

**REPORT OF THE
HOUSE SUBCOMMITTEE STUDYING
THE VIRGINIA FREEDOM OF INFORMATION ACT
AND TELECOMMUNICATIONS
TO
THE GOVERNOR
AND
THE GENERAL ASSEMBLY OF VIRGINIA**



HOUSE DOCUMENT NO. 19

**COMMONWEALTH OF VIRGINIA
RICHMOND
1983**

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Ms. Constance E. Ober, Vice-Chairman
Delegate Warren E. Barry
Mr. Linwood Judkins
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Mr. Paul Muse
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**Report of the
House Subcommittee Studying
The Virginia Freedom of Information Act
and Telecommunications**

**To
The Governor and the General Assembly of Virginia
Richmond, Virginia
December, 1982**

To: Honorable Charles S. Robb, Governor of Virginia
and
The General Assembly of Virginia

INTRODUCTION

The following resolution, House Resolution No. 11, agreed to during the 1982 General Assembly Session, requested that a subcommittee study the effects of telecommunications on the Virginia Freedom of Information Act and the need for amendments to the Act as it relates to the advances of telecommunications.

HOUSE RESOLUTION No. 11

Requesting the House General Laws Committee to study the Virginia Freedom of Information Act and the feasibility of legislation which would pertain to telecommunications under that Act.

WHEREAS, the General Assembly enacted Virginia's Freedom of Information Act in order to ensure that no activity of government which ought to be conducted in public was carried on in secrecy; and

WHEREAS, the General Assembly enacted Virginia's Privacy Protection Act to ensure that no personal information in governmental hands was made public knowledge when it should have been kept confidential; and

WHEREAS, telecommunication has become an integral part of today's society; and

WHEREAS, meetings are often conducted by means of a conference telephone or similar communication devices which greatly benefit the participants in the meetings; and

WHEREAS, telephone conference calls are not specifically subject to the provisions of the Virginia Freedom of Information Act; and

WHEREAS, the frequency and depth of governmental participation in such conference calls has increased in recent years; now, therefore, be it

RESOLVED by the House of Delegates, That the House General Laws Committee is requested to study the Virginia Freedom Of Information Act and the feasibility of legislation which would pertain to telecommunications under that Act; and, be it

RESOLVED FURTHER, That a seven member subcommittee be established to conduct this study, which would consist of three members of the House General Laws Committee, said members to be selected by the Chairman of the House General Laws Committee; one citizen member from the press, one citizen member from radio or television, one citizen member representing local government and one citizen member representing state government, the four citizen members to be selected by the Speaker of the House of Delegates.

The subcommittee shall complete its study in time to present its recommendations to the

Governor and the 1983 Session of the General Assembly.

The cost of this study shall not exceed \$3,000.

Delegate Ralph L. Axselle, Jr., was selected to chair the subcommittee. Other members of the House of Delegates chosen to serve on the subcommittee were Delegate Warren E. Barry and Delegate William T. Wilson. In addition, four citizens were appointed to serve on the subcommittee. They were: Mr. Paul Muse, representing the press; Mr. Linwood Judkins, representing the radio industry; Mr. L. Dale McGhee, the County Attorney for Henry County, representing local government; and Ms. Constance E. Ober, representing state government. Ms. Ober was selected as Vice-Chairman of the subcommittee.

BACKGROUND

The Virginia Freedom of Information Act, found in Chapter 21 of Title 2.1 of the Virginia Code, was enacted into law in 1968. The basic purposes of the Act are to ensure the people and the press of the Commonwealth ready access to records in the custody of public officials, and free entry to meetings of public bodies where public business is being conducted. Essentially, the Act was enacted to protect the public's "right to know" about the workings of their government. Exceptions to the applicability of the Act are statutorily mandated to be narrowly construed and rights and privileges under the Act are liberally construed.

The Virginia Freedom of Information Act has been amended twelve of the fourteen years since its enactment. During the 1982 General Assembly Session eight bills were passed which amended the Act. A majority of the recent amendments further refined the exemptions and exceptions to the Act.

Of prime interest to this subcommittee, however, were the technological advances in communication which made possible audio and video teleconferences, activities which at this point the Freedom of Information Act does not address. The subcommittee has thoroughly studied the advantages and disadvantages of public bodies' conducting public meetings via teleconferences, and the requirements of the open meeting provisions of the Act as they bear on telecommunications.

ACTIVITIES AND FINDINGS

Because of the tremendous importance of this study to the citizens of the Commonwealth, the subcommittee solicited advice and opinions from members of the public, members of the news media, and interest groups and organizations. The subcommittee received testimony at its June 24 and September 22 meetings. Several speakers expressed concerns about the potential for abuse of the open meeting provisions of the Virginia Freedom of Information Act if legislation passed allowing public meetings through teleconferencing. Although it was noted that conference calls could be useful in emergency situations, all participants agreed that the Act should not be weakened by exempting conference calls from the provisions of the Act.

Representatives for the Virginia Association of Counties and the Virginia Municipal League polled their members in an effort to ascertain the frequency of teleconference usage by public bodies. The organizations indicated that they were not advocating or requesting a change in the Virginia Freedom of Information Act at this time. Their polls indicated only negligible, if any, use of teleconferencing. Ms. Ober, a telecommunications planner with the Department of Telecommunications and a member of the subcommittee, reported on the use of teleconferencing by state agencies and institutions. Her report revealed that there was limited teleconference activity during the months of July and August, 1982, and that all but one of the meetings conducted through teleconferencing were administrative. Administrative meetings are often held as training sessions, management and staff briefings or interviews, and are not subject to the Virginia Freedom of Information Act due to the fact that no public meeting is being held where public business is being discussed. Ms. Ober described the nonadministrative meeting as an executive-type meeting which was held by a professional regulatory board pertaining to the disciplining of a practitioner. That meeting was not subject to the open meeting provisions of the Act since it pertained to a personal matter.

Since her report to the subcommittee, Ms. Ober has submitted figures for September and October which demonstrate an increase in teleconferencing for administrative purposes by state agencies. A copy of her amended report is attached as the appendix.

The subcommittee reviewed the June 14, 1982, opinion of the Attorney General pertaining to telephone calls and the Virginia Freedom of Information Act in which the Attorney General stated that a separate telephone poll of each member of Alexandria's City Council for the position of each member on legislation pending in the General Assembly did not violate the Act. The separate telephone poll did not constitute a meeting under the Act because separately telephoning each council member did not permit presence and participation in discussion by the city council. The Attorney General also noted that the results of the poll would not constitute a valid action having any binding effect on the city council.

In addition the subcommittee considered a case which is before the Supreme Court of Virginia. Roanoke Circuit Court Judge Ernest W. Ballou ruled that a telephone conference call held by the Roanoke City School Board in which all members of the Board participated did constitute a "meeting" within the meaning of the Virginia Freedom of Information Act. The Act was violated since the Board met in executive session without first calling a public meeting, giving notice of that meeting and voting to go into executive session. The case has been appealed to the Supreme Court of Virginia by the school board. Roanoke City School Board v. Times-World Corporation and John J. Chamberlain is tentatively scheduled to be heard in the fall of 1983 by the Supreme Court of Virginia.

A review of the Freedom of Information and Open Meeting Acts of other states indicates that very few states refer to teleconference or electronic meetings in their statutes. Most states are silent on the issue, as is Virginia. Those states which do address teleconference or electronic meetings provide for one of the following: (i) allows any meeting to be held through teleconferencing or electronic methods by specification in the definition of "meeting" (Montana, North Carolina, Oregon, Utah); (ii) allows only emergency meetings to be held through teleconferencing or electronic methods (Nebraska); (iii) allows emergency and "closed" session meetings to be held through teleconferencing or electronic methods (Iowa); and (iv) prohibits the use of teleconferencing or electronic methods for meetings (Oklahoma, Tennessee).

CONCLUSION

Testimony presented to the subcommittee indicated that there is little or no use of teleconferencing by local governments or Virginia public bodies at the present time and that amendments to the Virginia Freedom of Information Act pertaining to teleconferencing would be premature. The subcommittee realizes that there is a growing use of teleconferencing for administrative purposes such as training sessions for employees, staff briefings and interviews; however, administrative teleconferences are not public meetings where public business is being conducted and therefore are not subject to the Virginia Freedom of Information Act. The case pending before the Supreme Court of Virginia, Roanoke City School Board v. Times-World Corporation and John J. Chamberlain will be heard in the 1983 fall term and directly involves a conference call and its relation to the Act. For the foregoing reasons, the subcommittee recommends that no amendments be made at this time to the Freedom of Information Act pertaining to telecommunications.

In conclusion, the subcommittee cannot presently advocate or encourage the use of teleconferencings by public bodies for public meetings; however, any meeting held through teleconferencing by a public body in which the business of the citizens of the Commonwealth is discussed or conducted is subject to the Virginia Freedom of Information Act and should be conducted in a manner which would not violate that Act or any other provision of law. The subcommittee, recognizing the need for state agencies to use teleconferencing as an efficient and economical tool, supports the use of teleconferencing by state agencies for administrative purposes.

Respectfully submitted,

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Ralph L. Axelle, Jr., Chairman

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Constance E. Ober, Vice-Chairman

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Warren E. Barry

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Linwood Judkins

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L. Dale McGhee

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Paul Muse

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William T. Wilson

APPENDIX
STATE AUDIO TELECONFERENCING USAGE

JULY 1982

Number of teleconferences:	16	(average: 4 per week)
Number of participants:	61	(average: 3.8 per meeting)
Total number of conference minutes:	740	(average: 47 minutes)
Total SCATS costs at \$.26 per minute:	\$557.70	(average: \$35.00 per meeting)

AUGUST 1982

Number of teleconferences:	25	(average: 6 per week)
Number of participants:	149	(average: 5.96 per meeting)
Total number of conference minutes:	991	(average: 40 minutes)
Total SCATS costs at \$.24 per minute:	\$772.56	(average: \$30.90 per meeting)

SEPTEMBER 1982

Number of teleconferences:	28	(average: 7 per week)
Number of participants:	130	(average: 4.6 per meeting)
Total number of conference minutes:	1,104	(average: 39 minutes)
Total SCATS costs at \$.24 per minute:	\$1,003.94	(average: \$35.85 per meeting)

All but one group able to schedule
bridge at desired time

OCTOBER 1982

Number of teleconferences:	31	(average: 8 per week)
Number of participants:	161	(average: 5.19 per meeting)
Total number of conference minutes:	1,433	(average: 46 minutes)
Total number of participant minutes:	230,713	(average: 1,433 minutes)
Total SCATS costs at \$.23 per minute:	\$1,233	(average: \$39.77 per meeting)

All but one group able to schedule
bridge at desired time

