

REPORT OF THE

# Virginia Freedom of Information Advisory Council

TO THE GOVERNOR AND  
THE GENERAL ASSEMBLY OF VIRGINIA



## HOUSE DOCUMENT NO. 30

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\*\*\*\*\*

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**REPORT OF THE  
VIRGINIA FREEDOM OF INFORMATION  
ADVISORY COUNCIL**

**To: The Honorable James S. Gilmore, III, Governor of Virginia  
and  
The General Assembly of Virginia**

**Richmond, Virginia  
December 2000**

**Introduction**

*“Finding that the creation of a small, independent office that emphasized the importance of training, the quick resolution of FOIA disputes, and the issuance of nonbinding, advisory opinions were both feasible and desirable, the joint subcommittee recommended to the 2000 Session of the General Assembly the creation of the Virginia Freedom of Information Advisory Council (i) to assist the citizens of the Commonwealth in gaining ready access to records in the custody of public officials and free entry to meetings of public bodies wherein public business is being conducted and (ii) to assist state and local government officials in meeting their statutory obligations through training, publication of educational materials, and quick response to questions.”<sup>1</sup>*

The Freedom of Information Advisory Council (the “Council”), established by the 2000 Session of the General Assembly<sup>2</sup>, officially began operation on July 21, 2000. The Council was created as an advisory council in the legislative branch to encourage and facilitate compliance with the Freedom of Information Act. As directed by statute, the Council is tasked with furnishing, upon request, advisory opinions regarding the Freedom of Information Act (FOIA) to any person or agency of state or local government; conducting training seminars and educational programs for the members and staff of public bodies and other interested persons on the requirements of FOIA; and publishing educational materials on the provisions of FOIA.<sup>3</sup> The Council is also required to file an annual report on its activities and findings regarding FOIA, including recommendations for changes in the law, to the Governor and the General Assembly.

The Council is composed of 12 members: Delegate Clifton A. "Chip" Woodrum of Roanoke; Senator R. Edward Houck of Spotsylvania; Frank S. Ferguson, designee of the Attorney General; Nolan T. Yelich, Librarian of Virginia; E.M. Miller, Jr., director of the Division of Legislative Services; David Hallock of Richmond, with the law firm of Williams, Mullen, Clark and Dobbins; J. Stewart Bryan, III, of Richmond, chairman, president and chief

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<sup>1</sup> Report of the Joint Subcommittee Studying Virginia’s Freedom of Information Act, House Document No. 106 (2000).

<sup>2</sup> Chapters 917 and 987 of the 2000 Acts of Assembly.

<sup>3</sup> Article 2 (§ 2.1-346.2 et seq.) of Chapter 21 of Title 2.1 of the *Code of Virginia*.

executive officer of Media General, Inc.; W. Wat Hopkins of Blacksburg, associate professor, Virginia Tech; John B. Edwards of Smithfield, editor of the Smithfield Times; Roger C. Wiley of Richmond, partner, Hefty and Wiley; David E. Anderson, of Richmond, partner, McGuire Woods Battle & Boothe; and Martika A. Parson, of Richmond, with the Office of the Attorney General. The Division of Legislative Services provides staff support to the Council.

By issuing advisory opinions, the Council hopes to resolve disputes by clarifying what the law requires and to guide the future public access practices of state and local government. Although the Council has no authority to mediate disputes, it can be called upon as a resource to help fashion creative solutions in an attempt to remedy a dispute. The success of Council should be judged by the number of disputes that have been resolved, not by the number of opinions issued. The Council is a resource for the public, representatives of state and local government, and members of the media. It is the mission of the Council to give reasonable effect to the intent of the law and to give the right answer regardless of who is asking the question.

### **Work of the Council**

The Council met three times since it began operations in July 2000. At its organizational meeting held on August 15, 2000, in Richmond, the Council agreed that the day-to-day operations of the Council would be vested in its executive director. The Council also discussed (i) conducting training seminars at least annually, (ii) the creation and maintenance of a Council website to make the work of the Council and information related to FOIA generally more accessible to anyone interested in public access issues; and (iii) the publication of educational materials to assist state and local government officials, the media, and citizens in complying with FOIA. A direct telephone line and a toll-free number were established at the Division of Legislative Services to handle FOIA inquiries.

At its second meeting on September 20, 2000, the Council began deliberations on electronic communications (e-mails, etc.) and how they should be treated under FOIA in the context of both open records and open meetings. Are e-mails like paper or are they written conversation? It was suggested that they may be both. The Council reviewed the Library of Virginia's guidelines, adopted pursuant to the Virginia Public Records Act, on electronic communications in the context of records retention.

On November 29, 2000, the Council continued its examination of electronic communications as it relates to public access issues under FOIA. C. Preston Huff, State Records Administrator at the Library of Virginia and Bob Nawrocki, Electronic Records Coordinator at the Library of Virginia, prepared a presentation for the council discussing electronic communications and the Virginia Public Records Act. It was noted that the Public Records Act and the Freedom of Information Act take similar approaches to e-mail. By itself, e-mail is not a record, but is a means of conveying various types of information much like a piece of paper or microfilm. The presentation covered retention schedules for various records, and noted that the same schedules applied to information conveyed via e-mail as paper. Essentially, e-mail should not be treated any differently than paper from a records perspective.



The Council also heard from Bill Wilson, Director of the Division of Legislative Service's Automated Systems, on the nature of electronic communications from a technical perspective (i.e., the distinctions between e-mail, instant messaging, off-line-mail, and chat rooms). Mr. Wilson addressed key highlights of several means of electronic communication. He covered conference calls; private networks; the Internet, which includes e-mail; news and discussion groups; instant messaging; chat rooms; and commercial hybrids. For each of these modes of communications, Mr. Wilson described how they worked and the types of communications for which each might be valuable.

The issues discussed in the presentations posed many interesting albeit difficult questions in the realm of public records and electronic communication's effect on the application of the Freedom of Information Act. The council will continue to examine these issues at future meetings.

### **Services Rendered by the Council**

The Council offers advice and guidance orally and in writing to the public, representatives of state and local government, and members of the news media. Since July 21, 2000, with its staff of two, the Council responded to more than 100 telephone inquiries and prepared eight written advisory opinions. In addition, the executive director gave 11 presentations before government and news media organizations, on campus and in public forums. A listing of these presentations follows as Appendix B.

#### **Statistical Summaries**

At the direction of the Council, the staff has kept logs regarding telephone inquiries. In an effort to identify the uses of the Council's services, the logs have characterized callers as members of the public, state agency officials, local government officials, state legislators, and members of the news media. A similar breakdown has been developed with respect to requests for written advisory opinions.

In its four months of operation, the staff of the Council has prepared eight written advisory opinions. A listing of these opinions and a brief description of the opinions follow as Appendix C. With respect to telephone inquiries, the number was 100. Based on the number of inquiries received for the period July 21, 2000, through November 30, 2000, the Council anticipates that it will provide FOIA advice and guidance orally and in writing to approximately 500 citizens of the Commonwealth by the end of its first year.<sup>4</sup> For comparison purposes, the New York Committee on Open Government, upon which this office is based, generally fields between 800 and 900 inquiries each year, after having been in operation for 25 years.

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<sup>4</sup> This number also includes advice to state and local government officials and media representatives.

***Written Advisory Opinions***

Among the opinions, the total by group is as follows:

Members of the Public	3
Local Government Officials	3
Members of the News Media	1
State Agency Officials	1
State Legislators	0

***Telephone Inquiries***

The profile among those callers is as follows:

Members of the Public	43
Local Government Officials	25
Members of the News Media	21
State Agency Officials	17
State Legislators	3

***All Inquiries to the Council***

**Total number of inquiries (via phone, letter, email)** 141

**Number of inquiries received by:**

Public: 54  
Media: 33  
Government: 54

**Number of pending responses (as of 11/29):** 10

**Number of formal responses via written opinion:** 8

**Number of inquiries received concerning:**

Records: 85  
Meetings: 42  
Other (privacy issues, role of FOIA Council, etc.) 12

• *Note: some requests posed questions regarding both records and meetings, and have been counted accordingly.*

**Number of inquiries received about each of the following:**

Mechanics of FOIA (i.e. how does one make a request, proper procedure to close a meeting, what to do if a request is denied, etc.)	37
FOIA Definitions (i.e. is a described body a public body, does a described situation constitute a meeting, what is official business, etc.)	11
Specified meetings or records of a particular public body	21
Subcommittee meetings	1
Who may request records	3
Law enforcement records	10
Personnel records	6
Investigative records of public bodies (non-law enforcement)	5
School records	5
Working papers	2
Licensing records	2
Documents related to administrative hearings	2
Court documents	1
Access to test results	1
Records prepared for litigation and attorney-client privilege	3
Social or chance meetings of public officials	3
Contract discussions	2
Personnel discussions	2
Privacy issues	1
Inmate requests for records	1
Dissemination of credit card information	1
Records retention	1
E-mail	2
Role of the FOIA Advisory Council	3
Questions outside the scope of FOIA	9

### The Council's Website

The website address for the Council is <http://dls.state.va.us/foiacouncil.htm>. Since the launching of the Council's website on August 1, 2000, the Council has received approximately 900 "hits," averaging 26 hits per day. While still under construction, the Council's website provides (i) access to the Freedom of Information law, (ii) access to the Council's meeting schedule, including meeting summaries, (iii) access to the membership and staff of the Council, and (iv) links to other Virginia resources, including the Virginia Public Records Act, FOIA Overview with frequently asked questions, and FOIA summary and compliance tips from the Office of the Attorney General. It is expected that written advisory opinions and an index thereto will be available on the Council's website by January 2001.

### FOIA Workshops

FOIA training workshops were conducted the week of October 23-27 at the following locations statewide: Norfolk; Richmond, Charlottesville, and Wytheville. In addition to the FOIA Council, these statewide workshops were sponsored by the Office of the Attorney General, the Virginia Administrative Law Advisory Committee, the Virginia Association of Broadcasters, the Virginia Association Chiefs of Police, the Virginia Association of Counties, the Virginia Bar Association, the Virginia Coalition for Open Government, the Virginia Community College System, the Virginia Department of Criminal Justice Services, the Virginia Local Government Attorneys Association, the Virginia Municipal League the Virginia Press Association, the Virginia Sheriff's Association, and the Virginia School Boards' Association. The workshops reached approximately 500 persons statewide and offered continuing legal education (CLE) credit required for attorneys by the Virginia State Bar to sustain their licenses to practice law and criminal justice credits as required by the Virginia Department of Criminal Justice Services for law-enforcement officials.

### Educational Materials

The Council, in cooperation with the Virginia Coalition on Open Government, produced a public service poster titled *Open Government—It's your call. 1-866-448-4100*. The poster currently is being distributed to state and local officials to publicize the existence of the Council as well as its role to encourage and facilitate compliance with FOIA.

The Council is currently working on additional educational materials, including consideration of a handbook on public access laws for law-enforcement, FOIA request and response forms, and a sample motion form for public bodies to convene in a closed meeting.

# VIRGINIA ACTS OF ASSEMBLY -- 2000 SESSION

## CHAPTER 917

*An Act to amend the Code of Virginia by adding in Chapter 21 of Title 2.1 an article numbered 2, consisting of sections numbered 2.1-346.2 through 2.1-346.5, relating to the Freedom of Information Act; creation of the Virginia Freedom of Information Advisory Council.*

[H 551]

Approved April 9, 2000

**Be it enacted by the General Assembly of Virginia:**

**1. That the Code of Virginia is amended by adding in Chapter 21 of Title 2.1 an article numbered 2, consisting of sections numbered 2.1-346.2 through 2.1-346.5, as follows:**

*Article 2.*

*Virginia Freedom of Information Advisory Council.*

*§ 2.1-346.2. Virginia Freedom of Information Advisory Council; membership; terms; quorum; compensation.*

*A. The Virginia Freedom of Information Advisory Council (the Council) is hereby created as an advisory council in the legislative branch to encourage and facilitate compliance with the Freedom of Information Act. The Council shall be composed of twelve members as follows: the Attorney General or his designee; the Librarian of Virginia or his designee; the Director of the Division of Legislative Services or his designee; four members appointed by the Speaker of the House of Delegates, one of whom shall be a member of the House of Delegates, and three citizen members, at least one of whom shall be or have been a representative of the news media; three members appointed by the Senate Committee on Privileges and Elections, one of whom shall be a member of the Senate, one of whom shall be or have been an officer of local government, and one citizen member; and two citizen members appointed by the Governor, one of whom shall not be a state employee. The local government representative shall be selected from a list recommended by the Virginia Association of Counties and the Virginia Municipal League. The citizen members may be selected from a list recommended by the Virginia Press Association, the Virginia Association of Broadcasters, and the Virginia Coalition for Open Government, after due consideration of such list by the appointing authorities.*

*B. Initial appointments to the Council shall be for the following terms: of those nonlegislative members appointed by the Speaker of the House of Delegates, one shall serve a four-year term, one shall serve a three-year term and one shall serve a two-year term; of those nonlegislative members appointed by the Senate Committee on Privileges and Elections, one shall serve a four-year term and one shall serve a three-year term; and of those members appointed by the Governor, one shall serve a four-year term and one shall serve a three-year term. Thereafter, all such appointments shall be for terms of four years, except that appointments to fill vacancies shall be for the unexpired terms in the same manner as the original appointment. No member shall be eligible to serve for more than two successive four-year terms. However, after the expiration of a term of three years or less, or after the expiration of the remainder of a term to which appointed to fill a vacancy, two additional terms may be served by such member if appointed thereto. Legislative members and other state government officials shall serve terms coincident with their terms of office.*

*C. The members of the Council shall elect from among their membership a chairman and a vice-chairman for two-year terms. The chairman and vice-chairman may not succeed themselves to the same position. The Council shall hold meetings quarterly or upon the call of the chairman. A majority of the Council shall constitute a quorum.*

*D. Members of the Council shall receive no compensation for their services but shall be reimbursed for all reasonable and necessary expenses incurred in the discharge of their duties as provided in §§ 2.1-20.10 and 30-19.12, as appropriate.*

*§ 2.1-346.3. Powers and duties of the Council.*

*The Council shall:*

*1. Furnish, upon request, advisory opinions or guidelines, and other appropriate information regarding the Freedom of Information Act (§ 2.1-340 et seq.) to any person or agency of state or*

local government, in an expeditious manner;

2. Conduct training seminars and educational programs for the members and staff of public bodies and other interested persons on the requirements of the Freedom of Information Act;

3. Publish educational materials as it deems appropriate on the provisions of the Freedom of Information Act;

4. Request from any agency of state or local government such assistance, services and information as will enable the Council to effectively carry out its responsibilities. Information provided to the Council by an agency of state or local government shall not be released to any other party unless authorized by such agency; and

5. Report annually on or before December 1 of each year on its activities and findings regarding the Freedom of Information Act, including recommendations for changes in the law, to the Governor and the General Assembly.

§ 2.1-346.4. Staff.

Staff assistance to the Council shall be provided by the Division of Legislative Services. Staff shall perform those duties assigned to it by the Council.

§ 2.1-346.5. Cooperation of agencies of state and local government.

Every department, division, board, bureau, commission, authority or political subdivision of the Commonwealth shall cooperate with, and provide such assistance to, the Council as the Council may request.

**2. That the provisions of this act shall expire on July 1, 2002.**

## Appendix B

### Training/Education Presentations

An important aspect of the Council's work involves efforts to educate by means of seminars, workshops, and various public presentations.

From July 21, 2000 through the end of November 2000, the staff gave approximately 11 presentations, which are identified below by interest group in chronological order.

August 12, 2000	Richmond City School Board City Hall, Richmond, VA
October 12, 2000	College Communicators Association James Madison University Harrisonburg, VA
October 23, 2000	Virginia Municipal League Annual Conference Arlington, VA
October 24 - 27, 2000	FOIA Workshops Norfolk, Richmond, Wytheville, and Charlottesville, VA
November 3, 2000	Virginia Coalition for Open Government Access 2000 Stratford Hall, VA
November 13, 2000	Virginia Association of Counties 66 <sup>th</sup> Annual Conference Warm Springs, VA
November 14, 2000	Tidewater Mediation Network Virginia Beach, VA
November 28, 2000	WVTF Public Radio Roanoke, VA

## Appendix C

### WRITTEN ADVISORY OPINIONS ISSUED JULY 21, 2000 THROUGH NOVEMBER 29, 2000

<u>Opinion No.</u>	<u>Issue(s)</u>
AO-1	Inquiries as to the status of e-mail under the Freedom of Information Act, charges for electronic records, the working papers exemption, assessment of fees for producing a requested record, the meaning of "reasonable specificity."
AO-2	Access to property appraisal cards containing the calculations and methodology used in arriving at the individual assessed property value.
AO-3	Access to a preliminary "master list" of courses offered during the next academic year at a public high school.
AO-4	Meeting of three members of a public body to tour a permit-application site.
AO-5	Access to records in the possession of the treasurer related to local license taxes.
AO-6	Authority and scope of the FOI Advisory Council.
AO-7	Presence of a lawyer during a meeting closed pursuant to subdivision A. 7. § 2.1-344 (consultation with legal counsel).
AO-8	Closed meeting to discuss publicly-held real property, and scope of discussion at closed meeting



## Appendix D

### *2000 Meetings of the Freedom of Information Advisory Council*

**Initial Meeting—2 p.m. Tuesday August 15, 2000**

**House Room D, General Assembly Building, Richmond**

Review of initial staff briefing report: Maria J.K. Everett, *executive director*

Resolution of organizational issues, including statutory duties of Council, meetings of Council, role of staff: delegation of authority for daily operations, issuance of written and oral advisory opinions, training, website development, publications development, record keeping, and "Of note" as continuing agenda item to identify issues/trends that the Council may wish to consider.

**Second Meeting—10 a.m. Wednesday, September 20, 2000**

**House Room D, General Assembly Building, Richmond**

Receipt of Status Report: Maria J.K. Everett, *executive director*

"Of note"--handling of complaints; treatment of e-mails, including a review of current opinions and guidelines.

**Third Meeting—10 a.m. Wednesday, November 29, 2000**

**House Room C, General Assembly Building, Richmond**

Topic: Electronic Communications. Presentations by: Bill Wilson, *Director, Division of Legislative Automated Systems (DLAS)* - Nature of Electronic Communications.

C. Preston Huff, *Library of Virginia, State Records Administrator* and Bob Nawrocki, *Library of Virginia, Electronic Records Coordinator* - Electronic Communications and the Virginia Public Records Act.

Review of Draft Annual Report of Freedom of Information Advisory Council.

**Appendix E**

**Survey of Council-Related Articles in Virginia Newspapers, July 2000 to  
November 30, 2000**



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**ASSEMBLY OKS STATE 'SUNSHINE OFFICE'**

*Daily Press*, Wednesday, February 16, 2000

By AMY GARDNER Daily Press

Edition: Final, Section: LOCAL, Page: C5

RICHMOND - The General Assembly gave final passage Tuesday to a measure that would establish a "sunshine office" to which citizens, government workers and the media can turn for advice on public access to open meetings and records.

House and Senate versions of the measure sailed out of their chambers overwhelmingly. With Gov. Jim Gilmore also behind the initiative, the only obstacle remaining is securing the money to run the office - \$200,000 in the first year. The money is expected to get into both House and Senate versions of the state budget, which are due Sunday.

"It's a good day," said Forrest Landon, director of the Virginia Coalition for Open Government. Landon is a leading advocate for the sunshine office and other open-access changes to the state's Freedom of Information Act.

The 12-member Virginia Freedom of Information Advisory Council will provide advisory opinions or guidelines to any person or government agency; conduct training programs for government workers or anyone else interested; publish educational materials; and make recommendations on necessary changes in the Freedom of Information Act.

"I just think that we demonstrated the clear-cut need for an ombudsman-type office to help individual citizens with their FOI questions because they had no place to turn to, other than the courts," Landon said. He noted that 80 percent to 85 percent of inquiries to similar offices in other states come from private citizens and government workers - and not journalists. So the advisory council should be of use to a wide array of people, he said.

"Freedom-of-information laws are not media laws," he said. "You reporters are surrogates for the public a lot of the time, but there are individual citizens who get interested in government all the time, and they don't know anything about freedom-of-information laws."

The council will operate within the legislative branch, a provision that Gilmore originally opposed. But the governor agreed to back the bill because his office will appoint two of the 12 members and also because the bill has a two-year sunset clause, allowing the office's performance to be reassessed before it's made permanent.

The idea emerged from a two-year study of Virginia's Freedom of Information Act led by Del. Clifton A. "Chip" Woodrum, D-Roanoke.

"I'm very pleased with the way it's worked out," Woodrum said. "I think it will be an important step in making freedom-of-information law more user-friendly."

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## GETTING ANSWERS NEW OFFICE MAY HELP CITIZENS CUT THROUGH THE RED TAPE WHEN SEEKING INFORMATION THEY NEED

*Virginian-Pilot (Norfolk, VA), Tuesday, June 20, 2000*

MEREDITH KRUSE, STAFF WRITER

*Edition: FINAL, Section: LOCAL, Page: B3*

TYPE: PUBLIC LIFE

How do you know if you're paying more in real estate taxes than a neighbor whose house is worth as much as yours? Or if the class sizes at your child's school are better or worse than others in the city? Or if your neighborhood is getting its share of money for street repairs or other improvements?

Often the answers can be found in government records. Starting in July, Virginians will have a new resource to help them cut through red tape to get the information they want.

State legislators voted this year to create a "sunshine office" - a state agency to teach government officials and ordinary folks about Virginia's Freedom of Information Act, a state law that guarantees public access to most government records and meetings.

The office will give residents something they've never had before - a way to resolve battles over public access without going to court, said Forrest M. Landon, executive director of the Virginia Coalition for Open Government, a nonprofit group that lobbied in support of the office.

The new office, known as the Virginia Freedom of Information Advisory Council, will have a full-time executive director based in Richmond and a first-year budget of \$182,000.

The council's responsibilities include issuing advisory opinions or guidelines on the Freedom of Information Act to anyone who asks. Until now, if there was a question about whether a particular record or meeting should be open to the public, only the attorney general's office would offer an opinion, and the opinions could be requested only by certain government officials, not the public.

Indiana's sunshine office, one of the models for the Virginia agency, has issued 53 opinions in its first two years on such topics as access to police and school records and requirements for notifying the public about government meetings. Although not legally binding, the opinion of the office - a neutral third party - should carry some moral authority in resolving disputes, Landon said.

The Virginia office may set up a searchable database of opinions on the Internet so people can find out if their question has already been answered, said E.M. Miller Jr., director of the state Division of Legislative Services, which will oversee the sunshine office.

The office will also organize training sessions across the state for officials and the public, he said. And the 12-member council must give an annual report to the General Assembly that includes recommended changes in the law, which in the past has gone for a decade without revisions.

Much remains unknown about how the office will operate - in part because the governor and House of Delegates Speaker Vance Wilkins Jr. haven't finished making their appointments to the council. The executive director has not yet been hired, but Miller said five candidates have been interviewed and he expects the director to be on the job by July 1, when the council officially begins operations. The position pays about \$70,000 annually.

Landon predicted the new office not only will offer speedy answers to public access questions, but also may save state and local governments money by averting costly lawsuits.

A helping hand in government can make a difference in more personal ways as well.

One of the 2,400 inquiries fielded by the Indiana office came from a woman who was desperately trying to find a copy of her 50-year-old marriage certificate. She couldn't remember the county that had issued it, said Anne Mullin O'Connor, Indiana's public access counselor, and didn't know where to turn.

After a quick chat with Mullin O'Connor, the woman found the certificate with a single phone call.

"It was something that meant the world to her," Mullin O'Connor said. "There's not the time to do that sort of thing in most agencies."

Reach Meredith Kruse at 222-5558 or [mkruse\(AT\)pilotonline.com](mailto:mkruse(AT)pilotonline.com)

A GUIDE TO THE FREEDOM OF INFORMATION ACT  
TO LEARN MORE

JANET SHAUGHNESSY

The Virginian-Pilot

SOURCE: Interviews with FOIA experts

Graphic

(For a complete copy, see microfilm for this date.)

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## **FOI OFFICIAL AIMS TO CHECK BREWING FIGHTS**

*Richmond Times-Dispatch, Wednesday August 16, 2000*

Michael Hardy Times-Dispatch Staff Writer Contact Michael Hardy at (804)649-6810 or [mhardy@timesdispatch.com](mailto:mhardy@timesdispatch.com)

*Edition: City, Section: Area/State, Page: B-1*

After years of debate and turmoil, Virginia is beginning to ensure that the sun shines on the operations of state and local governments.

But contrary to the sometimes heated battles between governments and citizens in the past, the state is seeking to avoid confrontation and litigation in providing individuals and the news media access to records and meetings.

Under a law enacted by the General Assembly last winter, the director of the state's new "sunshine office" will issue verbal or written opinions to government officials, residents or the media to resolve brewing disputes.

The opinions are only advisory, but supporters hope they will avoid unnecessary confrontations or resorts to the courts.

"We want to prevent it from becoming too adversarial," said Del. Clifton A. Woodrum, D-Roanoke, who was elected yesterday chairman of the new Virginia Freedom of Information Advisory Council.

"We have a common objective to facilitate compliance with the Freedom of Information Act ... as an alternative to litigation," agreed Forrest M. Landon, executive director of the Virginia Coalition for Open Government.

They spoke at the first meeting of the new 12-member advisory council, which includes newspaper publishers, state lawmakers and government officials.

Its mandate is to oversee the operations of the office, housed in the General Assembly's Division of Legislative Services and to ensure that assistance and training sessions are provided to Virginians on the details of the 32-year-old Freedom of Information Act.

On the hot seat will be Maria J.K. Everett, a lawyer who worked for Legislative Services. As FOI ombudsman, she will handle the day-to-day operations of the new office and the council.

Appointed recently to the \$77,085-a-year post, Everett will give what one called "horseback opinions" about disputes over access to government records or governmental meetings.

She will render them by telephone or in writing, depending on how the judgments are requested.

"My role here is that of a worker bee," Everett told the council. "I will handle routine matters and issue advisory opinions."

In many cases, she can rule on the spot; she may take up to a month to issue opinions in particularly complicated cases.

"It's also my job to keep a finger on the pulse of public-access issues and bring it to your attention," she told the council members.

Modeled after an open-government agency in New York that has operated for 25 years, the Virginia

office also will provide training sessions around the state for those who work in government, the media and Virginians who deal with state and local agencies.

Everett, who was staff counsel to the assembly's two-year study committee that reformed the law, said she had already received more than a dozen requests for opinions and advice about the reformed law, which went into effect July 1. But delays in appointments to the council slowed its start.

Eventually, her office will have two telephone numbers - one toll free - to request opinions.

The adequacy of journalists' training was the subject of a brief exchange yesterday.

Council member John Edwards, publisher and editor of The Smithfield Times, acknowledged that many newspapers do a poor job of training reporters in the substance and nuances of the state's open-government law.

That admission later prompted Sen. R. Edward Houck, D-Spotsylvania and the council's vice chairman, to suggest that "the media are not doing a lot to train their own troops. I hope something is done about this."

J. Stewart Bryan III, president, chairman and chief executive of Media General Inc. and publisher of the Richmond Times-Dispatch, assured Houck that the press will do a better job training its reporters and editors, at least to the same degree that government educates its officials.

#### ADVISORY COUNCIL

\*Telephone: 786-3591

\*Web site: <http://dls.state.va.us/foiacouncil.htm>

#### Members:

\*David E. Anderson, Richmond lawyer, former counsel to Gov. Jim Gilmore

\*J. Stewart Bryan III, president, chairman and chief executive of Media General, publisher of the Richmond Times-Dispatch

\*John Edwards, publisher and editor of The Smithfield Times

\*David H. Hallock, Richmond lawyer and former state employee

\*Sen. R. Edward Houck, D-Spotsylvania

\*Dr. W. Wat Hopkins, journalism professor at Virginia Tech

\*Martika Parson, attorney general's office, representing state agencies

\*Roger Wiley, Richmond lawyer who helped draft an FOI handbook for local government officials

\*Del. Clifton A. Woodrum, D-Roanoke

\*E.M. Miller Jr., director, Division of Legislative Services

\*Nolan T. Yelich, librarian of Virginia

\*Attorney General Mark L. Earley, or his designee

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## **FOIA OFFICIAL LOW-KEY, HELPFUL ADVISORY OFFICE HAS ANSWERS**

*Richmond Times-Dispatch, Monday November 13, 2000*

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A joke resolution on Maria J.K. Everett's office door touts her as the ultimate authority on Virginia's open-government law.

The document, posted secretly by co-workers, declares her Queen of the Freedom of Information Act. "Which means that FOIA is administered at her discretion. If you want to know something, ask her. If she wants to answer, she will. . . . As befitting royalty, gifts are expected with each visit."

Everett laughs at theprank and her supposed hard-line style. She tries to show a soft, low-key side as director of the new Virginia Freedom of Information Advisory Council.

For nearly four months, Everett has been fielding questions about access to government records and meetings, explaining options and trying to resolve disputes to avoid litigation. Her opinions are advisory and usually given over the phone. She hopes to eventually post them on the office Web site.

"The council would like to keep it as informal as possible," Everett said of the office, patterned after one in New York that's been operating 25 years. "The telephone is our best resource."

To give quick answers, Everett assumes the facts of a particular case are accurate as presented and given in good faith. She sometimes calls others involved in a dispute to help her understand the situation, but she doesn't serve as an advocate. "We're not the FOIA police."

Everett, a lawyer, has worked 10 yearsfor the General Assembly's Division of Legislative Services, which now oversees the FOIA office. Everett was staff counsel to a legislative committee that studied FOIA for two years. She's been handling the daily business ofthe FOIA office and 12-member Advisory Council since July 21.

So far, she's responded to 68 calls, e-mails and letters, including 22 from individuals, 22 from state and local officials and 16 from the news media, according to a reporter's count. Several people have used the office more than once.

"I'm very pleased that it seems to be a balance" of users, said Del. Clifton A. Woodrum, D-Roanoke, chairman of the Advisory Council. "I'm very happy that local government and [state] government officials are confident using it. I'm glad the public is aware of it."

Much of the office's success depends on the personality of the director, said Woodrum. He described Everett as a skilled lawyer who also is personable and empathetic. "Maria has the personality to let a little steam off the kettle."

For each call, Everett fills out a one-page form that gives information about the caller, the question or comment, as well as her response. She allowed a Times-Dispatch reporter to view the forms, as well as the inquires she's received by letter or e-mail. She didn't charge for copies.

On Everett's first day, aRoanoke Times reporter called to find out whether a local health official's letter of resignation could be withheld even though it was distributed toa public board. Everett's answer: The letter is still exempt because it's a personnel record.



A Suffolk man later called to complain that city officials were willing to make copies of public records for a fee, but they wouldn't simply let him inspect the records.

A representative of the state Department of Fire Programs called seeking guidance on how officials could avoid FOIA trouble during an out-of-town conference. If enough officials attend, do conferences qualify as "public meetings" under FOIA? he asked.

According to her notes, Everett explained how officials could attend the conference and avoid getting snared. She pointed out that officials could meet to conduct business if they wanted as long as sufficient public notice was given and the meeting was open. "May not be a good idea from a policy point of view," she jotted in her notes.

Barbara Munsey, a Loudoun County resident, called the FOIA office in September to check her own reading of the law. She said she has concerns about how Loudoun's government is operating and recently learned the FOIA office existed.

"I think the office is brilliant because it does eliminate the cost and trouble for the average citizen to hire an attorney to sit and answer your question. I'm not an attorney. I'm a housewife."

Munsey said she now has several avenues to pursue her concerns and compared Everett to a doctor. "She gave me options."

Everett, who also provides FOIA training, said she's eagerly waiting for one of her opinions to end up as part of a lawsuit before a judge. To help answer tricky questions, she often uses Advisory Council members as a soundingboard.

One of them is Roger C. Wiley, a lawyer who regularly consults governments on FOIA. He said Everett's approach seems to be sound.

"The trick is to get enough of the facts before you give someone advice, so you don't arm someone with a club" based on erroneous information, he said.

Forrest M. Landon, executive director of the Virginia Coalition of Open Government, complained about the office's late opening and how its opinions still aren't available on the Internet. However, he didn't blame Everett.

He said he's glad that she's bringing her own concerns and observations about the law to the Advisory Council. The office, also known as the "sunshine office," is budgeted for about \$330,000 through 2001-02 and will require General Assembly action to continue.

Landon predicted that Everett and the Advisory Council will constantly wrestle with tricky questions, such as how far the office should go to gather facts before it issues an opinion.

"She's just going to have to feel her way on this. I think people are just going to have to give this office some leash."

## INFORMATION

Virginia Freedom of Information Advisory Council

Web site: <http://dls.state.va.us/foiacouncil>

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## PHOTO

  
DIALOGNEWS

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**OFFICE TACKLES PUBLIC RECORDS ISSUES COUNCIL MAKING STRIDES SINCE JULY INCEPTION, DEALS WITH MIX OF CALLERS**

*Daily Press, Thursday, November 30, 2000*

By HUGH LESSIG Daily Press

*Edition: Final, Section: LOCAL, Page: C1*

RICHMOND - A state office that handles questions about the Freedom of Information Act did a brisk business in its first few months of operation, its executive director said Wednesday.

The Virginia Freedom of Information Advisory Council has received 132 inquiries about public records since its inception in July, said Maria J.K. Everett. That's still below the volume of established offices in states such as New York, which fields 800 to 900 calls a year. But Everett said things are looking up. "We're doing business," Everett told members of the council. "We're not at the volume of New York, but we're coming out the gate."

The council issues advisory opinions, both in writing and over the phone. While its opinions don't carry the force of law, the council hopes to quickly resolve disputes, clarify the law and educate people about their rights when it comes to public records - be it the assessment on their house or the salary of the high school football coach.

Many questions have come from news reporters or local government officials who deal with public documents as part of their job.

But many callers are just regular people.

Of the 132 calls, 51 have come from the public and 50 have come from government.

Another 31 came from the media.

The council chairman, Democratic Del. Clifton "Chip" Woodrum of Roanoke, said the mix of calls was heartening.

He recalled someone predicting that local government officials would not call the office because "they wouldn't like the answer they'd get."

He also was pleased that the general public is weighing in regularly.

"We want to take the starch out of government," he said, "and make it user-friendly."

One of the most common questions concerns how much government charges for copies of documents.

Everett said the law is vague on this issue because it talks about both "reasonable" and "actual" costs.

Based on the questions that she's fielded, she said that the language could be clearer.

Supporters said it was important for the council to hit the ground running, because the General Assembly gave it only a two-year life.

Legislators will consider renewing it in early 2002, and they'll want to see evidence that it is providing a needed service.

That much is already clear, said Forrest M. "Frosty" Landon, executive director of the Virginia Coalition for Open Government, a nonprofit alliance that promotes access to open records.

"I think it's kind of remarkable, really," Landon said.

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