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## Virginia Freedom of Information Advisory Council

May 28, 2024, at 1:00 p.m.

Senate Room B, General Assembly Building

[foiacouncil.dls.virginia.gov](https://foiacouncil.dls.virginia.gov)

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The Virginia Freedom of Information Advisory Council (the Council) met with Senator Mamie E. Locke, vice-chair, presiding.<sup>1</sup> The meeting began with introductions, the welcoming of new members Delegate Elizabeth B. Bennett-Parker, Dennis Clark, Lindsay Fisher, Jon Burkett, and returning member, Delegate Marcus B. Simon,<sup>2</sup> and opening remarks followed by the election of a new chair and a recap of Virginia Freedom of Information Act (FOIA) and related access bills from the 2024 Session of the General Assembly. Materials presented at the meeting are accessible through the Council's [Meetings webpage](#).

### Election of Chair

Delegate Mike A. Cherry was elected as chair of the Council on July 27, 2023. Because Delegate Cherry no longer serves on the Council, the position was vacant. Delegate Simon was elected chair by unanimous vote and proceeded to preside over the meeting. Senator Locke remains vice-chair.

### Presentation: Recap of FOIA and Related Access Bills from 2024 Session

*Council Staff*

Staff provided the Council with a summarized version of the 2024 FOIA Legislative Update. The 2024 Session passed a total of 17 bills amending FOIA. Seven legislative drafts were recommended by the Council to the 2024 Session and were subsequently enacted either as introduced or enacted as amended.

Of the 17 bills that amend FOIA, one bill adds a new meetings exemption in FOIA as follows:

- SB 88 (Locke) makes various changes to the provisions related to decertification of law-enforcement officers and jail officers. Among other changes, the bill provides that records provided to the Criminal Justice Services Board or the Department of Criminal Justice Services for the purposes of decertification of an identifiable law-enforcement officer or jail officer may be withheld from the public in accordance with FOIA and those meetings concerning the decertification of an identifiable law-enforcement or jail officer may be closed (amending §§ 2.2-3711, 9.1-102, 15.2-1707, 15.2-1708, and 19.2-83.7).

Sixteen bills amend existing provisions of FOIA as follows:

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<sup>1</sup> **Members Present:** Delegate Marcus B. Simon (chair), Senator Mamie E. Locke (vice-chair), Delegate Elizabeth B. Bennett-Parker, Dennis Clark, Lindsay Fisher, Corrine Loudon, Lola Rodriguez Perkins, Bruce Potter, Cullen D. Seltzer, Amigo Wade.

**Members Absent:** Senator Richard H. Stuart, Jon Burkett, William D. Coleburn, Ryan Ferguson, Chidi I. James.

<sup>2</sup> Delegates Bennett-Parker and Simon replace Delegates Mike A. Cherry and William C. Wampler III as appointees of the Speaker of the House. Dennis Clark replaces Sandra G. Treadway as Librarian of Virginia. Lindsay Fisher replaces Lee Bujakowski as a citizen member appointed by the Speaker of the House. Jon Burkett replaces Bruce Potter as a citizen member of the news media appointed by the Speaker of the House.

- HB 581 (Simonds) requires attorneys for the Commonwealth to establish multidisciplinary human trafficking response teams. The bill provides that each team shall hold a meeting, at least annually, to (i) discuss implementation of protocols and policies; (ii) establish and review guidelines for the community's response to various forms of human trafficking, including sex trafficking and labor trafficking; and (iii) review protocols for the trauma-informed, victim-centered collection, preservation, and secure storage of evidence from physical evidence recovery kit examinations. The bill also provides that FOIA shall not apply to human trafficking response teams, with certain exceptions (amending §§ 2.2-3703, 2.2-3705.7, and 2.2-3711 and adding § 15.2-1527.6).
- HB 815 (Cherry) increases from six months to 12 months the maximum expiration date allowable for a cannabis product after registration absent stability testing. The bill allows pharmaceutical processors to employ as pharmacy technician trainees individuals who have less than one year of experience and allows pharmaceutical processors to employ persons with less than one year of experience to perform certain other supervised duties for which current law requires two years of experience. The bill also provides for the confidentiality of certain records and other information of the Board of Directors of the Virginia Cannabis Control Authority, including the exemption of certain information from the mandatory disclosure provisions of FOIA (amending §§ 2.2-3705.3, 4.1-1602, and 4.1-1603 and adding § 4.1-1606).
- HB 816 (Cherry) and SB 244 (McPike) provide that the provisions for conducting a meeting by electronic means due to a state of emergency stated in FOIA are declarative of existing law since March 20, 2020, with respect to the Governor's declared state of emergency due to COVID-19. Under the bills, any meeting by a public body using electronic communication means occurring from that date until July 1, 2021, and any otherwise lawful action taken at such meeting is validated with respect to FOIA if the body provided public notice, public access, and public comment commensurate with the requirements of existing FOIA provisions regarding electronic and closed meetings. The bills are a response to the case *Berry v. Bd. of Supervisors* (Va. 2023) and are a recommendation of the Council. *Note: The bills amend the third enactment of Chapter 597 of the Acts of Assembly of 2022; because they do not amend a Code section, the bills do not appear in Section III below.*
- HB 818 (Cherry) and SB 36 (Locke) exempt certain public meetings from the definition of "meeting" under FOIA to clarify that three or more members of a public body may appear and participate in such public meeting without violating FOIA, provided that no public business is transacted or discussed. The bills also exempt members of a public body who attend a public meeting of a second public body without violating FOIA, provided that no public business is transacted or discussed. Finally, the bills define "public business" as activity that a public body has undertaken or proposed to undertake on behalf of the people it represents. The bills state that their provisions are declarative of existing law (amending § 2.2-3701).
- HB 894 (Bennett-Parker) and SB 734 (Marsden) amend the number of all-virtual public meetings that public bodies, with certain exceptions, may convene in a calendar year to no more than two times per calendar year or 50 percent of the meetings held per calendar year rounded up to the next whole number, whichever is greater. Current law limits the number of all-virtual public meetings to no more than two times per calendar year or 25 percent of the meetings held per calendar year rounded up to the next whole number, whichever is



greater. The bills also provide that with respect to all-virtual public meetings, when audio-visual technology is available, a member of a public body shall, for purposes of a quorum, be considered absent from any portion of the meeting during which visual communication with the member is voluntarily disconnected or otherwise fails or during which audio communication involuntarily fails (amending § 2.2-3708.3).

- HB 1040 (Bennett-Parker) and SB 85 (Favola) provide that for purposes of determining whether a quorum is physically assembled, an individual member of a public body who is a person with a disability or a caregiver, defined in the bill, and uses remote participation counts toward the quorum as if the individual was physically present. The bills also provide that the participation policy adopted by a public body, as required by FOIA, shall not prohibit or restrict any individual member of a public body who is participating in an all-virtual meeting or who is using remote participation from voting on matters before the public body. As introduced, the bills were a recommendation of the Council (amending §§ 2.2-3701 and 2.2-3708.3).
- HB 1133 (Carr) renames the Virginia College Savings Plan as the Commonwealth Savers Plan (amending numerous Code sections to make corresponding technical changes, including §§ 2.2-3705.4, 2.2-3705.7, and 2.2-3711).
- HB 1412 (Cherry) amends an existing exemption from mandatory disclosure under FOIA for names, addresses, and phone numbers of complainants furnished in confidence with respect to an investigation of individual zoning enforcement complaints or complaints relating to the Uniform Statewide Building Code or the Statewide Fire Prevention Code made to a local governing body to exempt personal contact information of such complainants as defined in the bill (amending § 2.2-3705.3).
- SB 204 (Diggs) exempts a victim's insurance company and attorney from the prohibition on releasing photographic, audio, video, or other records depicting such victim. The bill also permits a victim, a victim's immediate family members if the victim is deceased, a victim's parent or guardian, the victim's insurance company, or the victim's attorney to waive the 14-day period for a public body to respond to a request for criminal investigative files (amending § 2.2-3706.1).
- SB 215 (Perry) removes the requirement that persons to whom non-ongoing criminal investigation files shall otherwise be disclosed be citizens of the Commonwealth. Current law limits disclosure of public records to individuals who are citizens of the Commonwealth unless a clear exception applies (amending §§ 2.2-3706.1 and 8.01-622.2).
- SB 324 (Roem) 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 and makes various other changes related to charges for public records. The bill directs the 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 (amending § 2.2-3704).
- SB 340 (Salim) clarifies that the name of a public employee, officer, or official as it appears on a purchase card statement or other payment record and the description of individual purchases are not exempt from disclosure by the State Comptroller (amending § 2.2-3705.2).

For further detail, please see the full 2024 Legislative Update posted on the [\*Council's website\*](#).



## Electronic Meetings Participation Policy

Pursuant to HB 894 (Bennett-Parker) and SB 734 (Marsden), which will take effect on July 1, 2024, public bodies will be required to adopt an electronic meetings participation policy at least once annually. These bills also amend the number of all-virtual public meetings that public bodies may convene in a calendar year to no more than two times per year or 50 percent of the meetings held per year. The Council reviewed and considered an updated draft policy presented by Council staff. The Council unanimously voted to adopt the updated electronic meetings participation policy to go into effect on July 1, 2024.

## Other Business

Council staff provided the Council with updates regarding the interim work plan. The third enactment clause of SB 324 (Roem) directs the Council to study whether the provision of FOIA 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. The Council discussed who should be invited to participate and directed staff to assist in convening a work group to examine the current FOIA provisions on charges and make recommendations on ways to amend such provisions as directed by SB 324.

Kevin Schmidt, Virginia Department of Agriculture and Consumer Services (VDACS), presented HB 580 (Simonds, 2024 Regular Session) and SB 411 (Boysko, 2024 Regular Session) which require VDACS to convene a task force on transparency in publicly funded animal testing facilities. The task force is directed to include a member of the Council. The Council appointed Cullen D. Seltzer as its liaison and Corrine Louden as an alternate member.

## Public Comment

Megan Rhyne, executive director of the Virginia Coalition for Open Government, encouraged Council members to actively participate in the SB 324 work group due to the lack of subcommittees this interim.

## Future Meeting Dates

Delegate Simon directed staff to poll members of the Council to determine future meeting dates for the Council.

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

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