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11/21/24

The Honorable Marcus Simon
Chairman
Virginia Freedom of Information Advisory Council
General Assembly Building
201 North 9th Street, 4th Floor
Richmond, VA 23219

**Subject: Request to Convene Workgroup to Examine FOIA Restrictions on Local Governments During Public Emergencies**

Dear Delegate Simon,

I am writing on behalf of the Virginia Association of Counties (VACo) to request that the Virginia Freedom of Information Advisory Council consider convening a workgroup to study the restrictions imposed by the Virginia Freedom of Information Act (FOIA) on local governments and public bodies during times of public emergencies.

Recent events have highlighted the need for greater flexibility in public body operations during emergencies to ensure the safety and welfare of our communities while maintaining transparency and accountability. For instance, the devastating impacts of Hurricane Helene in Southwest Virginia disrupted access to critical infrastructure and communication systems, creating significant challenges for local governments in meeting FOIA requirements. The time requirements in responding to FOIA requests in the middle of crisis situations also placed additional strain on local governments. Additionally, the tragic line-of-duty death of a firefighter in Loudoun County necessitated rapid coordination among county supervisors under heightened emotional and logistical pressures.

These circumstances underscore the tension between FOIA's essential purpose of promoting transparency and the operational realities faced by local governments during crises. While the temporary amendments to FOIA during the COVID-19 pandemic allowed for virtual meetings and other adjustments, recent emergencies reveal the need for a comprehensive examination of whether further statutory or procedural changes are warranted to address current gaps.

VACo believes a workgroup would provide an ideal forum for stakeholders to collaboratively explore these issues. This effort could examine:

1. Flexibility in meeting notification and public participation requirements during widespread infrastructure disruptions.
2. Options for temporary modifications to public meeting requirements during emergencies while safeguarding public access and input.
3. Measures to address confidentiality and privacy concerns, particularly in circumstances involving sensitive information related to public safety or emergency response.
4. Strategies for ensuring robust communication with residents when traditional methods are disrupted.
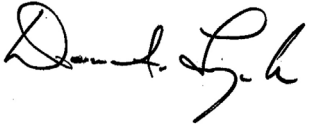
**1207 E. Main St., Suite 300**
**Richmond, Va. 23219-3627**

**Phone: 804.788.6652**
**Fax: 804.788.0083**

**Email: mail@vaco.org**
**Website: www.vaco.org**

We are confident that a balanced and thorough discussion of stakeholder groups will result in recommendations that preserve FOIA's core principles while equipping local governments with the tools needed to navigate emergencies effectively. VACo stands ready to participate in such discussions and provide input from our member counties' perspectives.

Thank you for your leadership and consideration of this important issue. We look forward to your response and are happy to assist in facilitating this effort.

Sincerely,

Dean A. Lynch, CAE
Executive Director
Virginia Association of Counties (VACo)

CC:     VACo Board of Directors Members
        VACo General Government Steering Committee Members
        Alan Gerhardt, Executive Director of the Virginia FOIA Council