



Virginia Freedom of Information Advisory Council

Donor Records Subcommittee

June 18, 2019, at 10:00 a.m.

Pocahontas Building, House Committee Room 300A

foiacouncil.dls.virginia.gov

The Donor Records Subcommittee (the Subcommittee) of the Virginia Freedom of Information Advisory Council (the Council) met in Richmond.¹ The meeting began with introductions and opening remarks followed by the election of Mark Vucci as chair by unanimous vote and discussion. Materials presented at the meeting are accessible through the [Council's website](#).

Presentation and Public Comment: 2019 House Bill 2386 (Bulova)

Council Staff

Delegate David L. Bulova

Staff gave background information on House Bill 2386 and a related lawsuit, *Transparent GMU v. George Mason University*, currently pending before the Virginia Supreme Court. Both the bill and the lawsuit arose from concerns over access to records of donations made to George Mason University (GMU). Staff explained that HB 2386 would change an existing FOIA exemption for donor records and add a provision to Title 23.1, whereas the lawsuit concerns whether a university foundation should be treated as a "public body" subject to FOIA. Staff further explained that although the litigation pending before the Virginia Supreme Court shares a factual background with the bill, the FOIA Council will proceed to study HB 2386 because it presents a separate issue from the legal issues presented to the Court.

Mark Vucci called on members of the Subcommittee to ask questions and any members of the public in favor of the bill to speak. Michael Stern asked for clarification of how donor anonymity works under the current law, which staff provided. Brian Turner of the American Association of University Professors spoke in favor of the bill, noting that terms and conditions tied to a donation can unduly influence faculty hiring and alter a public university's mission and structure.

Stephanie Hamlett noted that unless the Virginia Supreme Court reverses the lower court's ruling and determines a foundation to be a public body, most donor records will still be held by private foundations and will not be subject to FOIA. She also raised the question of whether the reference to "donor" in the section of the bill adding to Title 23.1 refers to the original donor (who made the donation to a university foundation) or the foundation (that makes the donation to the university).

Megan Rhyme of the Virginia Coalition for Open Government also spoke in favor of the bill. She noted that there is a public interest in knowing who is donating to public universities and who those individuals represent.

¹ **Members Present:** Mark Vucci (chair), Stephanie Hamlett, Michael Stern
Members Absent: William Coleburn, Cullen Seltzer

Robert Tyler, Associate Counsel for the University of Virginia, spoke in favor of the overall concept of the bill. He noted some practical concerns with the Title 23.1 portion of the bill, namely that it is too broad and does not adequately specify which types of "terms and conditions" are at issue. Michael Stern raised the question of how to define "terms and conditions related to academic decision making." It was discussed that the best route might be to use the plain definition instead of a more specific one, which could create an administrative burden on universities trying to parse through the terms of each donation.

Delegate David Bulova expressed his desire to get the language of the bill correct and outlined three issues: (1) clarifying when FOIA does and does not apply, (2) maintaining donor anonymity, and (3) ensuring that terms and conditions are part of a written record and subject to FOIA. He offered members of the Subcommittee the new policy language regarding the acceptance of donations that GMU has adopted. Mark Vucci read relevant portions of the policy to the public.

Michael Stern reiterated a concern that the bill will lead to disputes and lawsuits over what constitutes "academic decision making." Delegate Bulova noted that if the language is too narrowly tailored, universities lose the ability to abide by their own internal guidelines. Delegate Bulova also mentioned that while the term could be defined in code, it is probably best to deem it a term of art and let each university define it as it sees fit.

Members of the Subcommittee each expressed concern with amending provisions in Title 23.1, as such amendments fall outside the scope of FOIA. Mark Vucci made a motion to recommend the FOIA portion of the bill to the Council (lines 74 through 84), but made no recommendation regarding the portion of the bill that amends Title 23.1 (lines 101 through 109). Mr. Vucci also noted that the Council would be open to hearing the portion of the bill related to Title 23.1 if better, more concise language were to be presented at the next Council meeting.

Next Meeting

The Subcommittee decided to cancel its next meeting, previously scheduled for July 3, 2019, at 10:00 a.m.

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

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