

MEMORANDUM

To: The Virginia Freedom of Information Advisory Council (the “Council”)
From: Ramin Seddiq
Re: The Virginia Freedom of Information Act (“VFOIA”) – Va. Code § 2.2-3700 et seq.
Proposed definition of “discretionary disclosure”
Date: September 16, 2024

Pursuant to its powers and duties, as set forth in the Code of Virginia § 30-179(7) and other applicable sections, the Council is urged to recommend the adoption of the following definition and its addition to Va. Code § 2.2-3701 (“Definitions”):

Discretionary disclosure is the disclosure of information that could properly be withheld under [VFOIA], but that the custodian determines can be released because disclosure will not result in foreseeable harm to an interest protected under [VFOIA]. Discretionary disclosure authority shall exclude any consideration of whether disclosure could: 1.) reveal malfeasance, mismanagement, or waste; or 2.) cause embarrassment, or reputational or political harm to the public body, its custodian of records, officers, or employees.¹

¹ A segment of this definition is derived from the U.S. Department of Labor, Mine Safety and Health Administration (see: <https://www.msha.gov/training-education/frequently-asked-questions/what-discretionary-disclosure>).