



VIRGINIA FREEDOM OF INFORMATION ADVISORY COUNCIL
COMMONWEALTH OF VIRGINIA

Senator Mamie E. Locke, Vice-Chair

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VIRGINIA FREEDOM OF INFORMATION ADVISORY COUNCIL

Tuesday, May 28, 2024 - 1:00 pm
Senate Room B, General Assembly Building
Richmond, VA

Note: This meeting will be held in person and live streamed at
http://virginia-senate.granicus.com/ViewPublisher.php?view_id=3

SUGGESTED AGENDA
ANNOTATED

- 1. Call to Order; introduction of members.** *Welcome to Delegates Marcus B. Simon and Elizabeth B. Bennett-Parker, replacing Delegates Cherry and Mullin; Dennis Clark, replacing Dr. Treadway as Librarian of Virginia; Lindsay Fisher, replacing Lee Bujakowski as a citizen member appointed by the Speaker of the House; and Jon Burkett, replacing Bruce Potter as a citizen member of the news media appointed by the Speaker of the House.*
- 2. Election of Chair.** *As a reminder, Delegate Mike Cherry was elected Chair on July 27, 2023 and Senator Locke was elected Vice-Chair on December 14, 2022. The Council needs to elect a new Chair to replace Delegate Cherry as he no longer serves on the Council.*
- 3. Legislative Update.** *Recap of FOIA and other access bills from the 2024 Session of the General Assembly.*

4. Other Business.

- **Electronic Meetings Participation Policy.** *Under current law, a public body must adopt a participation policy before using remote participation or conducting all-virtual public meetings. The Council adopted its current electronic participation policy (available [here](#)) on December 14, 2022. Pursuant to HB 894 (Bennett-Parker)/SB 734 (Marsden), which will take effect July 1, 2024, public bodies will be required to adopt such a policy "at least once annually." HB 894/SB 734 also revise the numerical limit on all-virtual public meetings from two meetings or 25% of a public body's meetings per year to two meetings or 50% of a public body's meetings per year. For those reasons, staff has prepared an updated draft policy for the Council's consideration.*
- **SB 324 (Roem, 2024) Virginia Freedom of Information Act; charges for production of public records; report.** Prohibits a public body from charging a requester for any costs incurred during the first hour spent accessing, duplicating, supplying, or searching for records requested in conjunction with the requester's first request. The bill provides that for any additional time spent accessing, duplicating, supplying, or searching for such records, or for any additional record requests, the public body shall not charge an hourly rate for accessing, duplicating, supplying, or searching for the records exceeding the lesser of the hourly rate of pay of the lowest-paid individual capable of fulfilling the request or \$40 per hour. The bill allows a public body to petition the appropriate court for relief from the \$40-per-hour fee cap upon showing by a preponderance of the evidence that there is no qualified individual capable of fulfilling the request for \$40 per hour or less and requires such petition to be heard within seven days of when the petition is made, provided that the public body has sent and the requester has received a copy of the petition at least three working days prior to filing. The bill also provides that in certain instances a hearing on any petition shall be given precedence on a circuit court's docket over all cases that are not otherwise given precedence by law and that the time period the public body has to respond to a record request shall be tolled between the requester's receipt of the petition and the final disposition of the court. The bill prohibits a public body from charging a requester for any court costs or fees resulting from a petition. The bill directs the Virginia Freedom of Information Advisory Council to study whether public bodies should charge requesters pursuant to the bill and report on its findings by December 2024. The provisions of the bill amending the Code of Virginia do not become effective unless reenacted by the 2025 Session of the General Assembly.

The third enactment clause of SB 324 provides the following direction:

3. That the Virginia Freedom of Information Advisory Council (the FOIA Council) shall study whether the provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq. of the Code of Virginia) allowing public bodies to charge requesters for the production of public records should be permanently amended to make access to public records easier for requesters. In conducting its study, the FOIA Council shall convene a work group consisting of citizens of the Commonwealth, representatives of state and local government entities, broadcast, print, and electronic media sources, open government organizations, and other interested parties, to examine the current FOIA provisions on charges and make recommendations on ways to amend such provisions to make the assessment of charges by public bodies for the production of

public records more uniform, more transparent, easier to understand, and less costly. Technical assistance shall be provided to the FOIA Council by the Division of Legislative Services. All agencies of the Commonwealth shall provide assistance to the FOIA Council for this study, upon request. The work group shall complete its meetings by November 30, 2024, and present its findings and recommendations for consideration by the FOIA Council at its meeting in December 2024. The chairman of the FOIA Council shall submit to the Division of Legislative Automated Systems an executive summary of the work group's findings and recommendations with any additional comments by the FOIA Council no later than the first day of the 2025 Regular Session of the General Assembly. The executive summary shall state whether the FOIA Council intends to submit to the General Assembly and the Governor a report of its findings and recommendations for publication as a House or Senate document. The executive summary and report shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be posted on the General Assembly's website.

- **HB 580 (Simonds, 2024)/SB 411 (Boysko); Task Force on Transparency in Publicly Funded Animal Testing Facilities; report.** Requires the Department of Agriculture and Consumer Services to convene a Task Force on Transparency in Publicly Funded Animal Testing Facilities, consisting of legislators and stakeholders, for the purpose of identifying potential deficiencies in publicly funded animal testing facilities in the Commonwealth and recommending methods and context for making certain information about such animal testing facilities publicly available. The bill requires the Task Force to report its findings to certain committees of the General Assembly no later than November 1, 2024. *The Task Force created by this legislation includes "a member of the Virginia Freedom of Information Council."* (2024 Acts of Assembly, cc. 675 and 693)

5. Public Comment.

6. Set Future Meeting Dates.

7. Adjournment.

Council Members

Senator Mamie E. Locke, Vice- Chair	Delegate Marcus B. Simon
Senator Richard H. Stuart	Delegate Elizabeth B. Bennett-Parker
Dennis Clark	Amigo Wade
Ryan Ferguson	Chidi James
William "Billy" Coleburn	Cullen Seltzer
Corrinne Louden	Lola Rodriguez Perkins
Lindsay Fisher	Jon Burkett

Staff

Alan Gernhardt, Executive Director
 Joe Underwood, Senior Attorney
 Lauren Waller, Program Administrator

The FOIA Council's website is: [http:// foiacouncil.dls.virginia.gov](http://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.
E-mail: foiacouncil@dls.virginia.gov.