VIRGINIA FREEDOM OF INFORMATION ADVISORY COUNCIL

COMMONWEALTH OF VIRGINIA

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VIRGINIA FREEDOM OF INFORMATION ADVISORY COUNCIL

Tuesday, April 22, 2025 - 1:00 PM
House Room B, General Assembly Building
Richmond, VA

Note: This meeting will be held in person and live streamed at
https://virginiageneralassembly.gov/house/committees/commstream.html

SUGGESTED AGENDA
ANNOTATED

1. **Call to Order; introduction of members.**

2. **Legislative Update.** Recap of FOIA and other access bills from the 2025 Session of the General Assembly. *Note that this Legislative Update is in draft form because the Governor has until May 2, 2025 to take final action on any remaining bills.*

3. **Bills referred by the 2025 Session of the General Assembly.**

   - **HB 1590 (Kent) Virginia Freedom of Information Act; exclusions; apprenticeship programs; minors.** Excludes from the mandatory disclosure requirements of the Virginia Freedom of Information Act any personal information in a public record regarding the participation of a minor in a program run by a state public body, such as an internship, externship, or apprenticeship, except as otherwise prescribed by law.

- **SB 876 (Ebbin) Virginia Freedom of Information Act; notice of public meetings; proposed agenda required.** Requires public bodies subject to the Virginia Freedom of Information Act to include a proposed agenda and any subsequent revisions to be posted on the public body's official public government website, if any, and made available to the public prior to the meeting. The bill provides that any items added to the agenda after the meeting commences may be considered and discussed at the meeting, but final action shall not be taken on such an item unless the matter is time-sensitive.

4. **Bills from the 2025 Session of the General Assembly that include the FOIA Council on studies.**

    - **HB 2452 (Hodges). Baccalaureate public institutions of higher education; governing boards;public access to meetings; uniform minimal standards.** Establishes several requirements, subject to a reenactment clause, relating to public access to meetings of the governing boards of baccalaureate public institutions of higher education. The bill also requires the State Council of Higher Education for Virginia, in consultation with the Virginia Freedom of Information Advisory Council and a representative from the Library of Virginia, to work with the public institutions of higher education in the Commonwealth and with technology experts to develop minimal uniform standards, to the extent practicable, for (i) providing the public with real-time access to the meetings of governing boards of public institutions of higher education and the meetings of committees of such boards, (ii) archiving the recordings of such meetings, and (iii) taking minutes at such meetings. The bill requires any such minimal uniform standards to be implemented by each public institution of higher education in the Commonwealth no later than July 1, 2026.

5. **Study referral from the Joint Subcommittee to Study Pandemic Response and Preparedness in the Commonwealth.** *Please see the letter submitted by Co-Chairs of the Joint Subcommittee ("Freedom of Information Advisory Council- JSPRP Letter") and the After Action Report Breakout (Freedom of Information Advisory Council Referral).*

6. **Emergency Meeting Protocols.** *Please see the memorandum submitted by the Loudoun County Board of Supervisors.*

7. **Vexatious Requests/Harassment.** *The issue of requesters using FOIA as a weapon to harass or interfere with the work of public bodies is one that continues to be raised before the Council. The Council's Rights and Remedies Subcommittee examined this issue in 2010 and considered various legislative proposals to address the problem, but ultimately the Council at that time took no action on the matter. Summaries of the work of the 2010 Subcommittees are available on the Council's website here. Final consideration of the issue by the Council is described in the November 8, 2010 meeting summary available on the Council Meetings webpage.*

8. **Judicial Update**

- *Town of South Hill v. Hawkins* (Va. Ct. App. 2024) and *Hawkins v. Town of South Hill* (Va. Ct. App. 2024). [Note: Both cases share the same opinion issued December 10, 2024, but are listed separately by the Court of Appeals so both links are included here.] As you will recall, the Supreme Court of Virginia set out a definition of what constitutes "personnel information" and a test to determine whether that information is private in *Hawkins v. Town of South Hill* (Va. 2022) and remanded the case to the trial court for further proceedings. The subsequent trial court decision was appealed to the Virginia Court of Appeals by the Town, and a cross-appeal was filed by Hawkins. The Court of Appeals upheld the trial court's order on remand that the Town must produce certain documents with minimal redactions and awarding Hawkins costs as he substantially prevailed on remand; found the trial court had erred in finding that Hawkins, a licensed attorney, was categorically barred from recovering attorney fees as he was acting *pro se*; and remanded the case back to the trial court for a determination of attorney fees.
- *Minium v. Hines* (Va. Ct. App. 2025). In this case Minium requested the names, salaries, and other information for all law enforcement officials in Hanover County. In initial and supplemental responses, the Sheriff provided some of the information but withheld the names of employees of the Sheriff's Office below the rank of Captain except for some with public-facing positions, citing exemptions for the staffing of undercover operations and protective details (Code § 2.2-3706(B)(8)) and the identity of undercover officers (Code § 2.2-3706(B)(10)). The Court of Appeals concluded that "the names of law enforcement personnel are not exempted from production" and that "the County may not refuse to produce the names of law enforcement officials," and remanded the case to the trial court for further proceedings. [*Note: It is staff's understanding that this case is being appealed to the Supreme Court of Virginia.*]
- *Blackstock v. Va. Dept. of Transportation* (Va. Ct. App. 2025). Blackstock was an employee of the Virginia Department of Transportation (VDOT) who sought a copy of a report made by VDOT's internal auditor, first as part of a grievance and then under FOIA. Blackstock received the report with varying levels of redaction pursuant to the personnel information exemption (Code § 2.2-3705.1(1)) and the audit exemption (Code § 2.2-3705.3(7)). Believing he was entitled to an unredacted version of the report, Blackstock then filed a petition for mandamus which was denied after the trial court held a hearing, took testimony, and reviewed an unredacted copy of the report *in camera*. The Court of Appeals held that the trial court did not err in denying Blackstock's petition for mandamus. Notably, the Court of Appeals held that following the prefatory language stating that exemptions are discretionary and that exemption information may be disclosed except where disclosure is prohibited by law, certain language in the audit exemption acts to prohibit the release of certain portions of the reports to which the exemption applies, that a "public body cannot legally waive any such mandatory non-disclosure requirement," and that VDOT therefore was required to redact those portions of the audit report at issue.
- *Morgan v. Bd. of Supervisors of Hanover County* (Va. Ct. App. 2025). This case involves a dispute over a proposed distribution center in Hanover County. Among other legal issues, the plaintiffs challenged whether a Board of Supervisors meeting held to consider zoning issues on May 6, 2020 (during the COVID-19

pandemic when social distancing restrictions were in place) was conducted properly in accordance with FOIA. The meeting was held in person, with members of the public allowed into the meeting boardroom to the extent room capacity and social distancing restrictions allowed. Other members of the public could watch a live stream of the meeting outside the boardroom. The Court of Appeals considered that the Board did not control or select which members of the public were allowed into the boardroom; various members of the public went in and out of the boardroom to allow others to view and participate in the meeting; two plaintiffs and their attorney were present in the boardroom, a third plaintiff submitted written comments via email; the Board allowed public comment while taking precautions appropriate to the pandemic. Procedurally, this matter had already been heard at trial, appealed to the Virginia Supreme Court, and heard again on remand. The Court of Appeals ultimately held that the Board meeting in question was not in violation of FOIA.

- *NPR v. Dept. of Corrections* (Va. Ct. App. 2025)(Unpublished memorandum opinion available on the Virginia Coalition for Open Government website here). A reporter working for NPR found four tape recordings of executions of Virginia prisoners dated from 1987 to 1990 while doing research at the Library of Virginia. The reporter later requested any additional such recordings from 1990 to 2017 but was denied pursuant to § 2.2-3706(B)(4), which allows public bodies to withhold "[a]ll records of persons imprisoned in penal institutions in the Commonwealth provided such records relate to the imprisonment." The decision hinged on what was meant by "records of persons imprisoned." NPR argued that it meant records created or controlled by such persons, but the Court of Appeals followed a broader interpretation, stating that "of" is used to indicate relationships including meaning "connected with" or "referring to." The Court of Appeals found no error and upheld the trial court's ruling that the denial of the request did not violate FOIA.

9. Other Business.

- **Electronic Meetings Participation Policy.** *Under current law, a public body must annually adopt a participation policy before using remote participation or conducting all-virtual public meetings. The Council adopted its current electronic participation policy (available here) on May 28, 2024 to take effect July 1, 2025. There have been no changes in the law since the policy was adopted that would require any amendments to the policy. For those reasons, it is recommended that the Council adopt the same policy to take effect July 1, 2025.*

10. Public Comment.

11. Set Future Meeting Dates.

12. Adjournment.

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Council Members

Delegate Marcus B. Simon
Senator Richard H. Stuart
Senator Mamie E. Locke, Vice- Chair
Delegate Elizabeth B. Bennett-Parker

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The FOIA Council's website is: http:// foiacouncil.dls.virginia.gov. To assist us in providing Internet dissemination of materials, presenters are requested to submit written comments and handouts in electronic format by email to staff prior to meetings. Presenters are also requested to bring 20 copies of their remarks or handouts to meetings. These copies will be provided to FOIA Council members and the public.
E-mail: foiacouncil@dls.virginia.gov.