph; in subsection G, substituted "public body" for "local governing body, school board, or any authority, board, bureau, commission, district, or agency of local government" near the beginning of the first sentence, deleted "local" preceding "public body" twice in the second sentence, and in the third sentence, deleted "and" following emergency" and inserted "and the type of electronic communication means by which the meeting was held"; and added subsection H.</p>	

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Source: Virginia Freedom of Information Advisory Council; July 2005; revised May 2007; revised June 2008, June 2016.