

2011 FOIA Workshops

Legislative Update

I. Introduction

- changes made by 2010 and 2011 Gen Assembly sessions
- issues with widespread effect and broad concern
- questions are welcome at all times

II. Legislative Update 2010

A. General records exemption for financial account and routing numbers

§ 2.2-3705.1(13): *Those portions of records that contain account numbers or routing information for any credit card, debit card, or other account with a financial institution of any person or public body. However, access shall not be denied to the person who is the subject of the record. For the purposes of this subdivision, "financial institution" means any organization authorized to do business under state or federal laws relating to financial institutions, including, without limitation, banks and trust companies, savings banks, savings and loan companies or associations, and credit unions.*

Comparison:

§ 2.2-3808.1. Agencies' disclosure of certain account information prohibited.
Notwithstanding Chapter 37 (§ 2.2-3700 et seq.) of this title, it shall be unlawful for any agency to disclose the social security number or other identification numbers appearing on driver's licenses or information on credit cards, debit cards, bank accounts, or other electronic billing and payment systems that was supplied to an agency for the purpose of paying fees, fines, taxes, or other charges collected by such agency. The prohibition shall not apply where disclosure of such information is required (i) to conduct or complete the transaction for which such information was submitted or (ii) by other law or court order.

REMINDER: First five digits of SSN generally protected under Protection of SSN's Act as of 2009 (§§ 2.2-3815 and 2.2-3816)

B. Threat assessment team records exemption

§ 2.2-3705.4 (8)

Records of a threat assessment team established by a public institution of higher education pursuant to § 23-9.2:10 relating to the assessment or intervention with a specific individual. However, in the event an individual who has been under assessment commits an act, or is prosecuted for the commission of an act that has caused the death of, or caused serious bodily injury, including any felony sexual assault, to another person, the records of such threat assessment team concerning the individual under assessment shall be made available as provided by this chapter, with the exception of any criminal history records obtained pursuant to § 19.2-389 or 19.2-389.1, health records

obtained pursuant to § 32.1-127.1:03, or scholastic records as defined in § 22.1-289. The public body providing such records shall remove information identifying any person who provided information to the threat assessment team under a promise of confidentiality.

C. Scholastic records exemption amended to include applicants

§ 2.2-3701 "Scholastic records" means those records containing information directly related to a student or an applicant for admission and maintained by a public body that is an educational agency or institution or by a person acting for such agency or institution.

D. Cannot have meeting in location where recording is not allowed

§ 2.2-3707(H) Any person may photograph, film, record or otherwise reproduce any portion of a meeting required to be open. The public body conducting the meeting may adopt rules governing the placement and use of equipment necessary for broadcasting, photographing, filming or recording a meeting to prevent interference with the proceedings, but shall not prohibit or otherwise prevent any person from photographing, filming, recording, or otherwise reproducing any portion of a meeting required to be open. No public body shall conduct a meeting required to be open in any building or facility where such recording devices are prohibited.

IV. Legislative Update 2011

A. Double FOIA penalties for knowing & willful violation

§ 2.2-3714: In a proceeding commenced against any officer, employee, or member of a public body under § 2.2-3713 for a violation of § 2.2-3704, 2.2-3705.1 through 2.2-3705.8, 2.2-3706, 2.2-3707, 2.2-3708, 2.2-3708.1, 2.2-3710, 2.2-3711 or 2.2-3712, the court, if it finds that a violation was willfully and knowingly made, shall impose upon such officer, employee, or member in his individual capacity, whether a writ of mandamus or injunctive relief is awarded or not, a civil penalty of not less than \$500 nor more than \$2,000, which amount shall be paid into the State Literary Fund. For a second or subsequent violation, such civil penalty shall be not less than \$2,000 nor more than \$5,000.

B. Three days notice before filing a FOIA petition

2.2-3713(C): Notwithstanding the provisions of § [8.01-644](#), the petition for mandamus or injunction shall be heard within seven days of the date when the same is made, provided the party against whom the petition is brought has received a copy of the petition at least three working days prior to filing. The hearing on any petition made outside of the regular terms of the circuit court of a locality that is included in a judicial circuit with another locality or localities shall be given precedence on the docket of such court over all cases that are not otherwise given precedence by law.

C. Records not in transaction of public business are not public records
(restatement of existing law, for clarification)

2.2-3701: "Public records" means all writings and recordings that consist of letters, words or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photography, magnetic impulse, optical or magneto-optical form, mechanical or electronic recording or other form of data compilation, however stored, and regardless of physical form or characteristics, prepared or owned by, or in the possession of a public body or its officers, employees or agents in the transaction of public business. Records that are not prepared for or used in the transaction of public business are not public records.

#