



Virginia Freedom of Information Advisory Council

Meetings Subcommittee

November 22, 2023, at 10:00 a.m.

South Subcommittee Room 210, General Assembly Building

foiacouncil.dls.virginia.gov

The Meetings Subcommittee (the Subcommittee) of the Virginia Freedom of Information Advisory Council (the Council) met with Delegate Mike A. Cherry, chair, presiding.¹ The meeting began with introductions and opening remarks followed by discussion. Materials presented at the meeting, as well as all written public comments, are accessible through the [Council's 2023 Subcommittees webpage](#).

Presentation, Public Comment, and Discussion: *Gloss v. Wheeler* *Council staff*

Council staff presented the results of the research conducted regarding the Supreme Court of Virginia's ruling in *Gloss v. Wheeler* (2023). The 50-state research prompt was to formulate clear and distinct definitions of "public business" and "informative meetings" within the context of the Virginia Freedom of Information Act (FOIA) and determine if other states have mechanisms in place to manage situations where public bodies, or their members, attend public events collectively or find themselves in public spaces simultaneously without prior knowledge. Council staff also gave an overview of a bill draft ([24100965D](#)) that provides a definition of "meeting" for purposes of FOIA.

The Subcommittee heard brief public comment on the bill draft and was provided with other suggestions on the definitions of "meeting" and "public business." Martin Crim, Sands Anderson PC, suggested that the Subcommittee modify the definition of "meeting" so that informational gatherings or public forums to gather information from the public would not constitute a meeting and to include the following language in the definition: "The attendance of members of a public body at the meeting of another public body does not constitute a meeting of the first public body so long as those members attending the other public body's meeting do not discuss or transact any public business." Mr. Crim also suggested that the Subcommittee include in the bill draft a definition of "public business" as an "activity that the public body has undertaken or proposed to undertake on behalf of the people it represents."

The Subcommittee discussed the recommendations made by Mr. Crim and in additional public comments, including a recommendation to require public bodies to provide notice when three or more officials plan to be in attendance at a public gathering. Cullen Seltzer expressed his support for Mr. Crim's proposal, and Lola Rodriguez Perkins asked how localities would know if three or more members would be present at a community meeting. She said that setting notice requirements would create additional strain on localities and stated that the Subcommittee should consider using more general language for community meetings. Bruce Potter suggested including

¹ **Members Present:** Delegate Mike A. Cherry (chair), William D. Coleburn (virtual), Lola Rodriguez Perkins, Esq., Bruce Potter (virtual), and Cullen D. Seltzer, Esq.

Members Absent: None

a phrase ensuring that the public will be notified when more than three members will be in attendance at a meeting as defined by the Code of Virginia. Ms. Rodriguez Perkins supported Council staff drafting legislation based on the recommendations provided by Mr. Crim but said that the Subcommittee needs to consider the implications of defining "public business."

Delegate Cherry made a motion to recommend that Council staff draft legislation to present at the next Council meeting based on Mr. Crim's proposal and a public comment from Megan Rhyne, Virginia Coalition for Open Government. The motion passed unanimously.

Presentation, Public Comment, and Discussion: *Berry v. Board of Supervisors of Fairfax County*

Council staff

Council staff presented the results of research conducted related to the Supreme Court of Virginia's ruling in *Berry v. Board of Supervisors of Fairfax County* (2023) on void ab initio remedies rectifying actions resulting from noncompliance with FOIA's open meeting requirements, including whether other states have statutes of limitations for violations relating to meetings that failed to adhere to FOIA's open meeting requirements.

Subcommittee members received the following public comments relating to such a potential statute of limitations:

- Andrew McRoberts, Sands Anderson PC, stated that two years is too long for a statute of limitations.
- Ms. Rhyne agreed that two years is too long for a statute of limitations but said that 30 days may be too short. She also emphasized that it is necessary for courts to have discretion when handing down decisions.
- Ramin Seddiq supported the holding in *Berry v. Board of Supervisors of Fairfax County* that it is not unreasonable to ask a public body to adhere to meeting laws and said that he supported a two-year statute of limitations.

Subcommittee members discussed the public comments and two bill drafts, one of which relates to a statute of limitations of two years ([24100975D](#)) that was drafted by Council staff and one of which relates to proceedings for enforcement where violations by a public body would not render void any actions taken ([24100963D](#)) that was provided by Mr. Seltzer. Ms. Rodriguez Perkins said that she supported the proposed language provided by Mr. Seltzer but expressed her opinion about the dangerous effects that allowing void ab initio remedies would have on local government and the public and provided examples of businesses that such remedies may affect. Delegate Cherry agreed that the idea that an action that took place at a meeting potentially six months to one year ago may be rendered void is chilling and stated that courts should have some flexibility but should not be able to void an entire meeting. William Coleburn proposed that the Subcommittee determine a resolution between void ab initio remedies and court discretion.

Focusing on a statute of limitations, Ms. Rodriguez Perkins stated that she was opposed to a two-year statute of limitations and proposed a 30-day time period, consistent with FOIA, while Delegate Cherry stated that he was leaning toward the proposed two-year time period. Mr. Potter said that 30 days is too short of a time period and two years is too long of a time period and proposed a 90-day or 180-day time period. Mr. Coleburn supported the proposed 180-day statute of limitations. After further discussion, the Subcommittee recommended that Council staff draft



two bills to present to the Council, the first to create a statute of limitations of 180 days for reviewing or filing FOIA meeting violation complaints and the second to focus on void ab initio remedies.

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

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