



Virginia Freedom of Information Advisory Council

Phishing Study Subcommittee

November 17, 2020, at 11:10 a.m.

Electronic Meeting

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The Phishing Study Subcommittee (the Subcommittee) of the Virginia Freedom of Information Advisory Council (the Council) met electronically.¹ The meeting began with introductions and opening remarks. Materials presented at the meeting, as well as all written public comments, are accessible through the [Council's website](#).

Presentation and Discussion: 2019 House Joint Resolution 628 (Heretick)

Delegate Stephen E. Heretick

Delegate Heretick gave a brief summary of HJR 628 (Heretick, 2019) and an overview of the larger issue of how phishing scams affect public bodies and its members.

Public Comment

The Council received one written public comment from Mr. Roger Wiley. Mr. Wiley's comment referenced subdivision 10 of § 2.2-3705, relating to the exclusion from mandatory disclosure of personal contact information provided to a public body for the purpose of email communications. Mr. Wiley proposed an expansion to that provision that would provide for protections for personal contact information provided not only to a public body, but also to any of its members. Written public comments are available through the [Council's website](#).

During the period for live public comment, Sherri Neil with the City of Portsmouth expressed that due to the current situation with COVID-19 and the increased use of technology to conduct public business, the need to protect information is even more important. Ms. Neil also noted that the City of Portsmouth supports the proposal brought forth by Mr. Roger Wiley in his written public comment. Megan Rhyne with the Virginia Coalition for Open Government (VCOG) noted that VCOG continues to oppose efforts to conflate phishing and spoofing with access through FOIA. While VCOG is not opposed to Mr. Wiley's proposal, Ms. Rhyne noted that the specifics need to be worked out to make sure the correct safeguards are in place.

Discussion

The Subcommittee discussed Mr. Wiley's proposal as well as HJR 628. Mr. Rives noted that discussions should be separated into three broad categories: (i) Mr. Wiley's proposal regarding personal contact information provided to a public body and any of its members, (ii) contact information of citizens who correspond generally with public officials and public employees, and

¹ **Members Present:** Dr. Sandra Treadway (chair), Lee Bujakowski, Sterling Rives, and Amigo Wade
Members Absent: Shawri King-Casey

(iii) phishing attacks against public employees that may derive from the publication of internal directories and the like.

Regarding Mr. Wiley's proposal, Dr. Treadway asked if it would require all public bodies to provide an "opt out" provision before collecting personal contact information from citizens. Staff noted that the current statute requires that the recipient of the electronic mail request the public body not to disclose the recipient's personal contact information, so technically the burden is on the citizen; in practice however, public bodies typically provide an "opt out" checkbox on the registration form. Mr. Bujakowski noted that broadening the statute per Mr. Wiley's suggestion seems reasonable. Mr. Rives asked about the definition of "electronic mail" and whether it includes text messages and other forms of electronic communication. Staff noted that that is open to interpretation, but the original intent of the statute was geared toward signing up for emails from a public body. Mr. Rives proposed broadening the language in the statute to include all means of electronic communication, and not just electronic mail, and to include personal contact information provided not only to a public body, but also to any of its individual members. He also noted a preference to change the current "opt out" provision to an "opt in" provision whereby the recipient of the electronic communications would have to expressly authorize the public body to release the recipient's personal contact information. Staff noted that it needs to be clear whether the Subcommittee is interested in a discretionary exemption or as a prohibition from release. Mr. Rives clarified that his intention was to amend the current exemption and keep it as a discretionary exemption. Mr. Rives made a motion to amend subdivision 10 of § 2.2-3705 as discussed by the Subcommittee. The motion was properly seconded by Lee Bujakowski and passed with a vote of 3-0-1.²

The Subcommittee then turned to discuss personal contact information that is a part of general correspondence between a citizen and a public body or public official and how and whether that information should be protected. Delegate Heretick expressed that a citizen's personal contact information should not be open to disclosure, especially when that information can be used by a bad actor for nefarious purposes. Megan Rhyne with VCOG noted that trying to protect contact information through FOIA will not stop the real problem and will not stop bad actors. Mr. Rives suggested that protections be drafted as a further amendment to subdivision 10 of § 2.2-3705.1 or as a new discretionary exemption. Mr. Rives also noted that while an exemption will not stop the problem, it will reduce the degree to which nefarious behavior has a tendency to discourage public comment. Mr. Rives expressed that while a citizen's email address should be protected, the citizen's name should be open to disclosure, as the public has a right to know who is making public comments and interacting with public officials. Mr. Rives made a motion to direct staff to draft legislation that would protect a citizen's personal contact information contained in general correspondence with a public body, public official, or public employee. Lee Bujakowski properly seconded the motion, and it passed with a vote of 4-0.

Finally, the subcommittee discussed how to protect public bodies from phishing scams generally. Dr. Treadway noted that during prior discussions from the 2019 interim, the Subcommittee expressed that the issue of phishing may be better addressed through internal training and information technology protocols instead of making changes to the language in FOIA. Staff gave a brief presentation on how other states address the issue of phishing and noted that Virginia is really the only state that was considering amending FOIA to address phishing issues. Mr. Rives

² Amigo Wade abstained from the vote.



noted that any directories put together for internal use should not be disclosed to the general public. Mr. Rives made a motion to direct staff to prepare legislation to exempt internal staff directories from mandatory disclosure under FOIA and asked that the Subcommittee endorse the overall concept. That motion failed for lack of a second.

For more information, see the [Council's website](#) or contact the Division of Legislative Services staff:

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