

From: **Tyler, Robert M (rmt3k)** <rmt3k@virginia.edu>
Date: Thu, Dec 14, 2023 at 10:32 AM
Subject: FW: FOIA Council Meeting -- December 14, 2023
To: foiacouncil@dls.virginia.gov <foiacouncil@dls.virginia.gov>

Allen, I will try to sit in on this meeting today. I did want to voice one concern about the proposed definition of “public business” in LD24101703. While I think adopting the Gloss dissent’s definition is sensible, I think this proposed bill makes the same mistake committed by both opinions in Gloss; namely, that it defines “public business” with reference to meetings/activities of the public body, without considering how the definition affects usage of that term in the definition of “public records” later in 2.2-3701: *“Public records” means all writings and recordings . . . prepared or owned by, or in the possession of a public body or its officers, employees, or agents in the transaction of public business.*”

If the Court or the General Assembly defines “public business” explicitly by reference to meetings or activities of the public body, and given the presumption of consistent usage of statutory terms, I’m having trouble envisioning how officers, employees and agents of a public body can transact public business unless they are working on an action undertaken or proposed by the public body. And I think that risks narrowing the definition of “public records” to exclude records of matters worked on by officers, employees and agents of a public body that don’t involve activity “undertaken or proposed by the public body.”

Wouldn’t it make more sense to define public business with respect to all parties involved? Perhaps something like this:

“Public business” means (a) with respect to a public body, activity that the public body has undertaken or proposed to undertake on behalf of the people it represents and (b), with respect to officers, employees and agents of a public body, activity by or with any such officer, agent or employee within the scope of such officer, agent or employee’s official duties and functions.

Or this:

“Public business” means activity that a public body or its officers, employees, or agents undertake or propose to undertake within the scope of official powers, duties, functions and jurisdiction.

Thanks for considering.

Rob
Robert M. Tyler
Associate University Counsel

E robtyler@virginia.edu
P 434.297.7624
M 804.363.8729

University of Virginia
Office of University Counsel
Madison Hall, Third Floor
1827 University Avenue
P.O. Box 400225
Charlottesville, VA 22904-4225

universitycounsel.virginia.edu/