



# VIRGINIA FREEDOM OF INFORMATION ADVISORY COUNCIL

## COMMONWEALTH OF VIRGINIA

Delegate Mike A. Cherry, Chair  
Senator Mamie E. Locke, Vice-Chair

Alan Gernhardt, Esq., Executive Director  
Joseph Underwood, Esq., Senior Attorney  
Lauren Waller, Research Associate

Pocahontas Building ~ 900 East Main Street, 10th Floor ~ Richmond, Virginia 23219  
foiacouncil@dls.virginia.gov ~ 804-698-1810 ~ (Toll Free) 1-866-448-4100 ~ (Fax) 804-698-1899 ~ <http://foiacouncil.dls.virginia.gov>

**September 6, 2023**

**1:00 PM**

**Subcommittee Room #1**

**Pocahontas Building**

Click [HERE](#) for Live Stream

### **PROPOSED AGENDA (Annotated)**

#### **Meetings Subcommittee of the Virginia Freedom of Information Advisory Council**

#### **1. Call to Order, introduction of members.**

*The FOIA Council directed the Subcommittee to study recent decisions of the Supreme Court of Virginia with the goal to provide guidance to public bodies on how best to comply with the Supreme Court's rulings. The decisions are summarized as follows:*

- [Berry v. Bd. of Supervisors of Fairfax County](#) (March 23, 2023). The Supreme Court held that a zoning ordinance adopted by the County at an electronic meeting conducted during the COVID-19 pandemic was *void ab initio* because the meeting failed to comply with FOIA's open meetings requirements. Note that the meeting at issue was conducted under the electronic meetings language in the State Budget (2020-2022 State Budget Item 4-0.01(g)), not under the provisions in FOIA regarding electronic meetings during a declared state of emergency (Code § 2.2-3708.2). A notice of rehearing, petition for rehearing, and amicus briefs have been filed in the case.
- [Gloss v. Wheeler](#) (May 18, 2023). The Supreme Court ruled that five members of a county board of supervisors held an improper meeting in violation of FOIA under the facts of the case when they met with police officials and others in regard to protests that were held in the county concerning the death of George Floyd in Minnesota in 2020. The Supreme Court held that in the context of public meetings, "for a topic to constitute public business it must not just be something that conceptually could at some point come before a public body, but rather, the topic must be something that is either before the public body or is likely to come before the body in the foreseeable future."

2. **Public Comment.**

3. **Discussion.**

4. **Recommendations.**

5. **Other Business.**

6. **Adjournment.**

\*\*\*\*\*

**Subcommittee Members**

**Delegate Mike A. Cherry  
Lola Rodriguez Perkins  
Bruce Potter**

**William Coleburn  
Cullen Seltzer**

**Staff**

Alan Gernhardt, Esq., Executive Director  
Joseph Underwood, Esq., Senior Attorney  
Lauren Waller, Research Associate