



VIRGINIA FREEDOM OF INFORMATION ADVISORY COUNCIL
COMMONWEALTH OF VIRGINIA

Senator Mamie E. Locke, Vice-Chair

Alan Gernhardt, Esq., Executive Director
Joe Underwood, Esq., Senior Attorney
Lauren Waller, Research Associate

Pocahontas Building ~ 900 East Main Street, Pocahontas Building, 8th Floor ~ Richmond, Virginia 23219
(Phone) 804-698-1810 ~ (Toll Free) 1-866-448-4100 ~ (Fax) 804-698-1899
<http://foiacouncil.dls.virginia.gov> ~ foiacouncil@dls.virginia.gov



VIRGINIA FREEDOM OF INFORMATION ADVISORY COUNCIL

Thursday, July 27, 2023 - 1:00 pm
Senate Room A, Pocahontas 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 new members Delegates Michael P. Mullin and Mike A. Cherry, replacing Delegates Marcus B. Simon and William Wampler, III.*
- 2. Election of Chair.** *Elections for these positions were last held on December 14, 2022; Delegate Simon was elected Chair and Senator Locke was elected Vice-Chair. The Council needs to elect a new Chair to replace Delegate Simon as he no longer serves on the Council.*
- 3. Legislative Update.** Recap of FOIA and other access bills from the 2023 Session of the General Assembly.
- 4. Judicial Update.** The Supreme Court of Virginia has decided three FOIA cases since the Council last met:

- The Court issued its decision in the case of [*Berry v. Bd. of Supervisors of Fairfax County*](#) on March 23, 2023. The Court held that a zoning ordinance adopted by the County at an electronic meeting conducted during the COVID-19 pandemic was *void ab initio* because the meeting failed to comply with FOIA's open meetings requirements. Note that the meeting at issue was conducted under the electronic meetings language in the State Budget (2020-2022 State Budget Item 4-0.01(g)), not under the provisions in FOIA regarding electronic meetings during a declared state of emergency (Code § 2.2-3708.2). A notice of rehearing, petition for rehearing, and amicus briefs have been filed in the case.
- The Court issued its decision in the case of [*Suffolk City School Board v. Wahlstrom*](#) on April 27, 2023. The Court affirmed the decision of the trial court that the School Board had violated FOIA by not allowing Wahlstrom to attend a meeting in person when there was sufficient space in the meeting room for her to do so. The Court held that FOIA "affords citizens the opportunity to attend public meetings in person by actually entering into the physical space where the meeting is being conducted" with reasonable limitations such as room capacity and social distancing rules in place during the COVID-19 pandemic. The Court also discussed the standards for issuing injunctive relief, awards of attorney fees and costs, and civil penalties for knowing and willful violations of FOIA.
- The Court issued its decision in the case of [*Gloss v. Wheeler*](#) on May 18, 2023. The Court ruled that five members of a county board of supervisors held an improper meeting in violation of FOIA under the facts of the case when they met with police officials and others in regard to protests that were held in the county concerning the death of George Floyd in Minnesota in 2020. The Court held that in the context of public meetings, "for a topic to constitute public business it must not just be something that conceptually could at some point come before a public body, but rather, the topic must be something that is either before the public body or is likely to come before the body in the foreseeable future."

5. Bills Referred to the FOIA Council for study:
HB 1880 (Bennett-Parker, 2023) Localities; record of legal settlement or judgment; disclosure. Requires localities to retain a public record of certain legal settlements and judgments and requires the record of such amount to be subject to disclosure if requested pursuant to the Virginia Freedom of Information Act.

6. Subcommittee Appointments.

7. Discussion.

8. Other Business.

9. Public Comment.

10. Set Future Meeting Dates.

11. Adjournment.

Council Members

Senator Mamie E. Locke, Chair
Senator Richard H. Stuart
Sandra G. Treadway
Bruce Potter
Amigo Wade
William "Billy" Coleburn
Ryan G. Ferguson

Delegate Michael P. Mullin
Delegate Mike A. Cherry
Lee Bujakowski
Matthew Conrad
Chidi James
Cullen Seltzer
Lola Rodriguez Perkins

Staff

Alan Gernhardt, Executive Director

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.