



Virginia Freedom of Information Advisory Council

Records Issues Subcommittee

September 2, 2021, at 1:00 p.m.

Senate Room A, Pocahontas Building

foiacouncil.dls.virginia.gov

The Records Issues Subcommittee (the Subcommittee) of the Virginia Freedom of Information Advisory Council (the Council) met with Matthew Conrad, chair, presiding.¹ The meeting began with introductions and opening remarks followed by presentations and discussion. Materials presented at the meeting, as well as all written public comments, are accessible through the [Council's 2021 Subcommittees webpage](#).

Presentation: HB 2000 (Roem, 2021)

Delegate Danica A. Roem

Council Staff

Delegate Roem presented a brief overview of HB 2000 and its intent to make the FOIA fee system, and FOIA as a whole, more requester friendly.

Discussion: HB 2000

The Subcommittee discussed how best to approach the issue of public bodies not charging a requester an hourly rate for the first two hours spent accessing or searching for records when a requester makes four or fewer records requests within 31 consecutive days. There also was discussion about capping at \$33 per hour the amount a public body can charge a requester after the first two hours spent accessing or searching for records.

Members of the Subcommittee noted the following:

- Bruce Potter, along with Amigo Wade, expressed that it may be difficult to track how many requests a requester makes within each 31-day period.
- Cullen Seltzer asked whether the \$33 per hour cap was feasible when an attorney's review is needed. Delegate Roem responded that research into other FOIA regulations across the country showed that \$33 per hour is on the high end of the allowable charge scale, adding that some states, such as Colorado, Maine and North Dakota, have either similar or lower per hour charges.
- Delegate Roem noted that an alternative to raising the per hour cap would be to specify what an attorney's review would entail as long as the per hour charge is uniform throughout all counties and municipalities in Virginia. She stated that one area of Virginia should not be able to charge more for FOIA requests based solely on its location.

¹ **Members Present:** Matthew Conrad (chair), Pamela O'Berry, Lola Rodriguez Perkins, Bruce Potter, Cullen Seltzer, Dr. Sandra Treadway, and Amigo Wade

Members Absent: None

The Subcommittee considered each noted concern during its discussion of changes and line amendments to HB 2000. Ultimately, the Subcommittee voted 6-1 in favor of keeping the existing language related to four or fewer record requests made within 31 consecutive days. The Subcommittee voted unanimously to add language allowing a public body to seek relief from the appropriate court if the salary of the person tasked with reviewing a FOIA request exceeds the \$33 per hour cap. The Subcommittee voted to recommend the bill as amended to the Council.

Presentation: HB 2196 (Mullin, 2021)

Delegate Michael P. Mullin

Council Staff

Council staff gave a brief presentation on the difference in laws related to the release of law-enforcement disciplinary records across the country. The presentation included an analysis of all 50 states and Washington, D.C., and showed that 19 states' law-enforcement disciplinary records laws, including Virginia's, were mostly closed while 17 were restricted, and 15 were mostly open. Delegate Mullin gave a detailed overview of the amended version of HB 2196 and mentioned that a pressing issue is whether to keep the amended bill's language about law-enforcement disciplinary records related to substantiated disciplinary investigations.

Discussion: HB 2196

The Subcommittee discussed the definition of "technical infraction" in the amended bill as well as whether to keep the language regarding substantiated disciplinary investigations.

Members of the Subcommittee noted the following:

- Pamela O'Berry made a motion to delete "is not a matter of public concern" from the definition of "technical infraction" on line 35 of the amended bill because FOIA matters are a public concern, especially if a member of the public is looking to request records regarding a law-enforcement investigative matter.
- Lola Rodriguez Perkins asked for clarity on whether the amended bill would include internal affairs investigations. Delegate Mullin responded in the affirmative.
- Ms. O'Berry also suggested that the amended bill should note that a "technical infraction" would not include any instance where a firearm was discharged.

The Subcommittee considered each noted concern during its discussion of changes and line amendments to the amended version of HB 2196. The Subcommittee voted unanimously to (i) strike "is not a matter of public concern" from the definition of "technical infraction" on line 35 and add "technical infraction does not include any instance where a firearm is discharged" to the definition; (ii) add "that arises from the investigation of a law-enforcement officer's conduct" to the end of clause (iv) on line 45; and (iii) add language to the amended bill clarifying that information of a personal, medical, or financial nature shall not be released where the release of that information would jeopardize the safety or privacy of any person.

Mr. Conrad moved to recommend the amended draft of HB 2196 to the Council.

Next Meeting

No date was set for the next meeting of the Subcommittee.



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

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