VIRGINIA FREEDOM OF INFORMATION ADVISORY COUNCIL
COMMONWEALTH OF VIRGINIA

Senator Mamie E. Locke, Chair
Delegate Marcus B. Simon, Vice-Chair

Alan Gernhardt, Esq., Executive Director
Joseph Underwood, Esq., Senior Attorney
Matteo Murrelle, Staff Attorney
Fiora DeBorous, Program Coordinator

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VIRGINIA FREEDOM OF INFORMATION ADVISORY COUNCIL

Date: Monday, November 16, 2026, 1:00 p.m.
Location: Senate Committee Room B
General Assembly Building
Richmond, Virginia
Note: This meeting will be held in person and live streamed here.

AGENDA

1. **Call to order, Senator Mamie E. Locke, Chair.**
2. **Subcommittee reports.**
   a. **Remedies Subcommittee, Delegate Marcus B. Simon, Subcommittee Chair.**
   b. **Records Subcommittee, Delegate Kimberly Pope Adams, Subcommittee Chair.**
   c. **Meetings Subcommittee, Ms. Maria JK Everett, Subcommittee Chair.**
3. **Discussion.**
4. **Other business.**
5. **Judicial updates.**
6. **Public comment.** If you wish to provide public comment virtually, please contact us via email at foiacouncil@dls.virginia.gov no later than **Friday, November 13, 2026** at **11:00 p.m.**
7. **Adjourn.**

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Council Members

Senator Mamie E. Locke, Chair
Delegate Kimberly Pope Adams
Chad Owen
Jacob R. "Jake" Lambert
Maria J.K. Everett
Corrine Louden
Lindsay Fisher
Delegate Marcus B. Simon, Vice-Chair
Senator Richard H. Stuart
Amigo Wade
Chidi James
Ken Reid
Lola Rodriguez Perkins
Dwayne Yancey

Staff

Alan Gernhardt, Esq., Executive Director
Joseph Underwood, Esq., Senior Attorney
Matteo Murrelle, Staff Attorney
Fiora DeBorous, Program Coordinator

The FOIA Council's website is: foiacouncil.dls.virginia.gov. To assist us in providing Internet dissemination of materials, presenters are requested to submit written comments and handouts in electronic format by email to staff prior to meetings. Presenters are also requested to bring 20 copies of their remarks or handouts to meetings. These copies will be provided to FOIA Council members and the public.

SENATE BILL NO. _____ HOUSE BILL NO. _____

A BILL to amend and reenact § 2.2-3713 of the Code of Virginia, relating to Virginia Freedom of Information Act; proceedings for enforcement; petition for mandamus or injunction.

Be it enacted by the General Assembly of Virginia:

1. That § 2.2-3713 of the Code of Virginia is amended and reenacted as follows:

§ 2.2-3713. Proceedings for enforcement of chapter.

A. Any person, including the attorney for the Commonwealth acting in his official or individual capacity, denied the rights and privileges conferred by this chapter may proceed to enforce such rights and privileges by filing a petition for mandamus or injunction, supported by an affidavit showing good cause. Such petition may be brought in the name of the person notwithstanding that a request for public records was made by the person's attorney in his representative capacity. Venue for the petition shall be addressed as follows:

1. In a case involving a local public body, to the general district court or circuit court of the county or city from which the public body has been elected or appointed to serve and in which such rights and privileges were so denied;

2. In a case involving a regional public body, to the general district or circuit court of the county or city where the principal business office of such body is located; and

3. In a case involving a board, bureau, commission, authority, district, institution, or agency of the state government, including a public institution of higher education, or a standing or other committee of the General Assembly, to the general district court or the circuit court of the residence of the aggrieved party or of the City of Richmond.

B. In any action brought before a general district court, a corporate petitioner may appear through its officer, director or managing agent without the assistance of counsel, notwithstanding any provision of law or Rule of Supreme Court of Virginia to the contrary.

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 that the FOIA officer designated by

the public body pursuant to § 2.2-3704.2, legal counsel for the public body, if it has one, the chief executive officer or chief administrative officer for the public body, or the party against whom the petition is brought has received a copy of the petition at least three working days prior to filing. If an individual is alleged to have committed a knowing and willful violation of this chapter in his individual capacity pursuant to subsection A of § 2.2-3714, then that individual shall also receive a copy of the petition at least three working days prior to filing.

However, if the petition or the affidavit supporting the petition for mandamus or injunction alleges violations of the open meetings requirements of this chapter, the three-day notice to the party against whom the petition is brought shall not be required. 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.

Immediately upon filing the petition, or as soon thereafter as is practicable, the clerk shall issue a summons for the hearing to each such party against whom the petition is brought and cause it to be served on him with a copy of the petition. Nothing in this section shall be construed to require service of process by a sheriff or private process server by the petitioner when a petition for mandamus or injunction to enforce rights granted under this chapter has been filed.

D. The petition shall allege with reasonable specificity the circumstances of the denial of the rights and privileges conferred by this chapter. A single instance of denial of the rights and privileges conferred by this chapter shall be sufficient to invoke the remedies granted herein. If the court finds the denial to be in violation of the provisions of this chapter, the petitioner shall be entitled to recover reasonable costs, including costs and reasonable fees for expert witnesses, and attorney fees from the public body if the petitioner substantially prevails on the merits of the case, unless special circumstances would make an award unjust. In making this determination, a court may consider, among other things, the reliance of a public body on an opinion of the Attorney General or a decision of a court that substantially supports the public body's position.

E. In any action to enforce the provisions of this chapter, the public body shall bear the burden of proof to establish an exclusion by a preponderance of the evidence. No court shall be required to accord any weight to the determination of a public body as to whether an exclusion applies. Any failure by a public body to follow the procedures established by this chapter shall be presumed to be a violation of this chapter.

F. Failure by any person to request and receive notice of the time and place of meetings as provided in § 2.2-3707 shall not preclude any person from enforcing his rights and privileges conferred by this chapter.

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SENATE BILL NO. _____ HOUSE BILL NO. _____

A BILL to amend and reenact § 2.2-3704 of the Code of Virginia, relating to the Virginia Freedom of Information Act; public records to be open to inspection; nonresident real property owners.

Be it enacted by the General Assembly of Virginia:

1. That § 2.2-3704 of the Code of Virginia is amended and reenacted as follows:

§ 2.2-3704. Public records to be open to inspection; procedure for requesting records and responding to request; charges; transfer of records for storage, etc.

A. Except as otherwise specifically provided by law, all public records shall be open to citizens of the Commonwealth, nonresidents owning real property within the Commonwealth, representatives of newspapers and magazines with circulation in the Commonwealth, and representatives of radio and television stations broadcasting in or into the Commonwealth during the regular office hours of the custodian of such records. Access to such records shall be provided by the custodian in accordance with this chapter by inspection or by providing copies of the requested records, at the option of the requester. The custodian may require the requester to provide his name and legal address. The custodian of such records shall take all necessary precautions for their preservation and safekeeping.

B. A request for public records shall identify the requested records with reasonable specificity. The request need not make reference to this chapter in order to invoke the provisions of this chapter or to impose the time limits for response by a public body. Any public body that is subject to this chapter and that is the custodian of the requested records shall promptly, but in all cases within five working days of receiving a request, provide the requested records to the requester or make one of the following responses in writing:

1. The requested records are being entirely withheld. Such response shall identify with reasonable particularity the volume and subject matter of withheld records, and cite, as to each category of withheld records, the specific Code section that authorizes the withholding of the records.

2. The requested records are being provided in part and are being withheld in part. Such response shall identify with reasonable particularity the subject matter of withheld portions, and cite, as to each category of withheld records, the specific Code section that authorizes the withholding of the records.

3. The requested records could not be found or do not exist. However, if the public body that received the request knows that another public body has the requested records, the response shall include contact information for the other public body.

4. It is not practically possible to provide the requested records or to determine whether they are available within the five-work-day period. Such response shall specify the conditions that make a response impossible. If the response is made within five working days, the public body shall have an additional seven work days or, in the case of a request for criminal investigative files pursuant to § 2.2-3706.1, 60 work days in which to provide one of the four preceding responses.

C. Any public body may petition the appropriate court for additional time to respond to a request for records when the request is for an extraordinary volume of records or requires an extraordinarily lengthy search, and a response by the public body within the time required by this chapter will prevent the public body from meeting its operational responsibilities. Before proceeding with the petition, however, the public body shall make reasonable efforts to reach an agreement with the requester concerning the production of the records requested.

D. Subject to the provisions of subsection G, no public body shall be required to create a new record if the record does not already exist. However, a public body may abstract or summarize information under such terms and conditions as agreed between the requester and the public body.

E. Failure to respond to a request for records shall be deemed a denial of the request and shall constitute a violation of this chapter.

F. Except with regard to scholastic records requested pursuant to subdivision A 1 of § 2.2-3705.4 that must be made available for inspection pursuant to the federal Family Educational Rights and Privacy Act (20 U.S.C. § 1232g) and such requests for scholastic records by a parent or legal guardian of a minor student or by a student who is 18 years of age or older, a public body may make reasonable charges not to exceed its actual cost incurred in accessing, duplicating, supplying, or searching for the requested

records and shall make all reasonable efforts to supply the requested records at the lowest possible cost. No public body shall impose any extraneous, intermediary, or surplus fees or expenses to recoup the general costs associated with creating or maintaining records or transacting the general business of the public body. Any duplicating fee charged by a public body shall not exceed the actual cost of duplication. The public body may also make a reasonable charge for the cost incurred in supplying records produced from a geographic information system at the request of anyone other than the owner of the land that is the subject of the request. However, such charges shall not exceed the actual cost to the public body in supplying such records, except that the public body may charge, on a pro rata per acre basis, for the cost of creating topographical maps developed by the public body, for such maps or portions thereof, which encompass a contiguous area greater than 50 acres. Prior to conducting a search for records, the public body shall notify the requester in writing that the public body may make reasonable charges not to exceed its actual cost incurred in accessing, duplicating, supplying, or searching for requested records and inquire of the requester whether he would like to request a cost estimate in advance of the supplying of the requested records. The public body shall provide the requester with a cost estimate if requested. The period within which the public body shall respond under this section shall be tolled for the amount of time that elapses between notice of the cost estimate and the response of the requester. If the public body receives no response from the requester within 30 days of sending the cost estimate, the request shall be deemed to be withdrawn. Any costs incurred by the public body in estimating the cost of supplying the requested records shall be applied toward the overall charges to be paid by the requester for the supplying of such requested records. Any local public body that charges for the production of records pursuant to this section may provide an electronic method of payment through which all payments for the production of such records to such locality may be made. For purposes of this subsection, "electronic method of payment" means any kind of noncash payment that does not involve a paper check and includes credit cards, debit cards, direct deposit, direct debit, electronic checks, and payment through the use of telephonic or similar communications.

G. Public records maintained by a public body in an electronic data processing system, computer database, or any other structured collection of data shall be made available to a requester at a reasonable

cost, not to exceed the actual cost in accordance with subsection F. When electronic or other databases are combined or contain exempt and nonexempt records, the public body may provide access to the exempt records if not otherwise prohibited by law, but shall provide access to the nonexempt records as provided by this chapter.

Public bodies shall produce nonexempt records maintained in an electronic database in any tangible medium identified by the requester, including, where the public body has the capability, the option of posting the records on a website or delivering the records through an electronic mail address provided by the requester, if that medium is used by the public body in the regular course of business. No public body shall be required to produce records from an electronic database in a format not regularly used by the public body. However, the public body shall make reasonable efforts to provide records in any format under such terms and conditions as agreed between the requester and public body, including the payment of reasonable costs. The excision of exempt fields of information from a database or the conversion of data from one available format to another shall not be deemed the creation, preparation, or compilation of a new public record.

H. In any case where a public body determines in advance that charges for producing the requested records are likely to exceed $200, the public body may, before continuing to process the request, require the requester to pay a deposit not to exceed the amount of the advance determination. The deposit shall be credited toward the final cost of supplying the requested records. The period within which the public body shall respond under this section shall be tolled for the amount of time that elapses between notice of the advance determination and the response of the requester.

I. Before processing a request for records, a public body may require the requester to pay any amounts owed to the public body for previous requests for records that remain unpaid 30 days or more after billing.

J. In the event a public body has transferred possession of public records to any entity, including but not limited to any other public body, for storage, maintenance, or archiving, the public body initiating the transfer of such records shall remain the custodian of such records for purposes of responding to requests for public records made pursuant to this chapter and shall be responsible for retrieving and

supplying such public records to the requester. In the event a public body has transferred public records for storage, maintenance, or archiving and such transferring public body is no longer in existence, any public body that is a successor to the transferring public body shall be deemed the custodian of such records. In the event no successor entity exists, the entity in possession of the public records shall be deemed the custodian of the records for purposes of compliance with this chapter, and shall retrieve and supply such records to the requester. Nothing in this subsection shall be construed to apply to records transferred to the Library of Virginia for permanent archiving pursuant to the duties imposed by the Virginia Public Records Act (§ 42.1-76 et seq.). In accordance with § 42.1-79, the Library of Virginia shall be the custodian of such permanently archived records and shall be responsible for responding to requests for such records made pursuant to this chapter.

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SENATE BILL NO. _____ HOUSE BILL NO. _____

A BILL to amend and reenact § 2.2-3701 of the Code of Virginia, relating to ~~the~~ Virginia Freedom of Information Act; definition of "personal information."

Be it enacted by the General Assembly of Virginia:

1. That § 2.2-3701 of the Code of Virginia is amended and reenacted as follows:

§ 2.2-3701. Definitions.

As used in this chapter, unless the context requires a different meaning:

"All-virtual public meeting" means a public meeting (i) conducted by a public body, other than those excepted pursuant to subsection C of § 2.2-3708.3, using electronic communication means, (ii) during which all members of the public body who participate do so remotely rather than being assembled in one physical location, and (iii) to which public access is provided through electronic communication means.

"Caregiver" means an adult who provides care for a person with a disability as defined in § 51.5-40.1. A caregiver shall be either related by blood, marriage, or adoption to or the legally appointed guardian of the person with a disability for whom he is caring.

"Closed meeting" means a meeting from which the public is excluded.

"Electronic communication" means the use of technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities to transmit or receive information.

"Emergency" means an unforeseen circumstance rendering the notice required by this chapter impossible or impracticable and which circumstance requires immediate action.

"Information," as used in the exclusions established by §§ 2.2-3705.1 through 2.2-3705.7, means the content within a public record that references a specifically identified subject matter, and shall not be interpreted to require the production of information that is not embodied in a public record.

"Meeting" or "meetings" means the meetings including work sessions, when sitting physically, or through electronic communication means pursuant to § 2.2-3708.2 or 2.2-3708.3, as a body or entity, or as an informal assemblage of (i) as many as three members or (ii) a quorum, if less than three, of the

constituent membership, wherever held, with or without minutes being taken, whether or not votes are cast, of any public body. Neither the gathering of employees of a public body nor the gathering or attendance of two or more members of a public body (a) at any place or function where no part of the purpose of such gathering or attendance is the discussion or transaction of any public business, such gathering or attendance was not called or prearranged with any purpose of discussing or transacting any business of the public body, and no discussion or transaction of public business takes place among the members of the public body or (b) at a public forum, informational gathering, candidate appearance, meeting of another public body, or debate, the purpose of which is to inform the electorate or to gather information from the public and not to transact public business or to hold discussions relating to the transaction of public business, where no discussion or transaction of public business takes place among the members of the public body, even though the performance of the members individually or collectively in the conduct of public business may be a topic of discussion, debate, or question presented by others at such public meeting, shall be deemed a "meeting" subject to the provisions of this chapter. The appointment of more than two members of a public body to another public body does not constitute a meeting of the first public body. For purposes of this definition of "meeting" only, the term "public business" means any activity a public body has undertaken or proposes to undertake on behalf of the people it represents.

"Official public government website" means any Internet site controlled by a public body and used, among any other purposes, to post required notices and other content pursuant to this chapter on behalf of the public body.

"Open meeting" or "public meeting" means a meeting at which the public may be present.

"Personal information" means information that identifies an individual, including name, address, email address, Social Security number, driver's license number or other government-issued identification number, medical or disability information, photograph, and telephone number.

"Public body" means any legislative body, authority, board, bureau, commission, district, or agency of the Commonwealth or of any political subdivision of the Commonwealth, including counties, cities, and towns, municipal councils, governing bodies of counties, school boards, and planning

commissions; governing boards of public institutions of higher education; and other organizations, corporations, or agencies in the Commonwealth supported wholly or principally by public funds. It shall include (i) the Virginia Birth-Related Neurological Injury Compensation Program and its board of directors established pursuant to Chapter 50 (§ 38.2-5000 et seq.) of Title 38.2 and (ii) any committee, subcommittee, or other entity however designated of the public body created to perform delegated functions of the public body or to advise the public body. It shall not exclude any such committee, subcommittee, or entity because it has private sector or citizen members. Corporations organized by the Virginia Retirement System are "public bodies" for purposes of this chapter.

For the purposes of the provisions of this chapter applicable to access to public records, constitutional officers and private police departments as defined in § 9.1-101 shall be considered public bodies and, except as otherwise expressly provided by law, shall have the same obligations to disclose public records as other custodians of public records.

"Public records" means all writings and recordings that consist of letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostatting, 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.

"Regional public body" means a unit of government organized as provided by law within defined boundaries, as determined by the General Assembly, which unit includes two or more localities.

"Remote participation" means participation by an individual member of a public body by electronic communication means in a public meeting where a quorum of the public body is otherwise physically assembled.

"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.

"Trade secret" means the same as that term is defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.).

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Use of the term "Personal Information" in FOIA

Prepared by the Virginia Freedom of Information Advisory Council

Code section	Phrasing used	Context
§ 2.2-3705.4 (A)(6)	"Personal information, as defined in § 2.2-3801" then three references to "personal information"	Commonwealth Savers Plan prepaid tuition contracts or savings trust account agreements
§ 2.2-3711 (A)(25)	"Personal information, as defined in § 2.2-3801"	Meetings exemption that corresponds to § 2.2-3705.4 (A)(6)
§ 2.2-3705.7 (8)	"Personal information, as defined in § 2.2-3801"	VHDA loans or other housing assistance
§ 2.2-3705.7 (13)	"Personal information"	Assistive Technology Loan Fund Authority loan applicants or recipients
§ 2.2-3705.7 (27)	"Personal information, as defined in § 2.2-3801"	Veterans Care Center Resident Trust Funds concerning residents or patients of the Department of Veterans Services Care Centers
§ 2.2-3705.7 (36)	"Personal information"	Virginia Lottery - voluntary exclusion program
§ 2.2-3705.7 (37)	"Personal information"	Virginia Lottery - identity of any person reporting prohibited conduct

State	Key Terms Used	Notable exclusions / limits
Alaska	Information identifying a person and supporting judgments about personal characteristics	Published directory name, address, or telephone number; public-job information
Illinois	SSN, driver's license, employee ID, biometrics, financial information, passwords/access codes, medical records, personal contact information, home address, personal license plates, HIPAA electronic medical-record information	Home address and license plates excluded when compiled without possibility of attribution or as otherwise provided by law
Maryland	Name, address, email, ID numbers, medical/disability information, photo/image, SSN, telephone number	Driver's status, driving offenses, five-digit ZIP code, vehicular accident information
New Mexico	Partial tax/financial/credit/debit/driver's license numbers, DOB except year, SSN, certain nonelected employee home street addresses	Allows last four digits for listed numbers; allows year of birth; employee address protection excludes city, state, and ZIP
Ohio	SSN, tax ID, driver's license/state ID, checking/savings/credit/debit accounts, other financial or medical account numbers	Definition is tied to § 149.45 and appears narrower than open-ended "identifies an individual" formulations

Five state comparison of the terms that are covered within their PI definition

Comparing Maryland and Virginia

Category	Maryland Public Information Act (PIA)	Virginia Freedom of Information Act (FOIA)
Statutory Definition of "Personal Information"	Maryland has a general, express, chapter-wide statutory definition in GP § 4-101(h). "Personal information" is defined as "information that identifies an individual," including name, address, email address, Social Security number, driver's license/government ID, medical/disability information, photograph, and telephone number.	Currently, the phrase is not defined within FOIA itself (§ 2.2-3701). Four FOIA exemptions reference "personal information" as defined in § 2.2-3801 (under the Government Data Collection and Dissemination Practices Act), while three other exemptions use the term without any statutory definition or cross-reference.
"Unwarranted Invasion of Personal Privacy" (UIPP) Standard	Maryland has no general, catchall statutory exemption for "unwarranted invasion of privacy". Instead, GP § 4-103(b) establishes UIPP as a rule of construction: the statute must be construed in favor of disclosure: *"To carry out the right set forth in subsection (a) of this section, unless an unwarranted invasion of the privacy of a person in interest would result, this title shall be construed in favor of allowing inspection of a public record, with the least cost and least delay to the person or governmental unit that requests the inspection."*	Virginia has a UIPP standard related to its personnel records exemption (§ 2.2-3705.1(1)) via judicial interpretation. In *Hawkins v. Town of South Hill* (2022), the Supreme Court of Virginia ruled that employee records are private if disclosure would constitute an unwarranted invasion of personal privacy to a "reasonable person" under the circumstances. Note that the UIPP is also used in § 2.2-3706.1. relating to law-enforcement records, but as of this writing, there have been no cases interpreting this standard in the context of the exemption.
Shared Terms	(iv) driver's license number or any other identification number; (v) medical or disability information;(vi) photograph or computer-generated image; (vii) Social Security number.	social security number, driver's license number, medical history, physical or digital photographs, videos, or audio,

SENATE BILL NO. _____ HOUSE BILL NO. _____

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1. That § 2.2-3701 of the Code of Virginia is amended and reenacted as follows:

§ 2.2-3701. Definitions.

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"Caregiver" means an adult who provides care for a person with a disability as defined in § 51.5-40.1. A caregiver shall be either related by blood, marriage, or adoption to or the legally appointed guardian of the person with a disability for whom he is caring.

"Closed meeting" means a meeting from which the public is excluded.

"Electronic communication" means the use of technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities to transmit or receive information.

"Emergency" means an unforeseen circumstance rendering the notice required by this chapter impossible or impracticable and which circumstance requires immediate action.

"Information," as used in the exclusions established by §§ 2.2-3705.1 through 2.2-3705.7, means the content within a public record that references a specifically identified subject matter, and shall not be interpreted to require the production of information that is not embodied in a public record.

"Meeting" or "meetings" means the meetings including work sessions, when sitting physically, or through electronic communication means pursuant to § 2.2-3708.2 or 2.2-3708.3, as a body or entity, or as an informal assemblage of (i) as many as three members or (ii) a quorum, if less than three, of the constituent membership, wherever held, with or without minutes being taken, whether or not votes are cast, of any public

body. Neither the gathering of employees of a public body nor the gathering or attendance of two or more members of a public body (a) at any place or function where no part of the purpose of such gathering or attendance is the discussion or transaction of any public business, such gathering or attendance was not called or prearranged with any purpose of discussing or transacting any business of the public body, and no discussion or transaction of public business takes place among the members of the public body or (b) at a public forum, informational gathering, candidate appearance, meeting of another public body, or debate, the purpose of which is to inform the electorate or to gather information from the public and not to transact public business or to hold discussions relating to the transaction of public business, where no discussion or transaction of public business takes place among the members of the public body, even though the performance of the members individually or collectively in the conduct of public business may be a topic of discussion, debate, or question presented by others at such public meeting, shall be deemed a "meeting" subject to the provisions of this chapter. The appointment of more than two members of a public body to another public body does not constitute a meeting of the first public body. For purposes of this definition of "meeting" only, the term "public business" means any activity a public body has undertaken or proposes to undertake on behalf of the people it represents.

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"Open meeting" or "public meeting" means a meeting at which the public may be present.

"Personal information" means information that identifies an individual, including name, address, email address, Social Security number, driver's license number or other government-issued identification number, medical or disability information, photograph, and telephone number.

"Public body" means any legislative body, authority, board, bureau, commission, district, or agency of the Commonwealth or of any political subdivision of the Commonwealth, including counties, cities, and towns, municipal councils, governing bodies of counties, school boards, and planning commissions; governing boards of public institutions of higher education; and other organizations, corporations, or agencies in the Commonwealth supported wholly or principally by public funds. It shall include (i) the Virginia Birth-Related

Neurological Injury Compensation Program and its board of directors established pursuant to Chapter 50 (§ 38.2-5000 et seq.) of Title 38.2 and (ii) any committee, subcommittee, or other entity however designated of the public body created to perform delegated functions of the public body or to advise the public body. It shall not exclude any such committee, subcommittee, or entity because it has private sector or citizen members. Corporations organized by the Virginia Retirement System are "public bodies" for purposes of this chapter.

For the purposes of the provisions of this chapter applicable to access to public records, constitutional officers and private police departments as defined in § 9.1-101 shall be considered public bodies and, except as otherwise expressly provided by law, shall have the same obligations to disclose public records as other custodians of public records.

"Public records" means all writings and recordings that consist of letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostatting, 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.

"Regional public body" means a unit of government organized as provided by law within defined boundaries, as determined by the General Assembly, which unit includes two or more localities.

"Remote participation" means participation by an individual member of a public body by electronic communication means in a public meeting where a quorum of the public body is otherwise physically assembled.

"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.

"Trade secret" means the same as that term is defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.).

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SENATE BILL NO. _____ HOUSE BILL NO. _____

A BILL to amend and reenact § 2.2-3704 of the Code of Virginia, relating to ~~the~~ Virginia Freedom of Information Act; cost estimates.

Be it enacted by the General Assembly of Virginia:

1. That § 2.2-3704 of the Code of Virginia is amended and reenacted as follows:

§ 2.2-3704. Public records to be open to inspection; procedure for requesting records and responding to request; charges; transfer of records for storage, etc.

A. Except as otherwise specifically provided by law, all public records shall be open to citizens of the Commonwealth, representatives of newspapers and magazines with circulation in the Commonwealth, and representatives of radio and television stations broadcasting in or into the Commonwealth during the regular office hours of the custodian of such records. Access to such records shall be provided by the custodian in accordance with this chapter by inspection or by providing copies of the requested records, at the option of the requester. The custodian may require the requester to provide his name and legal address. The custodian of such records shall take all necessary precautions for their preservation and safekeeping.

B. A request for public records shall identify the requested records with reasonable specificity. The request need not make reference to this chapter in order to invoke the provisions of this chapter or to impose the time limits for response by a public body. Any public body that is subject to this chapter and that is the custodian of the requested records shall promptly, but in all cases within five working days of receiving a request, provide the requested records to the requester or make one of the following responses in writing:

1. The requested records are being entirely withheld. Such response shall identify with reasonable particularity the volume and subject matter of withheld records, and cite, as to each category of withheld records, the specific Code section that authorizes the withholding of the records.

2. The requested records are being provided in part and are being withheld in part. Such response shall identify with reasonable particularity the subject matter of withheld portions, and cite, as to each category of withheld records, the specific Code section that authorizes the withholding of the records.

3. The requested records could not be found or do not exist. However, if the public body that received the request knows that another public body has the requested records, the response shall include contact information for the other public body.

4. It is not practically possible to provide the requested records or to determine whether they are available within the five-work-day period. Such response shall specify the conditions that make a response impossible. If the response is made within five working days, the public body shall have an additional seven work days or, in the case of a request for criminal investigative files pursuant to § 2.2-3706.1, 60 work days in which to provide one of the four preceding responses.

C. Any public body may petition the appropriate court for additional time to respond to a request for records when the request is for an extraordinary volume of records or requires an extraordinarily lengthy search, and a response by the public body within the time required by this chapter will prevent the public body from meeting its operational responsibilities. Before proceeding with the petition, however, the public body shall make reasonable efforts to reach an agreement with the requester concerning the production of the records requested.

D. Subject to the provisions of subsection G, no public body shall be required to create a new record if the record does not already exist. However, a public body may abstract or summarize information under such terms and conditions as agreed between the requester and the public body.

E. Failure to respond to a request for records shall be deemed a denial of the request and shall constitute a violation of this chapter.

F. Except with regard to scholastic records requested pursuant to subdivision A 1 of § 2.2-3705.4 that must be made available for inspection pursuant to the federal Family Educational Rights and Privacy Act (20 U.S.C. § 1232g) and such requests for scholastic records by a parent or legal guardian of a minor student or by a student who is 18 years of age or older, a public body may make reasonable charges not to exceed its actual cost incurred in accessing, duplicating, supplying, or searching for the requested

records and shall make all reasonable efforts to supply the requested records at the lowest possible cost. No public body shall impose any extraneous, intermediary, or surplus fees or expenses to recoup the general costs associated with creating or maintaining records or transacting the general business of the public body. Any duplicating fee charged by a public body shall not exceed the actual cost of duplication. The public body may also make a reasonable charge for the cost incurred in supplying records produced from a geographic information system at the request of anyone other than the owner of the land that is the subject of the request. However, such charges shall not exceed the actual cost to the public body in supplying such records, except that the public body may charge, on a pro rata per acre basis, for the cost of creating topographical maps developed by the public body, for such maps or portions thereof, which encompass a contiguous area greater than 50 acres. Prior to conducting a search for records, the public body shall notify the requester in writing that the public body may make reasonable charges not to exceed its actual cost incurred in accessing, duplicating, supplying, or searching for requested records and inquire of the requester whether he would like to request a cost estimate in advance of the supplying of the requested records. The public body shall provide the requester with a cost estimate if requested, and such estimate shall include an itemized breakdown of anticipated costs. The period within which the public body shall respond under this section shall be tolled for the ~~amount of~~ time that elapses between ~~notice of~~ providing the itemized cost estimate and the ~~response of the requester~~ requester's assent, revision, or withdrawal of the request. If the public body receives no response from the requester within 30 days of sending the cost estimate, the request shall be deemed to be withdrawn. Any costs incurred by the public body in estimating the cost of supplying the requested records shall be applied toward the overall charges to be paid by the requester for the supplying of such requested records. Any local public body that charges for the production of records pursuant to this section may provide an electronic method of payment through which all payments for the production of such records to such locality may be made. For purposes of this subsection, "electronic method of payment" means any kind of noncash payment that does not involve a paper check and includes credit cards, debit cards, direct deposit, direct debit, electronic checks, and payment through the use of telephonic or similar communications.

G. Public records maintained by a public body in an electronic data processing system, computer database, or any other structured collection of data shall be made available to a requester at a reasonable cost, not to exceed the actual cost in accordance with subsection F. When electronic or other databases are combined or contain exempt and nonexempt records, the public body may provide access to the exempt records if not otherwise prohibited by law, but shall provide access to the nonexempt records as provided by this chapter.

Public bodies shall produce nonexempt records maintained in an electronic database in any tangible medium identified by the requester, including, where the public body has the capability, the option of posting the records on a website or delivering the records through an electronic mail address provided by the requester, if that medium is used by the public body in the regular course of business. No public body shall be required to produce records from an electronic database in a format not regularly used by the public body. However, the public body shall make reasonable efforts to provide records in any format under such terms and conditions as agreed between the requester and public body, including the payment of reasonable costs. The excision of exempt fields of information from a database or the conversion of data from one available format to another shall not be deemed the creation, preparation, or compilation of a new public record.

H. In any case where a public body determines in advance that charges for producing the requested records are likely to exceed $200, the public body may, before continuing to process the request, require the requester to pay a deposit not to exceed the amount of the advance determination. The deposit shall be credited toward the final cost of supplying the requested records. The period within which the public body shall respond under this section shall be tolled for the amount of time that elapses between notice of the advance determination and the response of the requester.

I. Before processing a request for records, a public body may require the requester to pay any amounts owed to the public body for previous requests for records that remain unpaid 30 days or more after billing.

J. In the event a public body has transferred possession of public records to any entity, including but not limited to any other public body, for storage, maintenance, or archiving, the public body initiating

the transfer of such records shall remain the custodian of such records for purposes of responding to requests for public records made pursuant to this chapter and shall be responsible for retrieving and supplying such public records to the requester. In the event a public body has transferred public records for storage, maintenance, or archiving and such transferring public body is no longer in existence, any public body that is a successor to the transferring public body shall be deemed the custodian of such records. In the event no successor entity exists, the entity in possession of the public records shall be deemed the custodian of the records for purposes of compliance with this chapter, and shall retrieve and supply such records to the requester. Nothing in this subsection shall be construed to apply to records transferred to the Library of Virginia for permanent archiving pursuant to the duties imposed by the Virginia Public Records Act (§ 42.1-76 et seq.). In accordance with § 42.1-79, the Library of Virginia shall be the custodian of such permanently archived records and shall be responsible for responding to requests for such records made pursuant to this chapter.

#

Quick Reference Guide: Using Artificial Intelligence (AI) when Requesting Records under the Virginia Freedom of Information Act

Before you hit send, check the following:

1. **Does my request cover what I actually need?** Read the request as if you were the person receiving it. Remove anything the AI added that you do not want.
2. **Is it reasonably specific?** Name the topic, the type of record (emails, contracts, reports), the people or offices involved, and a date range (if applicable).
3. **Does it refer to current Virginia law, if it cites any law at all?** If you mention a statute, it should be FOIA, § 2.2-3700 *et seq*.
4. **Are the facts right?** Check names, dates, citations, and the office you are writing to.
5. **Is it clear and courteous?** Short, plain requests are easier to process than long, formal ones. Avoid confrontational language if you feel that the FOIA officer is not giving you what you want.

Example: tightening an AI-drafted request

AI draft

"Pursuant to 5 U.S.C. § 552, I hereby demand any and all documents, communications, and data in any form relating to road maintenance, to be produced within 20 business days."

Wrong law, wrong deadline, and far too broad.

Revised

"Under Virginia FOIA, I request copies of contracts and invoices for pothole repair on Route 7 in [County] from January 1 to June 30, 2026. Electronic copies by email are preferred."

Specific, correct, and quicker to process.

Some facts about Virginia FOIA requests

Who may request?	Citizens of Virginia, and representatives of newspapers and magazines circulating in Virginia and of radio and television stations broadcasting in or into Virginia. A public body may ask for your name and legal address to confirm citizenship.
How to ask for records?	FOIA does not require a particular form. A written request (email is encouraged) gives you and the public body a clear record of what was asked and when.
How fast will I receive a response?	A response must be sent within five working days. If that is not practically possible, the public body may take seven additional working days to respond by telling you so within the first five.
Cost	Charges may not exceed the actual cost of searching for and copying records. You may ask for a cost estimate in advance. If charges are likely to exceed $200, a deposit may be required.
If records are withheld	The public body must tell you and cite the specific Code section that allows the records to be withheld.

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Portions of this guide are adapted from guidance published by the UK Information Commissioner's Office, "Freedom of information (FOI) and artificial intelligence" (2026). [Issuing office] • [Month Year]

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Best Practices for Using Artificial Intelligence (AI) when Requesting Records under the Virginia Freedom of Information Act

What to check before you send a request drafted with ChatGPT, Copilot, Gemini, Claude or a similar generative AI tool

Many people now use artificial intelligence (AI) tools to help draft requests for public records. AI can help you organize your thoughts and write clearly. But AI tools also make predictable mistakes that can slow down your request or make it more expensive. This guide explains how to get the most out of AI while making sure your request achieves your aims under Virginia law.

Can I use AI to write my request?

Yes. There is no legal difference between a request drafted with AI and any other request. What matters is what the request says, not how it was written. The Virginia Freedom of Information Act (FOIA) requires that a request must identify the records you want with "reasonable specificity."[1] One of the problems we have seen with AI-drafted requests is that they often have multiple parts and subparts which can make them quite long, complicated, and subject to multiple interpretations. A well-drafted request should be concise and clear on its face so it is both reasonably specific (as required by FOIA) and easily understood (to avoid confusion or mistakes in processing the request). For those reasons, if you choose to use AI to help you draft a request, make sure you double-check the product and edit it as needed.

Why should I check what AI wrote?

The AI tools we interact with are frequently trained on general information, and much of it concerns federal FOIA[2] or other states' laws.

Common issues that AI use introduces include:

- **Questions instead of records.** FOIA gives you access to records that already exist. A public body does not have to create a new record or answer questions, although it may agree to summarize information. Sometimes AI chooses phrasing that asks a question rather than making a request for records.
- **Requests that are broader than you need.** Requests including such phrasing as "All records relating to …" or "Including but not limited to …" are not "reasonably specific" because they leave the parameters of a request open-ended. Similarly broad language can cause a single request to be more expansive than you really want by asking for a wide range of records that increases search time and production costs. For example, you may be interested in a recent event

[1] Subsection B of § 2.2-3704 of the Code of Virginia.
[2] 5 U.S.C. § 552.

Portions of this guide are adapted from guidance published by the UK Information Commissioner's Office, "Freedom of information (FOI) and artificial intelligence" (2026). [Issuing office] • [Month Year]

that occurred in your locality or affected a specific agency but an AI tool might phrase a request to ask for all events of the same type over a span of years.

- **Laws from other jurisdictions.** Because AI often draws information from various online sources, they may cite to federal FOIA, another state's statute(s), or even laws from other countries. While those laws may be valid in their own jurisdictions, they generally do not apply to Virginia state and local public bodies.
- **Out of date or incorrect information.** AI chatbots may provide responses that include information that is not accurate, frequently misstating current law, or providing documents created years ago while citing them as current law.
- **Invented details.** Case names, legal citations, office names, events or facts that look convincing but are not real. Sometimes AI is subject to its own form of hallucinations such that it might come up with language that sounds plausible but it refers to something that does not actually exist. A request that contains errors is still a valid request, and staff will still try to process it, but a public body may need to contact you to clarify what you want, and that can delay receipt of your records.

What if the public body asks me to clarify my request?

Answer as soon as you can, and do not hesitate to narrow your request. Clarifying is a way to help smooth the process of getting your records. Clear, concise and polite communications between a requester and the public body are the best way to make sure a FOIA transaction goes smoothly.

Where can I get help?

- **The public body's FOIA officer.** Every Virginia public body that is subject to FOIA must designate a FOIA officer, whose contact information is required to be posted.
- **The Virginia Freedom of Information Advisory Council.** Reach out to us at foiacouncil.dls.virginia.gov.

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2026 SESSION

INTRODUCED

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HOUSE BILL NO. 463

Offered January 14, 2026
Prefiled January 12, 2026

A BILL to amend and reenact §§ 2.2-3701 and 2.2-3708.3 of the Code of Virginia, relating to Virginia Freedom of Information Act; definitions; meetings; quorum and electronic communication.

Patron—Cohen

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-3701 and 2.2-3708.3 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-3701. Definitions.

As used in this chapter, unless the context requires a different meaning:

"All-virtual public meeting" means a public meeting (i) conducted by a public body, other than those excepted pursuant to subsection C of § 2.2-3708.3, using electronic communication means, (ii) during which all members of the public body who participate do so remotely rather than being assembled in one physical location, and (iii) to which public access is provided through electronic communication means.

"Caregiver" means an adult who provides care for a person with a disability as defined in § 51.5-40.1. A caregiver shall be either related by blood, marriage, or adoption to or the legally appointed guardian of the person with a disability for whom he is caring.

"Closed meeting" means a meeting from which the public is excluded.

"Electronic communication" means the use of technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities to transmit or receive information.

"Emergency" means an unforeseen circumstance rendering the notice required by this chapter impossible or impracticable and which circumstance requires immediate action.

"Information," as used in the exclusions established by §§ 2.2-3705.1 through 2.2-3705.7, means the content within a public record that references a specifically identified subject matter, and shall not be interpreted to require the production of information that is not embodied in a public record.

"Meeting" or "meetings" means the meetings including work sessions, when sitting physically, or through electronic communication means pursuant to § 2.2-3708.2 or 2.2-3708.3, as a body or entity, or as an informal assemblage of ~~(i) as many as three members or (ii)~~ a quorum~~, if less than three,~~ of the constituent membership, wherever held, with or without minutes being taken, whether or not votes are cast, of any public body. Neither the gathering of employees of a public body nor the gathering or attendance of ~~two or more members~~ *a quorum* of a public body (a) at any place or function where no part of the purpose of such gathering or attendance is the discussion or transaction of any public business, such gathering or attendance was not called or prearranged with any purpose of discussing or transacting any business of the public body, and no discussion or transaction of public business takes place among the members of the public body or (b) at a public forum, informational gathering, candidate appearance, meeting of another public body, or debate, the purpose of which is to inform the electorate or to gather information from the public and not to transact public business or to hold discussions relating to the transaction of public business, where no discussion or transaction of public business takes place among the members of the public body, even though the performance of the members individually or collectively in the conduct of public business may be a topic of discussion, debate, or question presented by others at such public meeting, shall be deemed a "meeting" subject to the provisions of this chapter. The appointment of ~~more than two members~~ *a quorum* of a public body to another public body does not constitute a meeting of the first public body. For purposes of this definition of "meeting" only, the term "public business" means any activity a public body has undertaken or proposes to undertake on behalf of the people it represents.

"Official public government website" means any Internet site controlled by a public body and used, among any other purposes, to post required notices and other content pursuant to this chapter on behalf of the public body.

"Open meeting" or "public meeting" means a meeting at which the public may be present.

"Public body" means any legislative body, authority, board, bureau, commission, district, or agency of the Commonwealth or of any political subdivision of the Commonwealth, including counties, cities, and towns, municipal councils, governing bodies of counties, school boards, and planning commissions; governing boards of public institutions of higher education; and other organizations, corporations, or agencies in the Commonwealth supported wholly or principally by public funds. It shall include (i) the Virginia Birth-Related Neurological Injury Compensation Program and its board of directors established pursuant to Chapter 50 (§ 38.2-5000 et seq.) of Title 38.2 and (ii) any committee, subcommittee, or other entity however

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designated of the public body created to perform delegated functions of the public body or to advise the public body. It shall not exclude any such committee, subcommittee, or entity because it has private sector or citizen members. Corporations organized by the Virginia Retirement System are "public bodies" for purposes of this chapter.

For the purposes of the provisions of this chapter applicable to access to public records, constitutional officers and private police departments as defined in § 9.1-101 shall be considered public bodies and, except as otherwise expressly provided by law, shall have the same obligations to disclose public records as other custodians of public records.

"Public records" means all writings and recordings that consist of letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostatting, 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.

"Regional public body" means a unit of government organized as provided by law within defined boundaries, as determined by the General Assembly, which unit includes two or more localities.

"Remote participation" means participation by an individual member of a public body by electronic communication means in a public meeting where a quorum of the public body is otherwise physically assembled.

"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.

"Trade secret" means the same as that term is defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.).

§ 2.2-3708.3. Meetings held through electronic communication means; situations other than declared states of emergency.

A. Public bodies are encouraged to (i) provide public access, both in person and through electronic communication means, to public meetings and (ii) provide avenues for public comment at public meetings when public comment is customarily received, which may include public comments made in person or by electronic communication means or other methods.

B. Individual members of a public body may use remote participation instead of attending a public meeting in person if, in advance of the public meeting, the public body has adopted a policy as described in subsection D and the member notifies the public body chair that:

1. The member has a temporary or permanent disability or other medical condition that prevents the member's physical attendance~~.~~ ~~For purposes of determining whether a quorum is physically assembled, an individual member of a public body who is a person with a disability as defined in § 51.5-40.1 and uses remote participation counts toward the quorum as if the individual was physically present~~;

2. A medical condition of a member of the member's family requires the member to provide care that prevents the member's physical attendance or the member is a caregiver who must provide care for a person with a disability at the time the public meeting is being held thereby preventing the member's physical attendance~~.~~ ~~For purposes of determining whether a quorum is physically assembled, an individual member of a public body who is a caregiver for a person with a disability and uses remote participation counts toward the quorum as if the individual was physically present~~;

3. The member's principal residence is more than 60 miles from the meeting location identified in the required notice for such meeting; or

4. The member is unable to attend the meeting due to a personal matter and identifies with specificity the nature of the personal matter. However, the member may not use remote participation due to personal matters more than two meetings per calendar year or 25 percent of the meetings held per calendar year rounded up to the next whole number, whichever is greater.

For purposes of determining whether a quorum is physically assembled, if participation by a member of a public body through electronic communication is approved pursuant to this subsection, such member using remote participation counts toward the quorum as if the individual were physically present.

If participation by a member through electronic communication means is approved pursuant to this subsection, the public body holding the meeting shall record in its minutes the remote location from which the member participated; however, the remote location need not be open to the public and may be identified in the minutes by a general description. If participation is approved pursuant to subdivision 1 or 2, the public body shall also include in its minutes the fact that the member participated through electronic communication means due to a (i) temporary or permanent disability or other medical condition that prevented the member's physical attendance or (ii) family member's medical condition that required the member to provide care for such family member, thereby preventing the member's physical attendance. If participation is approved pursuant to subdivision 3, the public body shall also include in its minutes the fact that the member participated through electronic communication means due to the distance between the member's principal residence and the meeting location. If participation is approved pursuant to subdivision 4, the public body

shall also include in its minutes the specific nature of the personal matter cited by the member.

If a member's participation from a remote location pursuant to this subsection is disapproved because such participation would violate the policy adopted pursuant to subsection D, such disapproval shall be recorded in the minutes with specificity.

C. With the exception of local governing bodies, local school boards, planning commissions, architectural review boards, zoning appeals boards, and boards with the authority to deny, revoke, or suspend a professional or occupational license, any public body may hold all-virtual public meetings, provided that the public body follows the other requirements in this chapter for meetings, the public body has adopted a policy as described in subsection D, and:

1. An indication of whether the meeting will be an in-person or all-virtual public meeting is included in the required meeting notice along with a statement notifying the public that the method by which a public body chooses to meet shall not be changed unless the public body provides a new meeting notice in accordance with the provisions of § 2.2-3707;

2. Public access to the all-virtual public meeting is provided via electronic communication means;

3. The electronic communication means used allows the public to hear all members of the public body participating in the all-virtual public meeting and, when audio-visual technology is available, to see the members of the public body as well. When audio-visual technology is available, a member of a public body shall, for purposes of a quorum, be considered absent from any portion of the meeting during which visual communication with the member is voluntarily disconnected or otherwise fails or during which audio communication involuntarily fails;

4. A phone number or other live contact information is provided to alert the public body if the audio or video transmission of the meeting provided by the public body fails, the public body monitors such designated means of communication during the meeting, and the public body takes a recess until public access is restored if the transmission fails for the public;

5. A copy of the proposed agenda and all agenda packets and, unless exempt, all materials furnished to members of a public body for a meeting is made available to the public in electronic format at the same time that such materials are provided to members of the public body;

6. The public is afforded the opportunity to comment through electronic means, including by way of written comments, at those public meetings when public comment is customarily received;

7. No more than two members of the public body are together in any one remote location unless that remote location is open to the public to physically access it;

8. If a closed session is held during an all-virtual public meeting, transmission of the meeting to the public resumes before the public body votes to certify the closed meeting as required by subsection D of § 2.2-3712;

9. The public body does not convene an all-virtual public meeting (i) more than two times per calendar year or 50 percent of the meetings held per calendar year rounded up to the next whole number, whichever is greater, or (ii) consecutively with another all-virtual public meeting; and

10. Minutes of all-virtual public meetings held by electronic communication means are taken as required by § 2.2-3707 and include the fact that the meeting was held by electronic communication means and the type of electronic communication means by which the meeting was held. If a member's participation from a remote location pursuant to this subsection is disapproved because such participation would violate the policy adopted pursuant to subsection D, such disapproval shall be recorded in the minutes with specificity.

D. Before a public body uses all-virtual public meetings as described in subsection C or allows members to use remote participation as described in subsection B, the public body shall at least once annually adopt a policy, by recorded vote at a public meeting, that shall be applied strictly and uniformly, without exception, to the entire membership and without regard to the identity of the member requesting remote participation or the matters that will be considered or voted on at the meeting. The policy shall:

1. Describe the circumstances under which an all-virtual public meeting and remote participation will be allowed and the process the public body will use for making requests to use remote participation, approving or denying such requests, and creating a record of such requests; and

2. Fix the number of times remote participation for personal matters or all-virtual public meetings can be used per calendar year, not to exceed the limitations set forth in subdivisions B 4 and C 9.

The policy shall not prohibit or restrict any individual member of a public body who is participating in an all-virtual meeting or who is using remote participation from voting on matters before the public body.

Any public body that creates a committee, subcommittee, or other entity however designated of the public body to perform delegated functions of the public body or to advise the public body may also adopt a policy on behalf of its committee, subcommittee, or other entity that shall apply to the committee, subcommittee, or other entity's use of individual remote participation and all-virtual public meetings.

SENATE BILL NO. _____ HOUSE BILL NO. _____

A BILL to amend and reenact § 2.2-3701 of the Code of Virginia, relating to the Virginia Freedom of Information Act; definition of "meeting."

Be it enacted by the General Assembly of Virginia:

1. That § 2.2-3701 of the Code of Virginia is amended and reenacted as follows:

§ 2.2-3701. Definitions.

As used in this chapter, unless the context requires a different meaning:

"All-virtual public meeting" means a public meeting (i) conducted by a public body, other than those excepted pursuant to subsection C of § 2.2-3708.3, using electronic communication means, (ii) during which all members of the public body who participate do so remotely rather than being assembled in one physical location, and (iii) to which public access is provided through electronic communication means.

"Caregiver" means an adult who provides care for a person with a disability as defined in § 51.5-40.1. A caregiver shall be either related by blood, marriage, or adoption to or the legally appointed guardian of the person with a disability for whom he is caring.

"Closed meeting" means a meeting from which the public is excluded.

"Electronic communication" means the use of technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities to transmit or receive information.

"Emergency" means an unforeseen circumstance rendering the notice required by this chapter impossible or impracticable and which circumstance requires immediate action.

"Information," as used in the exclusions established by §§ 2.2-3705.1 through 2.2-3705.7, means the content within a public record that references a specifically identified subject matter, and shall not be interpreted to require the production of information that is not embodied in a public record.

"Meeting" or "meetings" means the meetings including work sessions, when sitting physically, or through electronic communication means pursuant to § 2.2-3708.2 or 2.2-3708.3, as a body or entity, or as an informal assemblage of (i) as many as ~~three~~ four members or (ii) a quorum, if less than ~~three~~ four,

of the constituent membership, wherever held, with or without minutes being taken, whether or not votes are cast, of any public body. Neither the gathering of employees of a public body nor the gathering or attendance of two or more members of a public body (a) at any place or function where no part of the purpose of such gathering or attendance is the discussion or transaction of any public business, such gathering or attendance was not called or prearranged with any purpose of discussing or transacting any business of the public body, and no discussion or transaction of public business takes place among the members of the public body or (b) at a public forum, informational gathering, candidate appearance, meeting of another public body, or debate, the purpose of which is to inform the electorate or to gather information from the public and not to transact public business or to hold discussions relating to the transaction of public business, where no discussion or transaction of public business takes place among the members of the public body, even though the performance of the members individually or collectively in the conduct of public business may be a topic of discussion, debate, or question presented by others at such public meeting, shall be deemed a "meeting" subject to the provisions of this chapter. The appointment of more than two members of a public body to another public body does not constitute a meeting of the first public body. For purposes of this definition of "meeting" only, the term "public business" means any activity a public body has undertaken or proposes to undertake on behalf of the people it represents.

"Official public government website" means any Internet site controlled by a public body and used, among any other purposes, to post required notices and other content pursuant to this chapter on behalf of the public body.

"Open meeting" or "public meeting" means a meeting at which the public may be present.

"Public body" means any legislative body, authority, board, bureau, commission, district, or agency of the Commonwealth or of any political subdivision of the Commonwealth, including counties, cities, and towns, municipal councils, governing bodies of counties, school boards, and planning commissions; governing boards of public institutions of higher education; and other organizations, corporations, or agencies in the Commonwealth supported wholly or principally by public funds. It shall include (i) the Virginia Birth-Related Neurological Injury Compensation Program and its board of

directors established pursuant to Chapter 50 (§ 38.2-5000 et seq.) of Title 38.2 and (ii) any committee, subcommittee, or other entity however designated of the public body created to perform delegated functions of the public body or to advise the public body. It shall not exclude any such committee, subcommittee, or entity because it has private sector or citizen members. Corporations organized by the Virginia Retirement System are "public bodies" for purposes of this chapter.

For the purposes of the provisions of this chapter applicable to access to public records, constitutional officers and private police departments as defined in § 9.1-101 shall be considered public bodies and, except as otherwise expressly provided by law, shall have the same obligations to disclose public records as other custodians of public records.

"Public records" means all writings and recordings that consist of letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostatting, 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.

"Regional public body" means a unit of government organized as provided by law within defined boundaries, as determined by the General Assembly, which unit includes two or more localities.

"Remote participation" means participation by an individual member of a public body by electronic communication means in a public meeting where a quorum of the public body is otherwise physically assembled.

"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.

"Trade secret" means the same as that term is defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.).

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Definition of "Informational Gathering"

Prepared by the Virginia Freedom of Information Advisory Council
Meetings Subcommittee
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Interpretive approach.

In the absence of an applicable statutory definition, consideration may be given to a term's plain meaning. The Supreme Court of Virginia has previously stated:

> "when ... a statute contains no express definition of a term, the general rule of statutory construction is to infer the legislature's intent from the ... language used. When the legislature leaves a term undefined, courts must give [the term] its ordinary meaning, [taking into account] the context in which it is used."[1]

Definitions

The following entries are dictionary definitions compiled from various sources that include definitions for several relevant terms.

Term	Definition	Definition
Informational. *adj.*	Relating to or providing information. (Cambridge Dictionary)	relating to or giving information **:** informing. (Merriam-Webster)
Information. *noun*.	Facts about a situation, person, event, etc. (Cambridge Dictionary)	knowledge of a particular event or situation. (Merriam-Webster)
Gathering. *noun*.	A coming together of people in a group, including for social, religious, or political purposes; an assembly or meeting. (Merriam-Webster)	an assemblage of people; group or crowd. (Dictionary.com).
Discussion. *noun.*	The activity in which people talk about something and tell each other their ideas or opinions. (Cambridge Dictionary)	an act or instance of discussing; consideration or examination by argument, comment, etc., especially to explore solutions; informal debate. (Dictionary.com)

Staff Observations

In several dictionary definitions, the meaning of "gathering" includes "meeting." Accordingly, the ordinary meanings alone may not establish a clear distinction between an "informational gathering" and a "meeting." In the context of an exception to a meeting, informational gathering can be contrasted with meetings where there is discussion or transaction of public business.

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[1]Freedom of Information Advisory Opinion 03 (2020)(quoting *American Tradition Institute v. Rector and Visitors of the University of Virginia*, 287 Va. 330, 341, (Va. 2014)).