

Hello Alan and Ashley,

Loudoun County (our client) has brought to our attention an inconsistency in the exemption in Sec. 2.2-3795.1 (10) for personal information submitted by a citizen for the purpose of receiving email information from a public body.

Each member of the Loudoun board of supervisors periodically distributes to his or her interested constituents an email newsletter about county-sponsored activities, events or projects specific to the supervisor's district. These newsletters are not campaign ads. The events and activities they cover are non-partisan and open to all. The newsletters are identified as sent by the individual supervisors, but they are sent over the county's email system, using county resources. Likewise, the citizens may submit their email addresses or other personal information through the supervisors or their aides, but that information is stored in the county's email database.

However, based on the advisory opinion (AO-07-04) Maria rendered 16 years ago to Loudoun's attorneys, the county staff has not been allowing citizens to "opt out" of disclosure when they submit their requests to receive these district newsletters, because the newsletters are at least arguably not coming from a public body (county or board of supervisors) but from an individual member. That has caused some ongoing concern about release of the email listings.

While the 2004 opinion may be correct in the literal sense, the public policy considerations that underlie the Sec. 2.2-3795.1 (10) exemption are much more compelling than they were 16 years ago. Phishing and hacks into local government data bases have become everyday occurrences, despite diligent efforts to combat them. The risk to the citizen submitting his or her email address to a public body is no different when the information is identified as coming from an individual supervisor than it is when it comes from the county or board as a whole.

We could simply ask a legislator to introduce a bill to make the exemption in Sec. 2.2-3795.1 (10) clearly applicable to information coming from a member of a public body. We believe, however, that this issue is one that would be appropriate for discussion at the meeting of the FOIA Council's phishing subcommittee scheduled for next week. If it can be placed on the agenda for that meeting, we will make certain that the appropriate Loudoun staff are attending the meeting (probably electronically) to present the issue and answer questions.

In the meantime I will be glad to answer any question you may have.

Thanks and best regards,

Roger

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