



# VIRGINIA FREEDOM OF INFORMATION ADVISORY COUNCIL

## COMMONWEALTH OF VIRGINIA

Senator Richard H. Stuart, Chair  
Delegate Luke E. Torian, Vice Chair  
foiacouncil@dls.virginia.gov

Alan Gernhardt, Esq., Executive Director/ Senior Attorney  
Chad Ayers, Esq., Staff Attorney

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Pocahontas Building ~ 900 E. Main Street, 8th Floor ~ Richmond, Virginia 23219  
804-225-3056 ~ (Toll Free) 1-866-448-4100 ~ (Fax) 804-698-1899 ~ <http://foiacouncil.virginia.gov>

**Wednesday, June 27, 2018**

**10:00 AM**

**House Committee Room 300A  
Pocahontas Building, Richmond, Virginia  
PROPOSED AGENDA (Annotated)**

**Records Subcommittee  
of the Virginia Freedom of Information Advisory Council**

- 1. Call to Order, introduction of members.**
- 2. Definition of "Public Record;" Social Media.** *At its meeting on April 4, 2018, the FOIA Council referred the following bill to the subcommittee for study, as summarized below.*
  - SB 730 (DeSteph); Virginia Freedom of Information Act. Clarifies that the definition of "public record" does not include records that are not prepared for or used in the transaction of public business. *As you will recall, at its meeting on May 21, 2018 the subcommittee asked staff to prepare a new draft including the discussed changes and recommended language regarding the definition of "public record."*
- 3. Custody and Transfer of Records; Access to Databases.** *At its meeting on April 4, 2018, the FOIA Council referred the following six bills to the subcommittee for study, as summarized below.*
  - HB 504 (Mullin); Virginia Freedom of Information Act; definition of "custodian."
  - HB 664 (Kilgore); Virginia Freedom of Information Act; transfer of public records; definition of "custodian."
  - HB 957 (Yancey); Virginia Freedom of Information Act; definition of "custodian."
  - HB 958 (Yancey); Virginia Freedom of Information Act (FOIA); records containing both excluded and nonexcluded information; duty to redact.
  - HB 959 (Yancey); Virginia Freedom of Information Act; transfer of public records.

- SB 876 (Mason); Virginia Freedom of Information Act; transfer of public records; definition of "custodian."
- Related Issue from 2017 Study Plan: Access to databases. *The Council previously deferred consideration of this issue pending the decision of the Supreme Court of Virginia in the case of The Daily Press v. the Office of the Executive Secretary of the Supreme Court of Virginia. That case was decided last year (293 Va. 551, 800 S.E.2d 822 (2017)). Additionally, subsequent legislation on the issue of access to court records databases was passed by the General Assembly and signed by the Governor this year (identical bills HB 780 (Habeb) and SB 564 (Peake)). Note that the legislation contains a second enactment clause with a delayed effective date for one provision concerning an online case information system. That provisions will go into effect July 1, 2019, while the remainder of the legislation will go into effect July 1, 2018.*

**4. Trade Secrets and Proprietary Records.** *At its meeting on April 4, 2018, the FOIA Council referred the following bill to the subcommittee for study, as summarized below.*

- HB 904 (Robinson); Virginia Freedom of Information Act (FOIA); general exclusion for trade secrets submitted to a public body.
- Related Issue from 2017 Study Plan: Proprietary records. *This issue was studied in conjunction with trade secrets. In 2017, the Council decided to move forward with the proposal for a general trade secrets exemption, but did not reach agreement on how to move forward regarding the use of the term "proprietary" in FOIA.*

**5. Public Comment.**

**6. Discussion.**

**7. Recommendations.**

**8. Other Business.**

**9. Adjournment.**

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**Subcommittee Members**

**Marisa Porto (Chair)  
Cullen Seltzer  
Mark Vucci**

**Shawri King-Casey  
Sandra Treadway**

**Staff**

**Alan Gernhardt, Esq., Executive Director  
Chad Ayers, Esq., Attorney**