

On Sun, Oct 3, 2021 at 8:12 PM Eric Lin <eclinva@gmail.com> wrote:

Esteemed Members of the Freedom of Information Council Subcommittee.

I am writing to you today to provide a written statement regarding the impacts of FOIA on the work of statewide advisory boards and the benefits of virtual meetings to the same bodies.

My name is Eric Lin and I am the Chair of the Office of New Americans Advisory Board (ONAAB). The ONAAB was created in 2020 under §2.2-2496 and established as an advisory board, within the meaning of § 2.2-2100, in the executive branch of state government. The purpose of the Board is to advise the Governor, cabinet members, and the General Assembly on strategies to improve state policies and programs to support the economic, linguistic, and civic integration of new Americans throughout the Commonwealth.

Prior to my service on the ONAAB, I served four Governors as a member of the Virginia Asian Advisory Board over an 11 year period; and on the Virginia Complete Count Commissions for the 2010 and 2020 US Census created under §2.2-134 and §2.2-135 of the Code of Virginia.

While I understand and support the need for transparency in our governance of the Commonwealth, I have seen firsthand how the FOIA standards that various public bodies must adhere to, severely limit the ability of these bodies to perform the functions that they are created for.

With regards to the ONAAB, and similarly the VAAB, this body is an advisory board with no policy making or regulatory powers. FOIA constraints have limited the ability of the members to collaborate freely while engaging in the work of the Board. We understand that the need for transparency in our government will impact the efficiency of our work, however it is difficult to engage in the work of the committees due to the in-person meeting requirements.

The ONAAB is made up of individuals from different geographic regions. This provides significant logistical barriers to the work of our board. By code §2.2-2497, we are allowed only 4 general meetings per year which would also align with 4 committee meetings per year. Our board consists of volunteer appointees, and nearly all have regular employment. Their efforts on behalf of the Commonwealth come at a cost, and we cannot expect them to spend additional time travelling for committee meetings in addition to the regular general Board meetings. That expectation would not be equitable as members may not have the flexibility to be absent from work, and the subsequent loss of income.

In 2013, Senate Bill 1263 VA FOIA; meeting by electronic communication means by certain committees, etc. of State bodies was passed and introduced the following:

*Virginia Freedom of Information Act; meeting by electronic communication means by certain committees, subcommittees, etc., of state public bodies; personal matters. Authorizes an advisory public body, defined as any state public body classified as advisory pursuant to § 2.2-2100 or any committee, subcommittee, or other entity, however designated, of a state public body created to advise the state public body, to meet by electronic communication means without a quorum of the advisory public body being physically assembled at one location, provided, among other requirements, the meeting is conducted utilizing a combined audio and visual communication method. The bill requires any advisory public body holding this kind of electronic communication meeting to make an audiovisual recording of the meeting, which recording shall be preserved by the advisory public body for a period of three years from the date of the meeting. The bill also enhances the annual reporting requirements for any public body authorized to conduct electronic communication meetings and requires the FOIA Council to develop a form that an authorized public body must make available to the public at any such meeting for public comment. The above-described provisions of the bill by its terms will expire on July 1, 2014. Finally, the bill allows a member of any public body to participate in a meeting by electronic communication means due to personal matters under certain circumstances. Currently, such remote participation is allowed only for emergency, medical condition, or distance from the meeting location of more than 60 miles. **The bill is a recommendation of the Virginia Freedom of Information Advisory Council.***

This legislation passed both houses in 2013 and expired July 1, 2014. At the time of its sunset, no advisory bodies exercised the electronic meeting provisions due to the following:

- In 2013-2014, the use of online meeting platforms like Zoom, WebEx, Goto Meeting, Windows Teams and Google Meets were not readily available and technology requirements were unsurmountable without funding.
- Audio and visual recording mechanisms were not easily employed, and the preservation provisions were high bars to meet.
- Advisory boards had inconsistent access to resources and state staffing to assist with the management of the resources necessary to implement the opportunity.

It is my belief that if the ONAAB, and other similar advisory boards, can conduct meetings, especially our committee meetings, through electronic means, we can be much more effective as a body. Additionally, we feel that having this provision available to our board is warranted due to the following reasons.

- During the Covid-19 State of Emergency, the business of the administration was conducted effectively and in compliance with FOIA for the duration of the State of Emergency.
- Online meeting platforms like Zoom, Goto Meeting, and Google Meets are now ubiquitous and employed with much success. Many of these services are free to access as attendees, and subscription costs are nominal for those hosting these online meetings.
- Employing electronic meeting resources makes the government MORE equitable and accessible while also preserving the FOIA requirement for recordkeeping and access.

I also understand that there are considerations as to the frequency or parameters of such meetings. It would make sense that the following provisions also be considered:

- Voting may take place in electronic meetings (if quorum and other proper criteria are met), although it would be preferable that members of bodies meeting virtually be visible when casting votes.
- For committees or subcommittees, there should not be a limitation on the number of meetings. As long as meetings comply with the public notice and recordkeeping requirements, then virtual participation of members and the public would only be a benefit to the work of the boards and Commonwealth.

It should be noted that the Virginia Freedom of Information Act was passed in 2009, and much has changed in the intervening 12 years. Technologies have changed as has the accessibility to these technologies therefore the residents of the Commonwealth regularly communicate with better facility and ease. Our government should recognize these more effective means of communication and needs to adopt these new technologies, while also adhering to the spirit of open government.

The ONAAB understands that FOIA exists at the intersection of efficiency and transparency in government. We also believe in that accountability. However, as noted previously, the application of the in-person standard has deleterious impacts on the operation of a body that exists to help advise on policy and not serve in any regulatory or rule-making capacity.

Respectfully,

Eric Lin

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