



---

## Virginia Freedom of Information Advisory Council

July 17, 2024, at 10:00 a.m.

Senate Room A, General Assembly Building

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

---

The Virginia Freedom of Information Advisory Council (the Council) met with Delegate Marcus B. Simon, chair, presiding.<sup>1</sup> The meeting began with introductions, the welcoming of new member Maria J.K. Everett,<sup>2</sup> and opening remarks, which were followed by a presentation. Materials presented at the meeting are accessible through the [Council's meetings webpage](#).

### Presentation and Discussion: SB 324 Work Group Report

#### *Staff*

The third enactment clause of SB 324 (Roem, 2024) directed the formation of a work group to examine the current FOIA provisions on charges and develop 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.

Staff provided the Council with an update on the formation of the work group, the study plan implemented, and the timeline of when the Council can expect a report from the work group. At its first meeting, the work group participants adopted the proposed study plan presented by staff, scheduling five meetings from July through October.

### Other Business

Delegate Simon requested Council members to voice any specific concerns or issues they may have regarding FOIA with hopes to add some of the issues to the interim study plan for future discussion. The issues expressed by Council members are as follows:

- Ms. Everett asked that the Council look into procedural law in its relation to FOIA.
- Lindsay Fisher expressed concern about the potential abuse of process by requestors. Specifically, public bodies may receive the same request multiple times, sometimes worded differently, which takes additional time and effort by the public body.
- Lola Rodriguez Perkins echoed the sentiments made by Ms. Fisher. Ms. Perkins also raised the issue of communications from closed session being shared during meetings of public bodies, stating that there is no bar or exemption from discussing such communications from closed session with the public. Ms. Perkins also raised issues with the deadlines permitted on the local level in reference to FOIA requests compared to the deadlines permitted under the federal Family Educational Rights and Privacy Act; the interplay of

---

<sup>1</sup> **Members Present:** Delegate Marcus B. Simon (chair), Senator Mamie E. Locke (vice-chair), Dennis Clark, Maria J.K. Everett, Ryan Ferguson, Lindsay Fisher, Chidi I. James, Lola Rodriguez Perkins, Bruce Potter, Cullen D. Seltzer, Amigo Wade

**Members Absent:** Senator Richard H. Stuart, Delegate Elizabeth B. Bennett-Parker, Jon Burkett, William D. Coleburn, Corrine Loudon, Ken Reid

<sup>2</sup> Maria J.K. Everett replaces William Coleburn as a citizen member appointed by the Senate Committee on Rules. Ken Reid replaces Cullen D. Seltzer as a citizen member appointed by the Governor who is not a state employee.

FOIA and litigation, including attorneys potentially using FOIA when involved in active litigation to mitigate deadlines; and § 2.2-3705.1 of the Code of Virginia, relating to citizen privacy and electronic communications.

- Amigo Wade stated, from a staffing standpoint, that he would like to see clearer definitions and statutes defining what is or is not a public body.
- Chidi I. James expressed that he would like the Council to regularly review exclusions to FOIA.
- Delegate Simon agreed with Mr. James' expression of periodically reviewing exclusions, stating that he would like to follow up on changes to FOIA in the last five years. He would also like the Council to explore how to handle optional exemptions, including where public bodies have discretion, and look into the FOIA working papers exemption.

### **Public Comment**

Megan Rhyne, Executive Director of the Virginia Coalition for Open Government, alerted the Council to ongoing litigation with the Virginia Court of Appeals. One case Ms. Rhyne brought to the Council's attention was *Citizens for Fauquier County vs. Town of Warrenton*.<sup>3</sup> Delegate Simon echoed Ms. Rhyne's comments, stating that it may be useful to the Council to have a list of all current or recent litigation pertaining to FOIA. Staff relayed that judicial updates were usually provided to the Council after a case was decided.

### **Future Meeting Dates**

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

---

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

Joseph Underwood, Senior Attorney, Virginia Freedom of Information Advisory Council, DLS  
junderwood@dls.virginia.gov  
804-698-1811

---

