



VIRGINIA FREEDOM OF INFORMATION ADVISORY COUNCIL

COMMONWEALTH OF VIRGINIA

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VIRGINIA FREEDOM OF INFORMATION ADVISORY COUNCIL

Monday, August 14, 2017 - 1:30 p.m.
House Room 1, Capitol Building

SUGGESTED AGENDA

ANNOTATED

- 1. Call to Order, introduction of members.** *Effective July 1, 2017, pursuant to HB 2144 (LeMunyon, 2017) the membership of the Council has been increased from 12 members to 14 members by adding one additional member from the House of Delegates and one additional member from the Senate. Welcome to new legislative members Senator Mamie E. Locke and Delegate Luke E. Torian.*
- 2. Bills referred to Council for study by 2017 Session of General Assembly; presentations by Patrons: *Patrons were invited to attend to discuss their bills.***
 - HB 2223, Kory: Virginia Freedom of Information Act; right to speak at open meetings.
 - SB 972, DeSteph: Requests for information by members of the General Assembly; responses not subject to redaction.¹
- 3. Public Comment.**

¹ HB 2223, Kory: Requires that every public body afford an opportunity for public comment during any open meeting and requires that the public comment periods be noticed on the public body's agenda. The bill permits the public body to have discretion in where it places the public comment period on its agenda and permits the public body to adopt reasonable rules governing the public comment portion of the meeting, including imposing reasonable restrictions on time, place, and manner. The bill requires that for meetings of all public bodies, not just those state public bodies on which there is at least one member appointed by the Governor as in current law, the notice provided for any such meeting include a statement as to approximately at what point during the meeting public comment will be received.

SB 972, DeSteph: Requires all departments, agencies, and institutions of the Commonwealth and staff and employees thereof to respond to a request for information made by a member of the General Assembly. The bill further provides that notwithstanding the Virginia Freedom of Information Act (§ 2.2-3700 et seq.), a response to a request for information made by a member of the General Assembly shall not be subject to redaction.

4. Discussion and recommendations, if any.
5. Trade Secrets and Proprietary Records Subcommittee Report.
6. Review of Proprietary Records and Trade Secrets Drafts.
7. Public Comment.
8. Discussion and recommendations, if any.
9. Review of Drafts Amended at the May 15, 2017 FOIA Council Meeting:
 - **HB 1971 Massie, Virginia Freedom of Information Act; record and meeting exclusions for multidisciplinary child abuse teams.** Excludes the records of a multidisciplinary team as they relate to individual child abuse or neglect cases or sex offenses involving a child from mandatory disclosure under the Virginia Freedom of Information Act. The bill also provides an exemption from open meeting requirements to such teams and sexual assault response teams. *Note: The issue is whether these bodies should be exempt from all provisions of FOIA much like family assessment and planning teams established pursuant to § 2.2-5207. See §2.2-3703.*
 - **HB 2316, Marshall, D.W.; Tobacco Region Revitalization Commission; meetings by teleconference.** Provides that the remote locations from which additional members of the Commission participate in a Commission meeting that is conducted through electronic communication means shall not be required to be open to the public. *As you will recall, at its last meeting the Council directed staff to prepare a draft that would make this change generally for all public bodies.*
10. Public Comment.
11. Discussion and recommendations, if any.
12. FOIA Litigation Issues.
 - FOIA and General Assembly members; litigation policy. *A circuit court decision issued June 14, 2017, held that individual members of the General Assembly are not "public bodies" and therefore are not required to respond to FOIA requests. The plaintiff in the case filed a motion for reconsideration and it has been reported that the judge reversed his decision after a hearing on August 2, 2017, but found no violation of FOIA. However, the Circuit Court still lists this case as "Active" and a written decision does not appear to have been issued yet. Pursuant to the FOIA Council litigation policy we cannot comment on the case while it is pending before a court.*
 - FOIA and judges; litigation policy. *A general district court decision issued August 3, 2017, held that judges are neither "public bodies" nor are they "officers or employees of public bodies," and therefore judges are excluded from the*

requirements of FOIA. Under the rules of court this decision is not yet final and may be appealed, and therefore the FOIA Council litigation policy prevents further comment at this time.

- Virginia Supreme Court decision in the case of *The Daily Press v. Office of the Executive Secretary of the Supreme Court of Virginia* (decided June 29, 2017). The Court affirmed the judgment below, holding that under FOIA, a party requesting copies of court records must ask each jurisdiction's clerk of court for certain court records, rather than seeking to obtain a copy of a database in the Office of the Executive Secretary of the Supreme Court of Virginia. The Court's decision was guided by Code § 17.1-242, which provides that the clerks of court are the designated custodians of court records.

13. Other Business.

- FOIA Council policy on individual participation by electronic means. As required by § 2.2-3708.1(B)(1), at its meeting on November 18, 2014, the Council adopted a policy on individual members' participation in Council meetings by electronic means. It is recommended that the Council adopt a revised version of the policy to reflect amendments to the law that became effective July 1, 2017 (note that these amendments were part of the omnibus legislation recommended by the Council). Specifically, the former version allowed such participation in cases where an emergency or personal matter prevented physical attendance, and limited such participation to two occasions per calendar year or 25% of the public body's meetings, whichever was fewer. As amended, the language about emergencies was removed so the provision now only refers to personal matters, and the limitation was set at two meetings per calendar year.
- Public comment forms. As required by House Bill 2146 (LeMunyon, 2017), the Council has published a public comment form on the "Forms and Sample Letters" page of the Council's website so requesters may comment on the quality of assistance they received in response to a request. However, the law does not specify where a requester is to send the form, or what the Council should do with any such comment forms it receives. We have received one such public comment to date.
- Proposal to add declaratory judgment to the remedies section of FOIA.
- HJR No. 96 study issues continued to this year; subcommittee work plan.

14. Discussion and recommendations, if any.

15. Public Comment.

16. Future meetings.

Next meeting of the FOIA Council is scheduled as follows:

- Monday, November 20, 2017 at 1:30 p.m. in House Room 1 in the Capitol, Richmond, Virginia.

17. Adjournment.

Council Members

Delegate James M. LeMunyon, Chair
Senator Mamie E. Locke
Sandra G. Treadway
Stephanie Hamlett
Mark Vucci
Marisa Porto
William "Billy" Coleburn

Senator Richard H. Stuart, Vice-Chair
Delegate Luke E. Torian
Ed Jones
Kathleen Dooley
Shawri King-Casey
Michael Stern
Cullen Seltzer

Staff

Alan Gernhardt, Executive Director
Jessica L. Budd, Attorney

The FOIA Council's web site 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 (i) e-mail to staff prior to meetings or (ii) diskette furnished to staff at 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.

APPENDIX -

I. Drafts Included in Materials:

1. Trade Secrets Draft #6 - LD18100101
2. Proprietary Records Deletion Draft #2 - LD18100099
3. Combination Draft (includes Trade Secrets Draft and Proprietary Records Draft) - LD18100100
4. DGS Language Draft - LD18100175
5. SARTs-MDTs Exclusion from FOIA Draft - LD18100108
6. Electronic Meetings Draft - LD18100110