



Virginia Freedom of Information Advisory Council

May 8, 2019, at 1:00 p.m.

Pocahontas Building, Senate Committee Room A

foiacouncil.dls.virginia.gov

The Virginia Freedom of Information Advisory Council (the Council) met in Richmond with Delegate Luke E. Torian, chair, presiding.¹ The meeting began with introductions and opening remarks followed by presentations and discussion. Materials presented at the meeting are accessible through the [Council's website](#).

Presentation: Recap of FOIA and Related Access Bills from 2019 Session of General Assembly

Council Staff

Staff informed the Council that the 2019 Session of the General Assembly passed a total of 19 bills amending FOIA.

Nine bills clarify three existing records exemptions and add three new records exemptions in FOIA as follows:

- HB 1650 and SB 1060, identical bills amending § 2.2-3705.7, clarify that information about an individual winner of the Virginia Lottery whose prize exceeds \$10 million is exempt from disclosure under FOIA unless the winner consents to such disclosure;
- HB 2546, amending § 2.2-3705.5, clarifies that information and records obtained or created by the Maternal Death Review Team (the Team) during a review of any death conducted by the Team shall be confidential and exempt from disclosure under FOIA to the extent that such information is made confidential by § 32.1-283.8;
- HB 2560 and SB 1224, identical bills amending § 2.2-3705.7, clarify that information reflecting the substance of meetings in which individual cases of abuse, neglect, or exploitation of adults as defined in § 63.2-1603 are discussed by multidisciplinary teams established pursuant to §§ 15.2-1627.5 and 63.2-1605 are exempt from mandatory disclosure under FOIA;
- HB 2490 and SB 1617, identical bills amending § 2.2-3705.4, exclude from the mandatory disclosure provisions of FOIA pertaining to educational records and certain records of educational institutions those records provided by a qualified institution to the Governor or designated reviewers related to a proposed memorandum of understanding, or proposed amendments to a memorandum of understanding, submitted pursuant to Chapter 12.1 (Tech Talent Investment Program) of Title 23.1;²

¹ **Members Present:** Delegate Luke E. Torian, Lee Bujakowski, Delegate Glenn R. Davis, Kathleen Dooley, Shawri King-Casey, Cullen Seltzer, Michael Stern, Sandra Treadway, and Mark Vucci

Members Absent: William Coleburn, Stephanie Hamlett, Senator Mamie E. Locke, and Senator Richard H. Stuart

² The new exemption provides that a memorandum of understanding entered into pursuant to such chapter shall be subject to public disclosure after it is agreed to and signed by the Governor.

- SB 1106, amending § 2.2-3705.7, excludes from the mandatory disclosure provisions of FOIA information discussed in a closed session of the Physical Therapy Compact Commission or the Executive Board or other committees of the Commission for purposes set forth in subsection E of § 54.1-3491; and
- SB 1492, amending § 2.2-3705.6, excludes from the mandatory disclosure provisions of FOIA trade secrets, financial information, and research-related information supplied to the Department of Housing and Community Development (the Department) as part of any grant application submitted to the Department pursuant to certain requirements set out in the Code or pursuant to the Virginia Growth and Opportunity Board or the Virginia Telecommunication Initiative as authorized by the appropriation act, if such disclosure would be harmful to the competitive position of the applicant.

Seven bills clarify three existing meetings exemptions and add two new meetings exemptions in FOIA as follows:

- HB 2178, amending § 2.2-3711, clarifies that discussion or consideration by the State Board of Elections or local electoral boards of voting security matters made confidential pursuant to § 24.2-410.2 or 24.2-625.1 are exempt from the open meeting requirements of FOIA;
- HB 2546, amending § 2.2-3711, clarifies that portions of meetings in which maternal death cases are discussed by the Maternal Mortality Review Team pursuant to § 32.1-283.8 are exempt from the open meeting requirements of FOIA;
- HB 2560 and SB 1224, identical bills amending § 2.2-3711, clarify that discussion or consideration of individual cases involving abuse, neglect, or exploitation of adults as defined in § 63.2-1603 pursuant to §§ 15.2-1627.5 and 63.2-1605 are exempt from the open meeting requirements of FOIA;
- HB 1964 and SB 1090, identical bills amending § 2.2-3711, create an exemption from the open meeting requirements of FOIA for discussion or consideration by the Board of Trustees of the Fort Monroe Authority of matters relating to specific gifts, bequests, and grants from private sources; and
- SB 1126, amending § 2.2-3711, creates an exemption from the open meeting requirements of FOIA for discussion, consideration, or review of matters by the Virginia Lottery Board related to investigations exempted from disclosure under subdivision 1 of § 2.2-3705.3.

Six other bills amend existing provisions or add new provisions to FOIA.

Additionally, two bills recommended by the FOIA Council but not amending FOIA passed the General Assembly:

- HB 2494, prohibits any state agency from disseminating to federal government authorities information concerning the religious preferences and affiliations of data subjects for the purpose of compiling a list, registry, or database of individuals based on their religious preferences or affiliations, unless specifically required by state or federal law, and
- SB 1101, allows the Office of the Attorney General to represent a member of the General Assembly in any civil matter alleging that such member in his official capacity violated FOIA.



Presentation: House Bill 2386 (Bulova)³

Delegate David L. Bulova

Delegate Bulova addressed a case currently pending on appeal before the Supreme Court of Virginia, *Transparent GMU v. George Mason University*. He stated that there is some overlap in subject matter between the case and HB 2386, because both stem from facts regarding certain gift agreements at George Mason University. However, the case focuses on whether a university foundation is a public body subject to FOIA, whereas HB 2386 would amend an existing records exemption concerning donor records and gift agreements. After further describing the intent and probable effects of the proposed legislation, Delegate Bulova noted that some have suggested to wait for the outcome of the case before proceeding to study HB 2386, but he urged the Council to proceed because the case and the bill address different issues.

Presentation: House Bill 2201 (Tyler)⁴

Rob Farrell, Virginia State Forester

Mr. Farrell stated that the Department of Forestry seeks the exemption presented in the bill to help protect information related to the investigation of forest fires, including arson, to protect trade secrets received by the Department from private companies and information concerning water quality investigations related to timber harvesting.

Presentation: House Joint Resolution 628 (Heretick)⁵

Council Staff

Staff summarized the letter received from Speaker of the House M. Kirkland "Kirk" Cox directing the Council to study current FOIA provisions and make recommendations on ways to address the threat of phishing attacks on citizens and public employees of the Commonwealth. Staff noted that the Council had studied access to personally identifiable information approximately a decade ago and suggested updating that work, as well as contacting relevant agencies such as the Department of Human Resource Management and the Virginia State Police for assistance with this study.

Assignment of Subcommittees

Delegate Luke E. Torian

At the conclusion of the presentations, members of the Council were assigned to specific subcommittees to study each of the bills presented. Delegate Torian followed staff recommendations by establishing three subcommittees to study the two bills and one resolution described above and appointed members to the three subcommittees.

The Donor Records Subcommittee, consisting of Council members William Coleburn, Stephanie Hamlett, Cullen Seltzer, Michael Stern, and Mark Vucci, will study HB 2386 (Bulova).

The Forestry Records Subcommittee, consisting of Council members Kathleen Dooley, Shawri King-Casey, Sandra G. Treadway, and Mark Vucci, will study HB 2201 (Tyler).

³ House Bill 2386 was introduced during the 2019 Session of the General Assembly, and was left in the House Committee on Education.

⁴ House Bill 2201 was introduced during the 2019 Session of the General Assembly, and was passed by indefinitely with a letter in the Senate Committee on Agriculture, Conservation and Natural Resources.

⁵ House Joint Resolution 628 was introduced during the 2019 Session of the General Assembly, and was left in the House Committee on Rules.



The Phishing Study Subcommittee, consisting of Council members Lee Bujakowski, Kathleen Dooley, Shawri King-Casey, Sandra G. Treadway, and Mark Vucci, will study HJ 628 (Heretick).

Public Comment and Next Meeting

During the period for public comment, the Council received one comment. An issue was raised regarding the time to respond to a FOIA request being tolled when a public body seeks an advance deposit from a requester, but there being no similar tolling provision when a requester asks for an estimate from a public body. The Council directed staff to look into the issue and present it at the next Council meeting.

The date and time of the next Council meeting will be posted to the Council website as soon as it is scheduled.⁶

For more information, see the [Council's website](#) or contact the Division of Legislative Services staff:

Alan Gernhardt, Executive Director, Virginia Freedom of Information Advisory Council, DLS
agernhardt@dls.virginia.gov
804-698-1877

Ashley Binns, Attorney, Virginia Freedom of Information Advisory Council, DLS
abinns@dls.virginia.gov
804-698-1812

⁶ Please note that subsequent to the May 8, 2019, FOIA Council meeting, the next Council meeting dates were set for July 17, 2019, and September 18, 2019. Both meetings will begin at 1:00 pm.

