

Virginia Freedom of Information Advisory Council  
Meetings Subcommittee  
May 14, 2014  
1:00 PM  
General Assembly Building  
Richmond, Virginia  
Meeting Summary

The Meetings Subcommittee of the FOIA Council (the Subcommittee) held its first meeting on May 14, 2014. Subcommittee members Dooley, Landon, Oksman, Selph, and Whitehurst were all present. The Subcommittee began the meeting by electing Mr. Whitehurst as Chair by unanimous vote. Staff then presented a brief review of House Joint Resolution No. 96 (HJR 96), which directs the FOIA Council to conduct a three-year study of FOIA, and the study plan adopted by the FOIA Council at its meeting on April 22, 2014. HJR 96 directs the FOIA Council to examine all of the exemptions in FOIA, as well as the organization and structure of FOIA. At its meeting in April the FOIA Council established the Subcommittee with the goal of studying all of the meetings exemptions, as well as any other meetings-related issues that may arise. Staff related that the Records Subcommittee had met earlier this same day and expressed concerns over policy issues and a desire for more direction from the full FOIA Council. The Subcommittee discussed the possibility of having a full FOIA Council meeting in June. Staff reminded the members that the FOIA Council already has statutory authority to study all FOIA issues, and that the Subcommittee may take a full view of meetings law. The Subcommittee then invited others present to express their views.

Craig Merritt, representing the Virginia Press Association (VPA) observed that HJR 96 tasks the FOIA Council to study all exemptions for applicability and appropriateness. He opined that determining applicability would be easy, but questioned how the members would determine appropriateness. He suggested there be some definite measures determined before studying individual exclusions. Mark Flynn of the Virginia Municipal League (VML) observed that what FOIA is really about is determined by working through the details of each exemption.

In discussion among the Subcommittee members, Ms. Dooley suggested approaching the exemptions using current FOIA policy as a guide to determine what is appropriate, noting the language of HJR 96 directed a study of the exemptions, the structure of FOIA, and looking at readability and clarity, not to study the underlying policy of FOIA. Mr. Oksman indicated that following the existing policy of openness strictly, there would be no exemptions at all. He agreed with Mr. Merritt's idea of having guidelines and criteria to judge new exclusions, and expressed his support for seeking further guidance from the full FOIA Council, but also stated he felt the Subcommittee could begin its part of the study before receiving additional guidance. Mr. Selph agreed, and the Subcommittee discussed the possibility of scheduling a FOIA Council meeting in June. Ms. Dooley also observed that there are certain balancing factors expressed in the current exemptions that could be used to judge appropriateness: the public good (including protecting of bargaining and negotiating positions, the financial interest of the public, and attorney-client confidentiality) versus private interests (such as individual privacy, employment and education matters, and private businesses' proprietary interests).

After further discussion, the Subcommittee agreed it wanted further guidance on how to determine the appropriateness of exemptions. The Subcommittee then discussed scheduling future meetings, and decided to hold approximately four more meetings. It was suggested that the Subcommittee might meet again in June, perhaps on the same day as the full FOIA Council, if the full FOIA Council agreed to hold an additional meeting.<sup>1</sup> Mr. Whitehurst invited any final public comment. Megan Rhyne of the Virginia Coalition for Open Government (VCOG) noted that in the past a lot of work was done using informal workgroups, and such an approach might be helpful for the study. The meeting was then adjourned.

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<sup>1</sup> Note that after the meeting, staff brought the Subcommittee's concerns to the attention of the Chair and Vice-Chair of the FOIA Council. They decided to issue a letter to the Subcommittee members providing guidance rather than to convene a full FOIA Council meeting.