

REPORT OF THE

**Virginia Freedom of
Information Advisory Council**

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



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VIRGINIA FREEDOM OF INFORMATION
ADVISORY COUNCIL**

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THE GENERAL ASSEMBLY OF VIRGINIA**

COMMONWEALTH OF VIRGINIA
DECEMBER 2016

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

Delegate James M. LeMunyon, Chair
Senator Richard H. Stuart, Vice-Chair
Shawri King-Casey
Kathleen Dooley
Stephanie Hamlett
Edward Jones
Marisa Porto
Sandra G. Treadway
Mark Vucci
William "Billy" Coleburn
Michael Stern

Staff

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Maria J.K. Everett, *Executive Director and Senior Attorney*
Alan Gernhardt, *Senior Attorney*
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REPORT OF THE VIRGINIA FREEDOM OF INFORMATION ADVISORY COUNCIL

To: **The Honorable Terence R. McAuliffe, Governor of Virginia
and The General Assembly of Virginia**

**Richmond, Virginia
December 2016**

INTRODUCTION

**"Whenever the people are well informed, they can be trusted with their
own government."**

**Thomas Jefferson in Paris to Richard Price
8 January 1789**

Established by the 2000 Session of the General Assembly¹, the Virginia Freedom of Information Advisory Council (the "Council") was created as an advisory council in the legislative branch of state government to encourage and facilitate compliance with the Virginia Freedom of Information Act (FOIA). As directed by statute, the Council is tasked with furnishing advisory opinions concerning FOIA upon the request of 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.² 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, including one member of the House of Delegates; one member of the Senate of Virginia; the Attorney General or his designee; the Librarian

¹ Chapters 917 and 987 of the 2000 Acts of Assembly.

² Chapter 21 (§ 30-178 et seq.) of Title 30 of the *Code of Virginia*.

of Virginia; the director of the Division of Legislative Services; one representative of local government; two representatives of the news media; and four citizens.

The Council provides guidance to those seeking assistance in the understanding and application of FOIA; although the Council cannot compel the production of documents or issue orders. By rendering 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 agencies. Although the Council has no authority to mediate disputes, it may be called upon as a resource to assist in the resolution of FOIA disputes and to foster compliance as well as a better understanding of FOIA. In fulfilling its statutory charge, the Council strives to keep abreast of trends, developments in judicial decisions, and emerging issues. The Council serves as a forum for the discussion, study, and resolution of FOIA and related public access issues, and is known for its application of sound public policy to resolve disputes and clarify ambiguities in the law. Serving an ombudsman role, the Council is a resource for the public, representatives of state and local government, and members of the media.

EXECUTIVE SUMMARY

In its sixteenth year, the Council continued to fulfill its role as a clearinghouse for public access issues for the Virginia General Assembly. The Council has kept abreast of trends, developments in judicial decisions, and emerging issues related to the Virginia Freedom of Information Act (FOIA) and access generally. In its 16-year history, the Council has provided more than 24,100 formal and informal advisory opinions to citizens of the Commonwealth, media representatives, and state and local government officials and has conducted over 950 FOIA training programs. The Council is recognized as the forum for evaluating proposed FOIA and related public access legislation and routinely conducts comprehensive studies of FOIA and other Virginia laws to ensure Virginia's commitment to open government while balancing the need to protect the public's negotiating and litigation positions, privacy, and safety.

During this reporting period—December 1, 2015, through November 30, 2016³—the Council examined FOIA legislation and other public access issues referred to it by the General Assembly. This year the General Assembly referred 14 bills to the Council for further study. Each of these bills referred was scheduled for review. Some bills were reviewed by the Council directly, while others were referred by the Council to its Records Subcommittee or Meetings Subcommittee to be incorporated into the three-year FOIA study pursuant to House Joint Resolution No. 96 (HJR 96, 2014, LeMunyon). All patrons were invited to Council meetings to provide the background for their respective bills. Some of the patrons came to Council meetings to speak to their bills, but unfortunately, several patrons did not attend a Council meeting. The Council did however review each of these bills, but took no action to advance or reject the access concepts reflected in most of them.

³ Note that the final Council meeting this year was held December 5, 2016. This report includes that meeting, but for all other purposes the reporting period covered in this report ended on November 30, 2016.

Out of the 14 bills referred, the Council voted to recommend to the 2017 Session of the General Assembly only one bill, an amended version of HB 336 (Pogge), which would protect from mandatory disclosure library records that can be used to identify any library patron under the age of 18 years. A full list of all of the bills referred and the actions taken on each bill appears as Appendix E to the 2016 Annual Report of the FOIA Council.

This year the Council completed its third and final year of study of FOIA pursuant to HJR 96, which directs the Council to (i) study all exemptions contained in FOIA and determine the continued applicability or appropriateness of such exemptions, (ii) determine whether FOIA should be amended to eliminate any exemption from FOIA that the Council determines is no longer applicable or appropriate, (iii) examine the organizational structure of FOIA and make recommendations to improve the readability and clarity of FOIA, and (iv) report its findings and recommendations by December 1, 2016. At each of its meetings, the Council received progress reports from its two HJR 96 subcommittees and reviewed the draft legislation that was recommended by each Subcommittee. The Council decided that rather than introduce individual legislative recommendations as separate bills while the study was ongoing, it would recommend for the 2017 Session two omnibus bills at the conclusion of the study, one bill incorporating the Council-approved recommendations of the Records Subcommittee, the other incorporating the Council-approved recommendations of the Meetings Subcommittee.⁴ Both recommendations were approved by unanimous vote of the Council (9-0) on December 5, 2016. Summaries of the Records Subcommittee's and Meetings Subcommittee's work, including agendas, recommendations, and other materials are available on the Council's website. The entire HJR 96 study is chronicled in a separate final study report.

The Council also heard other legislative proposals as part of its Annual Legislative Preview, and voted to recommend to the 2017 Session of the General Assembly proposed legislation to require guidance documents of the Virginia Parole Board to be made available as public records. The language of the proposal was identical to HB 397 (2012), which did not pass at that time.

The Council continued to monitor Virginia court decisions relating to FOIA. The Supreme Court of Virginia did not issue any opinions interpreting FOIA this year. However, the Supreme Court granted an appeal in the case of *Daily Press v. Office of the Executive Secretary of the Supreme Court*.⁵ That case concerns access to the case management system comprised of records from 118 of the 120 Virginia circuit courts and maintained by the Office of the Executive Secretary of the Supreme Court of Virginia (OES). Access to these records was the subject of Freedom of Information Advisory Opinion 03 (2015). After that advisory opinion was issued, OES reiterated its denial of the Daily Press' request and the Daily Press filed a FOIA petition in the Newport News Circuit Court. News reports stated that OES argued that the individual circuit court clerks were the custodians of the records rather than OES, that it was up to each clerk to decide whether to release records of his or her circuit court, and that OES could not release the database without the permission of the clerks. The Daily Press argued that since the records were available publicly on a limited basis

⁴ House Bills 1539 (2017) and 1540 (2017), respectively.

⁵ SCV Record No. 160889.

through OES' case management system and had been made available in bulk in the past, OES is the custodian and must make the entire database available. The Newport News Circuit Court ruled in favor of OES. The Council will continue to monitor the case as it is expected to be heard and decided by the Supreme Court of Virginia in 2017.

The Council continued its commitment to providing FOIA training. The Council views its training duty as its most important mission and welcomes every opportunity to provide FOIA training programs. During 2016, Council staff conducted 67 FOIA training programs throughout Virginia at the request of state and local government officials, the media, and citizens. Training programs are tailored to meet the needs of the requesting organization and are provided free of charge. In 2015, the annual statewide FOIA Workshops conducted by Council staff were discontinued in favor of providing training upon the request of any interested group. Under this approach, Council staff travels to the location of the group requesting training, provides relevant training materials, and presents training tailored to meet the needs of the particular group. All such Council training programs are preapproved by the Virginia State Bar for continuing legal education credit for licensed attorneys. The training programs are also preapproved by the Department of Criminal Justice Services for law-enforcement in-service credit, the Virginia Municipal Clerks Association, and the Virginia School Board Association for academy points. Responses to this training approach in the past year have been consistently positive. Additionally, plans for Council-provided FOIA Officer training as per HB 818 (c. 748 2016 Acts of Assembly) are in progress for an online training program available through the Knowledge Center administered by the Department of Human Resource Management. This format will make it easy for FOIA officers to be trained at a time when it is convenient for them, to generate records of who has completed training, and for issuance of a certificate of completion contemporaneously with successful course completion. The Council also hopes to use the Knowledge Center training to compile a database of contact information for FOIA officers across the state as a further service to the citizens of the Commonwealth.

For this reporting period, the Council, with a staff of two attorneys, responded to 1,730 inquiries. Of these inquiries, three resulted in formal, written opinions. The breakdown of requesters of written opinions is as follows: none by government officials, one by a media representative, and two by citizens. The remaining requests were for informal opinions, given via telephone and email. Of these requests, 1058 were made by government officials, 561 by citizens, and 108 by media. Starting in 2006, the Council has seen an increase in the number of informal opinion requests compared with requests for formal written opinions. For the past decade this trend has remained consistent. This continuing trend appears to stem from the Council's reputation for fairness and reliability in its informal opinions and as a credible source for FOIA guidance before disputes arise. This year there also was a noticeable increase in the number of inquiries concerning the new requirements for FOIA officers.

FOIA was again the subject of significant legislative activity in the 2016 Session. The General Assembly passed a total of 16 bills amending FOIA during the 2016 Session. Of the 16 bills passed by the 2016 Session, three bills create two new sections in FOIA and amend existing provisions; three bills add three new records exemptions; three bills add two

new meetings exemptions; and eight bills amend other existing provisions of FOIA. A more detailed report of the bills discussed above and other public access bills passed during the 2016 Session appears on the Council's website and is attached as Appendix D to the 2016 Annual Report of the FOIA Council.

Keeping abreast of the latest access trends, access to public records contained in databases continues to be an issue of interest, as well as other issues concerning access and technology. As stated above, the Council will continue to monitor the *Daily Press v. OES* case as it may have wide implications regarding access to databases. The Council has also indicated that in 2017 it intends to study several other technology-related issues:

- Whether to include in FOIA a policy statement to the effect that: "Any public body procuring any computer system, equipment or software, shall ensure that the proposed system, equipment or software is capable of producing public records in accordance with this chapter;"
- The impact of technology on FOIA, such as the use text messages by members of a public body during a meeting;
- The exemption for "vendor proprietary software" (subdivision 6 of § 2.2-3705.1);
- Posting meeting minutes online.

In addition to technology issues, the Council has stated that it intends in 2017 to continue studying access to proprietary records and trade secrets, personnel records, law enforcement records, and the organization of FOIA.

In 2016, the Council said farewell to three members. The Council praised the service to the Council and to public access generally of Council members John Selph and Frosty Landon who had served for eight years. Both gentlemen completed two four-year terms on the Council and by law were not eligible for reappointment. Both Mr. Selph and Mr. Landon made significant contributions to the work of the Council and could always be counted on to participate in the work of the Council subcommittees. The Council thanked them for their service, acknowledged that they will be sorely missed and wished them the best in future endeavors. Christopher Ashby's first four-year term on the Council also expired July 1, 2016, but without the appointment of a successor or the reappointment of Mr. Ashby. Because of this vacancy on the Council, the Council recommended that the Council's enabling legislation be amended to state that members continue in office until a successor is appointed.

This year the Council welcomed new members Michael Stern, Esq., who was appointed to a four-year term by the Speaker of the House of Delegates as a citizen member of the Council, and William D. Coleburn, General Manager of the Courier-Record newspaper and Mayor of the Town of Blackstone, who was appointed to a four-year term by the Senate Committee on Rules as a citizen member the Council. The Council also welcomed Jessica L. Budd, Esq., who recently joined the Division of Legislative Services as one of the staff to the Council.

The Council also acknowledged the 2016 retirement of Ginger Stanley, Executive Director of the Virginia Press Association. Ms. Stanley has been a staunch advocate for transparency in government and has participated in every Council study since the Council's inception. The Council recognized her efforts and thanked her for her support of the Council's work.

WORK OF THE COUNCIL

The majority of the Council's work this year was related to the three-year study of FOIA conducted pursuant to HJR 96. Because that work is chronicled in a separate final report specific to the HJR 96 study, this Annual Report focuses on other work of the Council and does not include the full details of updates, comments, and recommendations relating to HJR 96. For details regarding HJR 96, please see the HJR 96 Study Report.

May 4, 2016

The Council held its first meeting of the 2016 Interim on May 4, 2016.⁶ This meeting was held to hear an update on legislation passed by the 2016 Session of the General Assembly, to review draft legislation recommended by the Records Subcommittee and the Meetings Subcommittee which were created in 2014 as part of the study of FOIA in accordance with HJR 96, to receive progress reports from the Subcommittees, to consider bills referred by the 2016 Session of the General Assembly to the Council for further study, and to discuss other issues of interest to the Council. No action was taken by the Council at this meeting because a quorum was not present. However, the members who were present did take up the scheduled agenda items for discussion and public comment.

Legislative Update

Staff informed the Council that the 2016 Session of the General Assembly passed a total of 16 bills amending FOIA. Three of the bills create two new sections in FOIA and amend various existing provisions; two bills add three new records exemptions; two bills add two new meetings exemptions; one bill adds a new records exemption and a new meetings exemption; and eight bills amend existing provisions of FOIA. Staff noted that while the Legislative Update document was complete, it was not finalized because the Governor had not yet taken action on some bills and had until May 20, 2016, to do so. The final version will be posted on the Council's website after final action has been taken on all of the bills.

Subcommittee Reports and Recommendations

Each Subcommittee reported that it had met once in 2016. The Council reviewed three legislative drafts recommended by the Meetings Subcommittee to date, and nine legislative drafts recommended by the Records Subcommittee. Please see the HJR 96 Study Report for

⁶ Council members Delegate LeMunyon (Chair), Dooley, Hamlett, Porto, Selph, and Vucci were present; members Senator Stuart (Vice Chair), Ashby, Jones, King-Casey, Landon, and Treadway were absent.

details, as stated above.

Bills Referred by the 2016 Session of the General Assembly

Delegate LeMunyon deferred consideration of these matters, and suggested that some bills might be referred directly to the Subcommittees to be incorporated into the HJR 96 study, while others may be taken up by the full Council.

Other Business

Delegate LeMunyon also deferred Other Business to the June meeting of the Council.

There being no further business, the meeting was adjourned.

June 23, 2016

The Council held its second meeting of the 2016 Interim on June 23, 2016.⁷ This meeting was held to receive progress reports from the Subcommittees that were created in 2014 as part of the study of FOIA in accordance with HJR 96, to consider bills referred by the 2016 Session of the General Assembly to the Council for further study, and to discuss other issues of interest to the Council.

Review of Bills Referred by the 2016 Session of the General Assembly

Chairman LeMunyon told the Council that Delegate Pogge was unable to attend the meeting as she had previously planned and so review of Delegate Pogge's HB 334 and HB 336⁸ was deferred until the next Council meeting. Regarding HB 819 (LeMunyon) and SB 202 (Stuart),⁹ Chairman LeMunyon advised the Council that neither he nor Senator Stuart

⁷ Council members Delegate LeMunyon (Chair), Treadway, Ashby, Jones, King-Casey, Hamlett, Porto, Selph, and Vucci were present; members Senator Stuart (Vice Chair), Dooley, and Landon were absent.

⁸ **HB 334** Pogge--Bill Summary: Provides that in an enforcement action, if the court finds the public body violated certain meeting notice requirements, the court may invalidate any action of the public body taken at such meeting.

HB336 Pogge--Bill Summary: Protects from mandatory disclosure library records that can be used to identify any library patron under the age of 18 years. The bill provides that access shall not be denied to the parent, including a noncustodial parent, or guardian of such person, unless the parent's parental rights have been terminated or a court of competent jurisdiction has restricted or denied such access. For records of persons under the age of 18 years who are emancipated, the right of access may be asserted by the subject thereof. Any parent or emancipated person under the age of 18 years who is the subject of the record may waive, in writing, the protections afforded by the bill. If the protections are so waived, the public body shall open such records for inspection and copying.

⁹ **HB 819** LeMunyon--Bill Summary: Requires the release of any audio or video recording or combination thereof made by a correctional officer, jail officer, or deputy sheriff of an individual imprisoned in a penal institution in the Commonwealth being subdued by the correctional officer, jail officer, or deputy sheriff in a manner that results in the death of the individual being subdued or rendering him unconscious. The bill defines "correctional officer," "jail officer," and "deputy sheriff." The requirement applies to any audio or video recording that exists on or after July 1, 2016, regardless of when the audio or video recording was made.

SB 202 Stuart--Bill Summary: Provides that public access to records of the official salaries or rates of pay of public employees whose annual rate of pay is the annual equivalent of twice the federal minimum wage or less is not required under FOIA. Currently, public access to salary information is required for public employees whose annual rate of pay is more than \$10,000. The bill also provides that publicly available databases of public employees' salaries shall not include the name of any public officer, appointee, or employee.

were interested in advancing their bills and recommended no action be taken by the Council on these two bills. The Council, by consensus, agreed with this recommendation.

Delegate Kay Kory, patron of HB 698 (2016)¹⁰ did appear before the Council to discuss her bill and the reason for its introduction. HB 698 had previously been referred to the Meetings Subcommittee for review. Nonetheless, Delegate Kory explained that she had researched other states laws regarding the opportunity at public meetings for citizens to make their voice heard. She indicated that other states' laws were all over the map on this issue. Delegate Kory indicated that in Pennsylvania, California, and New Jersey, however, a public comment period is required by law. Delegate Kory advised that she is aware that HB 757 (R. Bell) was also introduced during the 2016 Session, dealt with required public comment at public meetings, and like her bill was referred to the Council for study. She stated she believed her bill provided balance by allowing a public body to impose reasonable restrictions on any public comment period.

Subcommittee Reports

Each Subcommittee reported that it had met three times this year, but neither had any further legislative changes to recommend pursuant to HJR 96 at this time. Please see the HJR 96 Study Report for details, as stated above.

Public Comment

Craig Merritt, Esq. on behalf of the Virginia Press Association (VPA) announced the upcoming retirement of Ginger Stanley, Executive Director of the VPA. Mr. Merritt praised Ms. Stanley for her attributes that have made the mission of the VPA successful. Specifically, her ability to (i) listen and be open to the possibility that she could be wrong, (ii) look for common good, (iii) be persistent in the face that while VPA does not have all of the resources available to other lobbyists, Ms. Stanley takes both a merit based and long view approach to issues of importance to VPA and citizens. Finally, Mr. Merritt praised Ms. Stanley's grace in the face of the negative and added that she has moved the ball forward for professional women at the General Assembly and elsewhere.

Other Business

Staff apprised the Council of the plans for Council-provided FOIA Officer training as per HB 818 (c. 748 2016 Acts of Assembly), which plans are in progress for an online training format available through the Knowledge Center administered by the Department of Human Resource Management. An online training format was ultimately selected to make it easy for FOIA officers to be trained at a time when it is convenient for them. Staff noted that by using the Knowledge Center, records would be generated of who has completed training, and upon completion, the Center's ability to issue a certificate of completion contemporaneously with successful course completion.

¹⁰ **Virginia Freedom of Information Act; right to speak at open meetings.** Requires that every public body afford an opportunity for public comment during any open meeting. A public body may adopt reasonable rules governing the public comment portion of the meeting, including imposing reasonable restrictions on time, place, and manner. The bill contains technical amendments.

Staff reminded the Council that with the passage of HB 817, the FOIA redaction bill enacted as Chapter 620 Acts of Assembly of 2016, there was the issue of the global language change that still need to be addressed. Stated succinctly, certain existing exemptions had phrasing stating that "nothing ... shall prohibit" disclosure or release of certain records, which were amended to require release of those records. Concerns were expressed that the change to require affirmative release may have unintended consequences. The Council agreed with staff and directed staff to contact those agencies affected for their advice and comment. The chart below provides more detailed information about this issue:

**FOIA Exemptions Generally -
Agencies/Entities Affected By The Global Language Change
HB 817 (2016)**

Specific exclusions affected by the global language change under HB 817 (2016)¹¹ <i>"shall not authorize the withholding of..."</i> <i>or</i> <i>"Information....shall be disclosed...."</i>	Identity of specific public body(s) affected by the global language change under HB 817 (2016)
§ 2.2-3705.1 (9) re: risk management	Department of the Treasury, Risk Management Division
§ 2.2-3705.2 (2) re: engineering & construction drawings & plans	Applicable to multiple public bodies
§ 2.2-3705.2 (4) re: terrorism & cybersecurity -	Secretary of Public Safety and Homeland Security
§ 2.2-3705.2 (7) re: school safety audits	Dept. of Education, VSBA, OAG
§§ 2.2-3705.2 (9) and (10) re: E911 subscriber data	Applicable to multiple public bodies
§ 2.2-3705.2 (15) re: disaster recovery, evacuation plans	Department of Health
§ 2.2-3705.3 (3) re: employment discrimination investigations -	DHRM, local public bodies & school boards, public institutions of higher ed.

¹¹ Specific text relating to the global language change appearing in FOIA prior to July 1, 2016: "However, nothing in this subdivision shall *prohibit the disclosure* of information..."
Effective July 1, 2016, the above language was amended as follows: "However, nothing in this subdivision shall *authorize the withholding* of information..."
This change was suggested because FOIA does not prohibit the release of any records. Upon reflection, however, the Council noted that this specific amendment had unintended consequences that needed to be addressed as part of the HJR 96 Study.

§ 2.2-3705.3 (5) re: Human Rights Act violations	Applicable to multiple public bodies, including local human rights/relations commissions
§ 2.2-3705.3 (8) re: DHRM mediations, etc.	DHRM NOTE: Already recommended by the FOIA Council for elimination b/c would be considered personnel records
§ 2.2-3705.4 (6) re: Virginia College Savings Plan	Virginia College Savings Plan
§ 2.2-3705.5 (4) re: certain DSS and OAG investigations	Department of Social Services, OAG
§ 2.2-3705.5 (17) re: quarantine orders	State Health Commissioner
§ 2.2-3705.7 (12) re: investment information	Virginia Retirement System, UVA, VCSP
§ 2.2-3705.7 (16) re: federal enforcement actions and strategies	Department of Environmental Quality, the State Water Control Board, the State Air Pollution Control Board, or the Virginia Waste Management Board
§ 2.2-3705.7 (22) re: parks and recreation records that contain information about identifiable individuals under the age of 18	Department of Conservation and Recreation, local park and recreation departments, and local and regional park authorities

The Council praised the service to the Council and to public access generally of Council members John Selph and Forrest "Frosty" Landon¹² for the last eight years. The terms of both Messrs. Selph and Landon will expire on July 1, 2016. Both gentlemen completed two four-year terms on the Council and by law are not eligible for reappointment at this time. Chairman LeMunyon noted that both John Selph and Frosty Landon have made significant contributions to the work of the Council and could always be counted on to participate in numerous Council subcommittees' work. Delegate LeMunyon thanked them for their service, acknowledged that they will be sorely missed and wished them the best in future endeavors. The Council and those present at the meeting celebrated these two outstanding members with refreshments. The Council also noted that Christopher Ashby's first four-year term on the Council would expire on July 1, 2016, but it was not known whether he would be re-appointed to a second four-year term.

Chairman LeMunyon spoke concerning the retirement of Ms. Stanley, Executive Director of the VPA. He noted that Ms. Stanley has been a staunch advocate for transparency in

¹² Mr. Landon was unable to attend this meeting.

government and has participated in every FOIA Council study since its inception. The Council recognized her efforts and thanked her for her support of the Council's work.

There being no further business, the meeting was adjourned.

July 18, 2016

This meeting was cancelled in order to allow more time for the Subcommittees and Work Groups to meet before reporting to the Council.

September 19, 2016

The Council held its third meeting of the 2016 Interim on September 19, 2016.¹³ This meeting was held to review draft legislation recommended by the Records Subcommittee and the Meetings Subcommittee, which subcommittees were created in 2014 as part of the study of FOIA in accordance with HJR 96, to receive progress reports from the Subcommittees, to consider bills referred by the 2016 Session of the General Assembly to the Council for further study, and to discuss other issues of interest to the Council. The Council also welcomed its newest members William "Billy" Coleburn, Editor of the Courier Record in Blackstone, appointed by the Senate Committee on Rules for a term of four-years, and Michael Stern, Esq., citizen member appointed by the Speaker of the House of Delegates for a term of four-years.

Review of Bills Referred by the 2016 Session of the General Assembly

Chairman LeMunyon told the Council that Delegate Pogge was unable to attend the meeting as she had previously planned and so review of Delegate Pogge's HB 334 and HB 336¹⁴ would be deferred until the next Council meeting. Additionally, Delegate Villanueva (HB 432) and Senator Garrett (SB 678) were unable to attend this meeting, therefore consideration of their bills was also deferred until the October 17, 2016 meeting.

¹³ Council members Delegate LeMunyon (Chair), Treadway, Dooley, King-Casey, Porto, Vucci, Coleburn, and Stern were present; members Senator Stuart (Vice Chair), Hamlett, and Jones were absent.

¹⁴ **HB 334 Pogge**--Bill Summary: Provides that in an enforcement action, if the court finds the public body violated certain meeting notice requirements, the court may invalidate any action of the public body taken at such meeting.

HB336 Pogge--Bill Summary: Protects from mandatory disclosure library records that can be used to identify any library patron under the age of 18 years. The bill provides that access shall not be denied to the parent, including a noncustodial parent, or guardian of such person, unless the parent's parental rights have been terminated or a court of competent jurisdiction has restricted or denied such access. For records of persons under the age of 18 years who are emancipated, the right of access may be asserted by the subject thereof. Any parent or emancipated person under the age of 18 years who is the subject of the record may waive, in writing, the protections afforded by the bill. If the protections are so waived, the public body shall open such records for inspection and copying.

Delegate Morris, patron of HB 61 (2016) attended the meeting and advised the Council that his bill was in response to public bodies deliberately failing to respond to any citizen requests for records under FOIA. He noted that this bill has been introduced in the last two Sessions and what he offered today is a far cry from the Class 1 misdemeanor penalty for willful and knowing violations of FOIA from previous years. He stated that the current form of his bill did not require mandatory termination of public officers or employees for willful and knowing violations, but is permissive. Chairman LeMunyon arrayed the Council's options as it related to Delegate Morris's bill. Namely, the Council could (i) recommend HB 61 to the 2017 Session of the General Assembly, (ii) take no action, or (iii) decide not to recommend the bill as presented by Delegate Morris. Delegate LeMunyon asked staff to do additional research about the termination of public officers and employees given due process rights. The Council deferred further action on HB 61 until its October 17, 2016 meeting.

Before addressing SB 492, Senator Surovell discussed with the Council his legislative proposal aimed at alleged abuses of public bodies using closed meetings. Senator Surovell specifically mentioned the Prince William Board of Visitors voting to raise their salaries across the board, following discussion of the matter improperly in a closed meeting. He noted that three months ago the city council of Fairfax discussed in a closed meeting the issue of when to hold general elections. He also mentioned the board of visitors at the University of Virginia held a closed meeting about the consolidation of certain reserve funds for which the stated purpose of the closed meeting motion was personnel and regulatory matters. Senator Surovell stated that his proposal would authorize a judge in a FOIA case to impose a \$500 monetary penalty against each member of a public body who certified that a closed meeting was proper when in fact the member knew that the closed meeting was held in violation of FOIA. He noted that bad publicity alone does not work to curtail these FOIA abuses. The Council noted that this proposal needed some further work and asked staff to prepare a new draft addressing certain technical fixes to be considered at the next meeting of the Council in October.

Turning to SB 492¹⁵, Senator Surovell told the Council that family members of victims are routinely denied access to completed unattended death investigations and cited the case in Virginia Beach where the parents was denied access to records concerning the death of their son by suicide. He noted that when the parents filed a FOIA petition, the Virginia Beach Circuit Court ruled in favor of the City and that the Virginia Supreme Court denied the writ for further review. Senator Surovell indicated that he was trying to get closure for the families in instances like this. The Chairman called for public comment. Dan Wilson, Department of State Police, told the Council that the bill does not say that a crime has been committed. Dave Ress, a reporter with the Daily Press, commented that the Virginia Beach

¹⁵ SB 492 Summary: Limits the application of the criminal investigative file exemption by providing that nothing in FOIA shall be construed to authorize the withholding of information from the records of completed unattended death investigations from immediate family members of the victim, provided that (i) such information is in a form that does not reveal the identity of persons supplying information or other individuals involved in the investigation and (ii) the immediate family members of the victim have been ruled out as suspects.

police never release any information and described this as a fundamental problem with FOIA in that discretionary exemptions are treated as mandatory. Megan Rhyne, Executive Director of the Virginia Coalition for Open Government (VCOG), told the Council that her organization had filed an amicus brief in the case and therefore is in favor of SB 492. Council member Ms. Dooley suggested that the bill be amended to define "immediate family." The Council deferred further consideration on SB 492 until its next meeting in October.

Subcommittee Reports and Recommendations

The Meetings Subcommittee reported that it has held five meetings in 2016; the Records Subcommittee reported that it has held seven meetings this year. Each Subcommittee presented two legislative drafts for the Council's consideration. The Council voted unanimously to recommend all four drafts. Please see the HJR 96 Study Report for details, as stated above. In addition to its work pursuant to HJR 96, the Council had asked the Records Subcommittee to consider four bills from the 2016 Session of the General Assembly offered by Delegate Robert G. Marshall that concern nondisclosure agreements and access to certain site plans.¹⁶ The background to these bills concerned a site being built in Prince William County and the County's denial of certain records related to the site. Delegate Marshall, representatives of Prince William County, and other interested parties spoke to the bills before the Subcommittee. After consideration, the Subcommittee referred the bills back to the Council without making any recommendation for action. The Council deferred consideration of the bills until its meeting on October 17, 2016 because Delegate Marshall was unable to attend today's meeting. Other pending matters include possible unintended consequences from the "global language change" enacted this year with HB 817/SB 494 (certain exemptions had phrasing stating that "nothing ... shall prohibit" disclosure or release of certain records, which was amended to require release of those records). The Subcommittee reported that it had sent a letter requesting comment from each agency affected by the changed language, and four agencies had provided written comments in response. The agency responses were inconsistent - some indicated they did not believe the

¹⁶ **HB 280** Marshall RG-- any proposed plat, site plan, or plan of development that is officially submitted to the local planning commission for approval shall be considered a public record subject to disclosure under the Virginia Freedom of Information Act. *NOTE: HB 280 would amend § 15.2-2259.*

HB 281 Marshall, RG--Removes any building permit submitted to a locality for final approval from an exclusion from the provisions of the Freedom of Information Act (FOIA) that otherwise protects confidential proprietary records of a private business pursuant to a nondisclosure agreement made with a public body. *NOTE: HB 281 would amend § 2.2-3705.6.*

HB 282 Marshal, RG--Requires that a nondisclosure agreement by a public body be approved at an open meeting if it is to serve as the basis for an exclusion from the provisions of the Freedom of Information Act (FOIA) of confidential proprietary records of a private business. Such an approval must be renewed at least every three months at further open meetings if it is to continue to supply the basis for the FOIA exclusion. *NOTE: HB 282 would amend §§ 2.2-3705.6 and 2.2-3711.*

HB 383 Marshall, RG--Removes any building permit submitted to a locality for final approval from an exclusion from the provisions of the Freedom of Information Act (FOIA) that otherwise protects confidential proprietary records of a private business pursuant to a nondisclosure agreement made with a public body and provides that any proposed plat, site plan, or plan of development that is officially submitted to the local planning commission for approval shall be considered a public record subject to disclosure under FOIA. *NOTE: HB 383 would amend §§ 2.2-3705.6 and 15.2-2259.*

amended language would change the application of the exemption; others indicated they were concerned the language change would require the release of records that had been exempt under the old language; one agency said it would need more time to determine whether there was any negative consequence from the change. The Council deferred further consideration of this issue.

Public Comment

Bill Richardson, Virginia Cure, told the Council that he was a member of the Governor's Parole Review Task Force in 2015, which made certain recommendations. He stated that he supports modification of the Parole Board's FOIA exemption. Mr. Richardson stated that he did not want information on specific cases, but more transparency in the process undertaken by the Parole Board. He suggested the total elimination of the total FOIA exemption for the Parole Board found in § 2.2-3703 and was in favor of making the Parole Board subject to FOIA for records only and granting exclusions from release for specific case file records of the Parole Board. Alternatively, he supported HB 397 (Delegate Hope) from the 2012 Session.¹⁷ Chairman LeMunyon suggested that if Mr. Richardson wanted a recommendation from the Council, he should talk with Delegate Hope about his preferred approach and bring the issue back to the Council at its October meeting.

The last item of business discussed by the Council was raised by staff and concerned how Council members would like to be notified of formal advisory opinions issued by the executive director. In the past, Council members referred to the Council's website to read these opinions. Given that two members had been recently appointed to the Council, staff inquired whether Council members would like an email advising them of the posting of an opinion or would prefer a copy of the opinion itself. Council members Mark Vucci, Sandra Treadway, Michael Stern, and Billy Coleburn indicated that they would prefer an email notifying them that a new opinion had been posted. The remainder of the Council elected to continue their practice of checking the Council's website periodically.

There being no further business, the meeting was adjourned.

October 17, 2016

The Council held its fourth meeting of the 2016 Interim on October 17, 2016.¹⁸ This meeting was held to review draft legislation recommended by the Records Subcommittee and the Meetings Subcommittee, which subcommittees were created in 2014 as part of the study of FOIA in accordance with HJR 96, to receive progress reports from the Subcommittees, to consider bills referred by the 2016 Session of the General Assembly to the Council for further study, and to discuss other issues of interest to the Council.

¹⁷ HB 397 Summary: Requires guidance documents of the Parole Board to be available as public records under the Freedom of Information Act. The bill has a delayed effective date to give the Freedom of Information Advisory Council an opportunity to review the legislation and report on its implementation.

¹⁸ Council members Delegate LeMunyon (Chair), Treadway, Hamlett, Dooley, Porto, Vucci, Coleburn, and Stern were present; members Senator Stuart (Vice Chair), King-Casey, and Jones were absent.

Review of Bills Referred by the 2016 Session of the General Assembly

Chairman LeMunyon told the Council that Delegate Pogge was unable to attend the meeting as she had previously planned and so review of Delegate Pogge's HB 334 and HB 336¹⁹ would be deferred until the next Council meeting on November 21, 2016. The Council took no action on the following bills:

HB 432, Delegate Villanueva
SB 678, Senator Garrett
HB 61, Delegate Morris

Senator Surovell again discussed his SB 492²⁰ with the Council and presented two options for the Council's consideration. Senator Surovell stated that he preferred the second option which more clearly defines which family members would have access to completed unattended death investigations. Senator Surovell reminded the Council that the reason for the introduction of SB 492 was because family members of victims are routinely denied access to completed unattended death investigations. He cited the case in Virginia Beach where the parents were denied access to records concerning the death of their son by suicide. He noted that when the parents filed a FOIA petition, the Virginia Beach Circuit Court ruled in favor of the City and that the Virginia Supreme Court denied the writ for further review. Senator Surovell indicated that he was trying to get closure for the families in instances like this. The Chairman called for public comment. Dan Wilson, Department of State Police, told the Council that the bill does not say that a crime has been committed and stated that there was nothing to prevent a family member from releasing the completed investigation to someone who may be a suspect in the case. Captain Fertig, Chesterfield Police Department, stated that he concurred with the remarks of Mr. Wilson and added that there are too many unknown variables and while family members may be ruled out initially, there may be after acquired evidence that may make a family member a suspect. Kevin Carroll, representing the Fraternal Order of Police (FOP), told the Council that the FOP

¹⁹ **HB 334 Pogge--Bill Summary:** Provides that in an enforcement action, if the court finds the public body violated certain meeting notice requirements, the court may invalidate any action of the public body taken at such meeting.

HB336 Pogge--Bill Summary: Protects from mandatory disclosure library records that can be used to identify any library patron under the age of 18 years. The bill provides that access shall not be denied to the parent, including a noncustodial parent, or guardian of such person, unless the parent's parental rights have been terminated or a court of competent jurisdiction has restricted or denied such access. For records of persons under the age of 18 years who are emancipated, the right of access may be asserted by the subject thereof. Any parent or emancipated person under the age of 18 years who is the subject of the record may waive, in writing, the protections afforded by the bill. If the protections are so waived, the public body shall open such records for inspection and copying.

²⁰ **SB 492 Summary:** Limits the application of the criminal investigative file exemption by providing that nothing in FOIA shall be construed to authorize the withholding of information from the records of completed unattended death investigations from immediate family members of the victim, provided that (i) such information is in a form that does not reveal the identity of persons supplying information or other individuals involved in the investigation and (ii) the immediate family members of the victim have been ruled out as suspects.

opposed the proposal in either form and suggested that a better path to achieve Senator Surovell's goal was to require the Department of Criminal Justice Services (that sets out accreditation standards for law-enforcement agencies) to include a mandatory standard that the law-enforcement talk to the victim's family. Katherine Donhauser, Assistant County Attorney, speaking on behalf of the Hanover County Sheriff, stated that she agrees with the remarks previously made and added that unattended death investigations involve more than just suicides. Doug Goodwin, representing the Virginia Chiefs of Police and the Ashland Police Department stated that while he appreciated Senator Surovell's concerns, he agreed with the comments already made. Captain Scott Burke, Portsmouth Police Department, suggested that records be released after a determination that the death was not criminal in nature. Dave Ress, Daily Press, reiterated his concern that this is a fundamental problem with FOIA in that discretionary exemptions are treated as mandatory. Senator Surovell was given the opportunity to address the concerns raised. Senator Surovell stated that his draft says "completed" investigations, therefore the concern about unintended consequences would be limited. Delegate LeMunyon questioned what Senator Surovell felt about the accrediting standard option presented by the FOP. Senator Surovell replied that while he felt it was an interesting option, he didn't know enough about DCJS accrediting standards to give an answer. Ms. Dooley inquired whether the issue was limited to just suicide cases, to which the Senator replied suicide is not always clear. By way of example, Senator Surovell stated that in the case of a terminally ill individual who died alone, initially it is unclear whether he died of his terminal illness, committed suicide, over dosed on some medication, or died of some other cause. He stated that the inconsistent application of the law is the real issue and that Virginia citizens need consistent application by all jurisdictions. In closing, he stated that all criminal investigative files are exempt from mandatory disclosure and law-enforcement does not want any erosion of current law. Chairman LeMunyon asked for any motion on SB 492 as presented. Ms. Porto moved to recommend the amended SB 492. There being no second, the motion failed. The Chairman suggested that Senator Surovell should keep trying to work with law-enforcement.

Senator Surovell next discussed his legislative proposal for establishing monetary penalties for wrongfully certifying the lawfulness of a closed meeting discussion (LD 17100867D). Senator Surovell stated that the draft was an incentive to do the right thing the first time. Mr. Stern inquired whether there was a requirement for bad faith in the proposal. It was answered in the negative. Ms. Porto asked what event(s) precipitated the draft. Senator Surovell responded that he had heard stories from all around about the lack of limiting discussions in closed meetings. He noted that the latest such story was about a board of visitors at an institution of higher education.

The Council called for public comment on Senator Surovell's draft. Mr. Ress stated that he favored the draft and noted there is a lot of vagueness in the understanding of what is a proper topic for a closed meeting. Phyllis Errico on behalf of the Virginia Association of Counties stated that she was concerned about the breadth of the draft. She explained that such a violation may be an honest mistake or that a public body or its members may be unaware that a mistake was made.

Mr. Coleburn made a motion to recommend Senator Surovell's draft, which was seconded by Ms. Porto. Discussion among Council members followed. Ms. Dooley noted that the draft imposed a tough strict liability standard and requires the court to impose a monetary penalty. She stated that all FOIA issues that may arise are not always black and white. Mr. Stern said that he agreed with Ms. Dooley and pointed out that current law states that "...to the best of his knowledge..." Mr. Coleburn opined that closed meeting certifications are much too routine in actual practice. On the motion to recommend the draft, the motion failed by a vote of 4 to 4.²¹

Delegate Hope was present at the meeting and discussed the current exemption from FOIA afforded to the Parole Board under § 2.2-3703. He suggested that records related to general policy guidance for parole decision making should be available to the public. Delegate Hope noted that the 2015 Governor's Commission on Parole Review recommended the modification of the Parole Board's FOIA exemption as noted above. Delegate LeMunyon inquired whether Delegate Hope would also like the Council to consider the concept presented by HB 397 from the 2012 Session²². Delegate Hope answered in the affirmative.

Public comment was again requested. Steve Northup, Esq., told the Council that he represented old law prisoners who were still eligible for parole. He stated that there are 3,000 such prisoners in the system and have been for at least 20 years. Mr. Northup stated that there must be reasons why these prisoners continued to be denied parole, but that the process is opaque. These prisoners have no idea of what they need to do to be granted parole. Mr. Northrop stated that he knows that risk assessments are done pursuant to Parole Board guidelines, but no one knows what those guidelines are. Karen Brown, chair of the Parole Board, stated that she was unclear about the concerns raised in light of the fact that the Board's policies and procedures are available online. She stated that the Board does a risk assessment for reoffending, reoffending violently, and for needs if paroled and that the risk assessments are online. Ms. Brown said that the inmates are not provided the risk assessment by the Parole Board, but it may be provided to them under Department of Correction procedures. The Council then discussed the issue. Mr. Vucci stated that it appeared the changes to FOIA would be codifying existing practices of the Parole Board. Delegate Hope responded that that was not the case. He pointed out that the Governor's Commission had recommended that all Board policies and procedures be posted online. Chairman LeMunyon, with the consent of Council, deferred further consideration of Delegate Hope's proposal until the November Council meeting when the Council would have the bill before them.

Subcommittee Reports and Recommendations

Both Subcommittees reported that they had completed their work for the year. The Meetings Subcommittee reported that it had met seven times in 2016; the Records Subcommittee reported that it held eight meetings in 2016. At today's meeting the Council

²¹ Those voting in favor of the motion: LeMunyon, Treadway, Porto, and Coleburn. Those voting against the motion: Hamlett, Dooley, Vucci, and Stern.

²² HB 397 (2012) requires guidance documents of the Parole Board to be available as public records under the Freedom of Information Act. The bill has a delayed effective date to give the Freedom of Information Advisory Council an opportunity to review the legislation and report on its implementation.

considered four drafts recommended by the Records Subcommittee as well as two proposals referred to the Council from the Subcommittee without recommendation, all stemming from the HJR 96 study. The Council also considered two drafts recommended by the Meetings Subcommittee. Please see the HJR 96 Study Report for details, as stated above.

In addition to its work pursuant to HJR 96, the Records Subcommittee reported on several other issues it had considered. The Council had asked the Subcommittee to consider four bills from the 2016 Session of the General Assembly offered by Delegate Robert G. Marshall that concern nondisclosure agreements and access to certain site plans.²³ The background to these bills concerned a site being built in Prince William County and the County's denial of certain records related to the site. Delegate Marshall, representatives of Prince William County, and other interested parties spoke to the bills before the Subcommittee. After consideration, the Subcommittee referred the bills back to the Council without making any recommendation for action. The Council again deferred consideration of the bills until its meeting on November 21, 2016 because Delegate Marshall was unable to attend today's meeting. At previous meetings of the Subcommittee, the Auditor of Public Accounts (APA), Office of the State Inspector General (OSIG), and Joint Legislative Audit and Review Commission (JLARC) had discussed removing themselves from a current administrative investigation exemption²⁴ and creating a new exemption that better reflects the work of these agencies. They presented a draft to the Records Subcommittee on September 29, 2016, but after discussion the Subcommittee took no action on the draft, instead suggesting that the interested parties continue working on it and then present it to the full Council. Out of concern for possible unintended consequences from the "global language change" enacted this year with HB 817/SB 494 (certain exemptions had phrasing stating that "nothing ... shall prohibit" disclosure or release of certain records, which was amended to require release of those records), the Subcommittee voted to recommend reverting the changed language of the affected exemptions back to its prior form. The Subcommittee concluded its work for the year with further consideration of access to

²³ **HB 280** Marshall RG-- any proposed plat, site plan, or plan of development that is officially submitted to the local planning commission for approval shall be considered a public record subject to disclosure under the Virginia Freedom of Information Act. *NOTE: HB 280 would amend § 15.2-2259.*

HB 281 Marshall, RG--Removes any building permit submitted to a locality for final approval from an exclusion from the provisions of the Freedom of Information Act (FOIA) that otherwise protects confidential proprietary records of a private business pursuant to a nondisclosure agreement made with a public body. *NOTE: HB 281 would amend § 2.2-3705.6.*

HB 282 Marshal, RG--Requires that a nondisclosure agreement by a public body be approved at an open meeting if it is to serve as the basis for an exclusion from the provisions of the Freedom of Information Act (FOIA) of confidential proprietary records of a private business. Such an approval must be renewed at least every three months at further open meetings if it is to continue to supply the basis for the FOIA exclusion. *NOTE: HB 282 would amend §§ 2.2-3705.6 and 2.2-3711.*

HB 383 Marshall, RG--Removes any building permit submitted to a locality for final approval from an exclusion from the provisions of the Freedom of Information Act (FOIA) that otherwise protects confidential proprietary records of a private business pursuant to a nondisclosure agreement made with a public body and provides that any proposed plat, site plan, or plan of development that is officially submitted to the local planning commission for approval shall be considered a public record subject to disclosure under FOIA. *NOTE: HB 383 would amend §§ 2.2-3705.6 and 15.2-2259.*

²⁴ Subdivision 3 of § 2.2-3705.3.

criminal investigative files, but chose to take no action on this issue because Senator Surovell's SB 492 and Delegate Villanueva's SB 432, both of which would amend the criminal investigative files exemption, were still pending before the full Council.

The Council next considered the draft that would revert the "global language change" effected by HB 817/SB 494 as described above (LD 17100766D). Staff related that the original language stating that certain records were not prohibited from release at first appeared ambiguous because FOIA does not prohibit release of records, but upon further consideration, that language actually meant that records were still exempt, but could be released. The change made by HB 817/SB 494, which would require release of these records therefore appeared to be an inadvertent substantive change, and the Subcommittee recommended reverting the language of the affected exemptions. Ms. Rhyne stated that reverting to the prior phrasing may cause more confusion, and stated that the current law requiring mandatory release should be kept. Ms. Hamlett said the discussion at the Subcommittee level had raised the issue of court interpretation, noting that HB 817/SB 494 did not have an enactment clause stating that these changes were declaratory of existing law. Ms. Porto noted that in Subcommittee she had voted against changing the language back, that the comments from affected agencies were inconsistent, and that the current law appears to provide more transparency and reverting the language seems like a step backward. Delegate LeMunyon asked how the Council wished to proceed, but there were no further comments or motions made.

Considering the work to be addressed at the November meeting, Delegate LeMunyon noted that Delegates Marshall and Kory had contacted him about their bills referred to the Council, but he had not heard from the patrons of other bills referred to the Council. Therefore those other bills would not be added to the November agenda unless the members made contact.

Public Comment

Ms. Rhyne suggested that the training requirement set out in § 2.2-3704.2, which currently requires FOIA officers "be trained at least annually by legal counsel for the public body or the Virginia Freedom of Information Advisory Council," be amended to allow training under any such program approved by legal counsel or the FOIA Council. She informed the Council that VCOG had recently conducted a "FOIA basics" webinar with over 200 participants. The webinar information stated explicitly that it would not satisfy the annual training requirement, but Ms. Rhyne noted that most of the participants were FOIA officers who participated anyway.

Legislative Preview

Staci Henshaw, speaking on behalf of the APA, OSIG, and JLARC, stated that these agencies were still working with interested parties on a draft that would remove these agencies from their current administrative investigation exemption (subdivision 7 of § 2.2-3705.3) and create a new exemption in the same section that better reflects these agencies' actual work and duties.

There being no further business, the meeting was adjourned.

November 21, 2016

The Council held its fifth meeting of the 2016 Interim on November 21, 2016.²⁵ This meeting was held to review draft legislation recommended by the Records Subcommittee and the Meetings Subcommittee, which subcommittees were created in 2014 as part of the study of FOIA in accordance with HJR 96, to receive progress reports from the Subcommittees, to consider bills referred by the 2016 Session of the General Assembly to the Council for further study, and to discuss other issues of interest to the Council. After being called to order and introducing the members present, the Council welcomed a new staff attorney, Jessica L. Budd, who will also staff the House General Laws Committee when the General Assembly is in Session.

Virginia Parole Board and FOIA; Delegate Hope; Review of HB 397 (2012)

Delegate Hope spoke to the Council about access to certain records of the Virginia Parole Board, which he had originally introduced in his House Bill 397 (2012).²⁶ He stated the goal of the legislation was to ensure that guidance and policy documents would be posted publicly on the Parole Board's website. He noted that the change was a recommendation of the Governor's Parole Review Commission, and that he would like the Council to recommend language identical to HB 397 (2012) for the 2017 Session of the General Assembly. Ms. Dooley noted that Delegate Hope had spoken at the Council's last meeting, and a representative of the Parole Board had then stated that such records were already made public. Delegate Hope replied that in 2012 he knew that not all such documents were posted publicly, and that his bill would require that every such document be posted. The Council then voted unanimously (7-0) to recommend Delegate Hope's proposal to the 2017 Session of the General Assembly.

Review of Bills Referred by the 2016 Session of the General Assembly

Delegate Robert G. Marshall appeared by teleconference to address his House Bills 280,

²⁵ Council members Delegate LeMunyon (Chair), Dooley, Hamlett, Porto, Stern, Treadway and Vucci were present; members Senator Stuart (Vice Chair), Coleburn, Jones and King-Casey were absent.

²⁶ This topic was listed on the agenda as item #4 and was taken up out of order. HB 397 (2012) was studied by the Council in 2012, but no action was taken at that time because the interested parties had indicated they would work together to reach a resolution.

281, 282, and 383.²⁷ He stated that the bills' genesis is a proposed data center in Haymarket that would be built in a rural and residential no-growth zone several miles outside of an industrial area. He indicated the plan appears to involve building 110' towers with high voltage power lines near residential areas, and he wanted the affected citizens to be able to find out more information. He also told the Council that it is believed that Amazon is the company that is building the data center, and Delegate Marshall and Senator Black had tried to contact Jeff Bezos, the owner of the company, but had not been able to do so. He further stated that the County of Prince William would not provide certain records or confirm that the company involved is Amazon, citing the economic development exemption (subdivision 3 of § 2.2-3705.6) and a nondisclosure agreement. Delegate Marshall further said that in order to eliminate most opposition to the bills, they could be limited to a data center of greater than 50,000 square feet with a line extension greater than one mile and a power line of 220 or more kilovolts. Mr. Stern asked if the legislation could address only this one instance since it appears to be the concern. Delegate Marshall stated that adding the proposed conditions would have that effect. He also said that otherwise, if nothing is done, this situation would set a precedent for all of Virginia. Ms. Porto asked about HB 282, which would require nondisclosure agreements to be voted on by public bodies in order to be approved and re-approved every three months. Delegate Marshall said that currently nondisclosure agreements are often approved by employees rather than elected officials, but he believes such agreements should be approved by elected officials for greater accountability to the public and because elected officials should not be bound by hired staff.

The Council then asked to hear from Prince William County. Jeff Kaczmarek, Executive Director of the Prince William County Department of Economic Development, stated that from an economic development perspective, these bills would have a broad impact on all of Virginia. He pointed out that the technology sector and data centers particularly are highly sensitive to data disclosure as their data often involves the military, defense industry, or

²⁷ **HB 280** Marshall RG-- any proposed plat, site plan, or plan of development that is officially submitted to the local planning commission for approval shall be considered a public record subject to disclosure under the Virginia Freedom of Information Act. *NOTE: HB 280 would amend § 15.2-2259.*

HB 281 Marshall, RG--Removes any building permit submitted to a locality for final approval from an exclusion from the provisions of the Freedom of Information Act (FOIA) that otherwise protects confidential proprietary records of a private business pursuant to a nondisclosure agreement made with a public body. *NOTE: HB 281 would amend § 2.2-3705.6.*

HB 282 Marshal, RG--Requires that a nondisclosure agreement by a public body be approved at an open meeting if it is to serve as the basis for an exclusion from the provisions of the Freedom of Information Act (FOIA) of confidential proprietary records of a private business. Such an approval must be renewed at least every three months at further open meetings if it is to continue to supply the basis for the FOIA exclusion. *NOTE: HB 282 would amend §§ 2.2-3705.6 and 2.2-3711.*

HB 383 Marshall, RG--Removes any building permit submitted to a locality for final approval from an exclusion from the provisions of the Freedom of Information Act (FOIA) that otherwise protects confidential proprietary records of a private business pursuant to a nondisclosure agreement made with a public body and provides that any proposed plat, site plan, or plan of development that is officially submitted to the local planning commission for approval shall be considered a public record subject to disclosure under FOIA. *NOTE: HB 383 would amend §§ 2.2-3705.6 and 15.2-2259.*

private businesses. He stated that it is a quickly growing industry in Virginia and the key is site selection. He pointed out that companies look at other states and always have alternative sites available, so these bills would have a chilling effect across Virginia. Mr. Stern asked how the legislation proposed would compromise data. Mr. Kaczmarek stated it was a question of timing regarding how much data was released at what stage in the process, as more data is always released as a project moves further through the processes of planning, zoning, and regulation. Ms. Dooley indicated that Fredericksburg had just made an announcement regarding Strangeways Brewing Company opening a new location in the City. She said that if City Council had to vote publicly to approve "a nondisclosure agreement with Strangeways Brewing" it would have ruined the deal. She also noted that site plans submitted for approval are already public record, and that security plans for a data center would be exempt from disclosure. Mr. Kaczmarek added that they sign nondisclosure agreements with all sorts of companies, not just data centers. Delegate Marshall said that the County took another position and did not disclose requested records, and he again pointed out that if the bills are limited to data centers other objections would no longer apply.

Turning to public comment, Dave Ress, Daily Press, stated how astonishing it is that a senior member of the House of Delegates must put in a bill to say site plans submitted for approval are public, and that it points to underlying FOIA problems. Megan Rhyne pointed out that nondisclosure agreements should be public, much as sealing orders in a court case are public. Kara Hart of the Virginia Economic Development Partnership (VEDP) told the Council that nondisclosure agreements are standard and expected in economic development deals. Additionally, she noted that deals often move quickly and the VEDP Board only meets quarterly, so requiring the Board to vote on nondisclosure agreements is not practical. In reply to a question from Delegate LeMunyon, Ms. Hart also pointed out that the economic development exemption requires a promise of confidentiality from the public body, which takes the form of a nondisclosure agreement. Roger Wiley, Esq., speaking on behalf of Loudoun County, stated that Loudoun also has data centers and also opposes these bills. He suggested the possibility that the request for site plans was denied early in the process before they were submitted for approval. He also pointed out that FOIA's exemptions are discretionary, and nondisclosure agreements are used to commit public bodies to using the exemptions. Delegate Marshall responded that he agreed in principle, but in fact he and others requested site plans at different stages in the process and were all denied. He also noted that if the data center was being built in an industrial area, there would be no objection.

Returning to discussing among the Council members, Ms. Porto expressed concern for a balance between economic development needs and the citizens' right to know. She noted that it sounds like a large group of citizens in this instance were not given information they need to determine how this project will affect their lives. Ms. Dooley moved not to recommend the bills, noting that some of the materials addressed in the bills are already public, some of the materials might include security records, and regarding nondisclosure agreements, it would not help to have public bodies vote to renew "nondisclosure agreements with unidentified companies for undisclosed reasons." Ms. Hamlett seconded the motion. Mr. Stern stated that he was unsure this approach was the right way to address

the issue, but that the issue should be addressed. Ms. Porto stated that she understood some of the material was supposed to be public already, but based on Delegate Marshall's testimony that was not happening. She questioned how an ordinary citizen could get such records when a senior member of the House of Delegates cannot get them. The Council then voted on the motion to take no action. The motion passed 4-3 (Delegate LeMunyon, Ms. Dooley, Ms. Hamlett, and Mr. Vucci voted in favor; Ms. Porto, Mr. Stern, and Dr. Treadway voted against), and so the Council took no action on these bills.

Next, Delegate Pogge addressed her House Bill 336 (2016), which would have protected from mandatory disclosure library records that can be used to identify any library patron under the age of 18 years.²⁸ She stated that there had been a request for names and addresses of adults and minors who held library cards that resulted in the release of over 1700 names and addresses of minors. She related that schools would not release the same records because they are exempt as scholastic records. Delegate Pogge also offered an amendment to simplify the bill by striking language concerning access when the subject is over 18 years of age. The stricken language matches language used in the scholastic records exemption, but it is unnecessary here because this change is only meant to address minors' records. Phil Abraham of the Vectre Corporation expressed support for the bill as amended on behalf of the Virginia Library Association. After a discussion of a further technical amendment, the Council voted unanimously (7-0) to recommend the bill as amended.

Delegate Pogge then addressed her House Bill 334 (2016), which would have provided that in an enforcement action, if the court finds the public body violated certain meeting notice requirements, the court may invalidate any action of the public body taken at such meeting. She said she introduced the bill because one of her constituents had important information that affected her life and livelihood discussed in a closed meeting that was supposed to be an open meeting. The Delegate said her goal was to give citizens some redress when public bodies do not follow the rules by allowing a court to invalidate actions of the public body. In response to questions from Mr. Stern regarding what criteria a court should take into account, Delegate Pogge replied that the court should look to whether the notice requirements were met, and agreed there should be a time limit to invalidate actions such as 90 days. Mr. Ress stated that this is a good bill and noted it is only a small step in that if a violation is found, a court "may" invalidate an action but is not required to do so. Mr. Wiley stated that he understood what Delegate Pogge was trying to do but noted that if there is a 90 day waiting period, every lawyer will advise their clients they must wait the 90 days. He also stated that Mr. Stern's concerns were valid because the bill would give the judge discretion without guidance on how to use it. He further observed that the bill would affect state as well as local entities, that it could have huge financial consequences, and that

²⁸ **HB336** Pogge--Bill Summary: Protects from mandatory disclosure library records that can be used to identify any library patron under the age of 18 years. The bill provides that access shall not be denied to the parent, including a noncustodial parent, or guardian of such person, unless the parent's parental rights have been terminated or a court of competent jurisdiction has restricted or denied such access. For records of persons under the age of 18 years who are emancipated, the right of access may be asserted by the subject thereof. Any parent or emancipated person under the age of 18 years who is the subject of the record may waive, in writing, the protections afforded by the bill. If the protections are so waived, the public body shall open such records for inspection and copying.

a court already has remedies it can take when it finds that a public body has violated FOIA. Ms. Rhyne stated that VCOG was neither in favor nor opposed, and noted that under opinions of the Attorney General, judges have discretion already. Delegates LeMunyon and Pogge further discussed the proposed time limit and concluded 15 days should be enough. Ms. Porto moved to recommend the bill with an amendment to add a 15 day time limit to bring an action after a meeting has occurred. Ms. Dooley suggested adding an amendment in concept that the petitioner must identify the action to be invalidated. As an example, she pointed out that if there were 30 agenda items it would raise the issue of whether all parties affected by all the agenda items would have to appear in court. The Subcommittee also discussed further the idea of adding criteria to guide the court's discretion. The Subcommittee then voted on the motion, which failed 4-3 (Delegate LeMunyon, Ms. Porto, and Dr. Treadway voted in favor; Ms. Dooley, Ms. Hamlett, Mr. Stern, and Mr. Vucci voted against).

Next, Delegate Kory presented her House Bill 698 (2016), which would have required that every public body afford an opportunity for public comment during any open meeting. She noted that an amended draft (LD 17101424D) had been prepared and distributed that would require public comment periods at a minimum of two meetings per year, but that draft would need to be amended further. Delegate Kory, Delegate LeMunyon, Mr. Vucci and staff discussed a proposed amendment to the bill to require public comment at a minimum of six meetings held per year by any public body, if it holds that many, but to allow the public body to choose at which public meetings public comment would be heard if the public body has more than six meetings per year. Delegate Kory noted that most public bodies already allow public comment, but some do not, and the bill is trying to find a middle ground. The new draft also did not include language that had been included in the original bill that would have allowed a public body to adopt reasonable rules governing the public comment portion of the meeting, including imposing reasonable restrictions on time, place, and manner. The Subcommittee discussed putting this language back in the amended draft as a second amendment. Ms. Porto moved to recommend the bill with both amendments. Ms. Dooley indicated she was concerned about the language of the amendments, whether the bill properly fits within FOIA, and what a body that currently held more than six meetings per year and allowed public comment at all of them would do if the bill passed. For those reasons she stated she would not support the bill as amended at this time. Delegate LeMunyon asked if there was a second on the motion, but there was none and the motion failed. Delegate Kory stated that she would try to work further on the bill, to hear more comments and satisfy concerns regarding the proposal.

Subcommittee Recommendations

The Council next considered five drafts recommended by the Records Subcommittee and one draft recommended by the Meetings Subcommittee.²⁹ The Council voted to include all of these draft recommendations in the omnibus legislation the Council will recommend to the 2017 Session of the General Assembly. Please see the HJR 96 Study Report for details, as stated above.

²⁹ Note that both Subcommittees had completed their work and made their final reports to the Council at the Council's meeting on October 17, 2016.

The Council next considered the draft that would revert the "global language change" effected by HB 817/SB 494 (LD 17100766D), which had been considered but not acted upon at the Council's last meeting. As a reminder, last year the Records Subcommittee recommended replacing language that appears in multiple existing exemptions that states that "nothing ... shall prohibit" disclosure or release of records. Recognizing that FOIA generally does not prohibit release, the Subcommittee recommended replacing that phrasing with language stating that "nothing ... shall authorize withholding" or other language indicating an affirmative duty to disclose. However, it has come to the attention of staff that such a global change may have unintended consequences, and therefore reconsideration of this recommendation was necessary. Staff related that the original language stating that certain records were not prohibited from release at first appeared ambiguous because FOIA does not prohibit release of records, but upon further consideration, that language actually meant that records were still exempt, but could be released. The change made by HB 817/SB 494, which would require release of these records, therefore appeared to be an inadvertent substantive change, and the Subcommittee recommended reverting the language of the affected exemptions. There was no further discussion of the issue, and the Council voted 5-1-1 to recommend (all in favor except Ms. Porto voted against and Ms. Dooley abstained).

Other Business

Staff raised the issue of whether school boards should be included in the requirement to post a statement of FOIA rights and responsibilities (§ 2.2-3704.1). The Council voted unanimously (7-0) to recommend this amendment be added and incorporated into the omnibus legislation.

Staff also raised the issue of whether the policy statement of FOIA (§ 2.2-3700) should include a statement regarding the procurement of technology similar to language in § 2.2-1111, which applies to the Department of General Services (DGS).³⁰ Mr. Lacy encouraged the Council to adopt this language, and stated that this is a huge issue because of the speed at which technology has developed since the 1990's. Mr. Wiley said he understood the problem and had had a problem with a state agency where software would not produce records, but suggested it be put off until next year. Ms. Rhyne agreed, and as an example reminded the Council of when a school adopted a security system that checked visitors' identification, then later asked for an exemption for the records it kept. Ms. Porto suggested adding this to the study of technology issues next year, and the Council agreed by consensus.

Staff next proposed a change in the Council's enabling legislation that would state that a member continues to serve until his or her successor is appointed. Ms. Everett pointed out that Mr. Ashby's term expired on July 1, 2016 and the vacancy has not been filled. She also

³⁰ Subsection 2 of § 2.2-1111 states that the regulations adopted by DGS' Division of Purchase and Supply shall, among other things: "Require that before any public body procures any computer system, equipment or software, it shall consider whether the proposed system, equipment or software is capable of producing products that facilitate the rights of the public to access official records under the Freedom of Information Act (§ 2.2-3700 et seq.) or other applicable law."

stated that a Code search revealed 41 instances using similar language. After brief discussion the Council voted unanimously (7-0) to recommend this change.

Annual Legislative Preview, Part II

At its last meeting, the Council heard from Staci Henshaw, speaking on behalf of the APA, OSIG, and JLARC, that these agencies were still working with interested parties on a draft that would remove these agencies from their current administrative investigation exemption (subdivision 7 of § 2.2-3705.3) and create a new exemption in the same section that better reflects these agencies' actual work and duties. Staff reported that Ms. Henshaw had informed staff that after much discussion and consideration of alternative language, the parties had decided not to move forward with the proposal this year.

Public Comment

Mr. Ress observed that today the Council heard from two legislators regarding patterns of flouting FOIA. He also posed several rhetorical questions: When members of the General Assembly ask what was the vote on the omnibus bills, what is the answer? When asked about the over 100 exemptions in FOIA, what records are protected and what is the interest protected? He asked whether the Council members had read the omnibus bill, and how to reconcile parts that contradict each other such as the treatment of personnel records and administrative investigation records. He also asked how the members of the Council would answer if asked in detail what is the balance between the public purpose served and the public right to know. He suggested the members ask themselves whether they can answer these questions. In light of Mr. Ress' concerns, Ms. Dooley suggested the Council meet again solely to vote on the omnibus legislation as amended to include the recommendations made today.

There being no further business, the meeting was adjourned.

December 5, 2016

The Council held its final meeting of the 2016 Interim on December 5, 2016.³¹ This meeting was held to conduct a final review of the two omnibus legislative proposals by the Council as part of concluding the study of FOIA pursuant to HJR 96. Please see the HJR 96 Study Report for details, as stated above.

Other Business

Chairman LeMunyon noted that he believed that two-thirds of all FOIA exemptions protect the personal information of citizens and businesses. He stated that over time, the law has changed to protect the privacy of citizens, but not government processes. Delegate LeMunyon stated that there are many tough calls in enacting FOIA exemptions. For example, information contained in personnel records weighs the privacy of individual

³¹ Council members Delegate LeMunyon (Chair), Treadway, Hamlett, Dooley, Jones, Porto, Vucci, Coleburn, and Stern were present; members Senator Stuart (Vice Chair) and King-Casey were absent.

employees against the public's right to know. The same is the case with regard to certain law-enforcement records. He reiterated that FOIA is a balancing act of competing interests.

Council member Porto requested staff to distribute a Daily Press editorial critical of the work of the Council. Ms. Porto stated that the editorial says it all.

Council member Jones thanked Delegate LeMunyon and staff for navigating through a complex path. Mr. Jones stated that his take away from the three-year study was that there were improvements to FOIA being recommended, but recognized that it is an ongoing process. Mr. Jones stated that the Council had shown openness to examine the tougher issues and suggested that this dialogue continue.

In closing, Delegate LeMunyon thanked staff for its work and noted that of the several bodies on which he serves, the Council is the most active. He asked staff to advise Council members when the omnibus bills will be heard by Subcommittee No. 2 of the House Committee on General Laws.

The first meeting of the Council in 2017 was scheduled for Tuesday, March 7, 2017 at 1:30 p.m. in Richmond, Virginia.

There being no further business, the meeting was adjourned.

SERVICES RENDERED BY THE COUNCIL

As part of its statutory duties, the Council is charged with providing opinions about the application and interpretation of FOIA, conducting FOIA training seminars, and publishing educational materials. In addition, the Council maintains a website designed to provide on-line access to many of the Council's resources. The Council offers advice and guidance over the phone, via e-mail, and in formal written opinions to the public, representatives of state and local government, and members of the news media. The Council also offers training seminars on the application of FOIA. While FOIA training is the most critical mission of the Council, in 2015, the annual statewide FOIA Workshops conducted by Council staff were discontinued. The statewide workshops posed considerable administrative burdens in their planning and execution, especially in light of the small Council staff. Essentially, staff proposed that in fulfilling its statutory mission to conduct educational programs about FOIA, it would provide training upon request to interested groups, such as the staff of state and local agencies, members of local governing bodies, media organizations, citizen organizations, and any other group that wishes to learn more about FOIA. Council staff will travel to the location of the group requesting training. The training is and would be tailored to meet the needs of the particular group, can range from 45 minutes to several hours, and can present a general overview of FOIA or focus specifically on particular exemptions or portions of FOIA frequently used by that group or organization. Organizations requesting training are strongly encouraged, but not required, to consolidate training by including other like organizations within a single or neighboring jurisdiction(s) wherever possible. Council staff is available to conduct FOIA training throughout Virginia, upon request, for governmental entities, media groups and others interested in receiving a FOIA program that

is tailored to meet the needs of the requesting organization. This service is provided free of charge. The Council develops and continually updates free educational materials to aid in the understanding and application of FOIA. During this reporting period, the Council, with its staff of two, responded to 1,730 inquiries and conducted 67 training seminars statewide. A listing of these training seminars appears as Appendix A.

FOIA Opinions

The Council offers FOIA guidance to the public, representatives and employees of state and local government, and members of the news media. The Council issues both formal, written opinions as well as more informal opinions via the telephone or e-mail. At the direction of the Council, the staff has kept logs of all FOIA inquiries. In an effort to identify the users of the Council's services, the logs characterize callers as members of government, media, or citizens. The logs help to keep track of the general types of questions posed to the Council and are also invaluable to the Council in rendering consistent opinions and monitoring its efficiency in responding to inquiries. All opinions, whether written or verbal, are based solely on the facts and information provided to the Council by the person requesting the opinion. The Council is not a trier of fact. Thus, it is specifically noted in each opinion, whether written or verbal, that Council opinions are given based on the representations of fact made by the opinion requester.

For the period of December 1, 2015 to November 30, 2016, the Council, with a staff of two attorneys, fielded 1,730 inquiries. Of these inquiries, three resulted in formal, written opinions. By issuing written opinions, the Council hopes to resolve disputes by clarifying what the law requires and to guide future practices. In addition to sending a signed copy of the letter opinion to the requester, written opinions are posted on the Council's website in chronological order and in a searchable database. The Council issues written opinions upon request, and requires that all facts and questions be put in writing by the requester. Requests for written opinions are handled on a "first come, first served" basis. Response for a written opinion is generally about four weeks, depending on the number of pending requests for written opinions, the complexity of the issues, and the other workload of the staff. An index of formal opinions issued during the past year appears as Appendix B. The table below profiles who requested written advisory opinions for the period December 1, 2015 through November 30, 2016:

Written Advisory Opinions: 3

State and Local Government	0
Citizens of the Commonwealth	2
Members of the News Media	1

Typically, the Council provides advice over the phone and via e-mail. The bulk of the inquiries that the Council receives are handled in this manner. The questions and responses are recorded in a database for the Council's own use, but are not published on the website as are written advisory opinions. Questions are often answered on the day of receipt, although response time may be longer depending on the complexity of the question and the research

required. The table below profiles who requested informal opinions between December 1, 2015 and November 30, 2016:

Telephone and E-mail Responses: 1,727

Government	1058
Citizens	561
News Media	108

Appendix F to this report sets out the number of inquiries received by the Council each month from December, 2015 through November, 2016, and separately sets forth the number of different types of inquiries received by category (Records, Meetings, Other). Appendix G shows the number of opinions over a ten-year timespan.

The Council's Website

The website address for the Council is <http://foiacouncil.dls.virginia.gov/>. The Council's website provides access to a wide range of information concerning FOIA and the work of the Council, including (i) Council meeting schedules, including meeting summaries and agendas, (ii) the membership and staff lists of the Council, (iii) reference materials and sample forms and letters, (iv) the Council's annual reports, (v) information about Council subcommittees and legislative proposals, and (vi) links to other Virginia resources, including the Virginia Public Records Act. To facilitate compliance with FOIA, sample response letters for each of the five mandated responses to a FOIA request as well as a sample request letter are available on the website. Written advisory opinions have been available on the website since January 2001 and are searchable by any visitor to the website. The opinions are also listed in chronological order with a brief summary to assist website visitors.

FOIA Training

In fulfilling its statutory mission to conduct FOIA educational programs, the Council has conducted a series of day-long workshops around the state to provide FOIA training to recently-appointed public officials and employees. From 2000 through 2005 the workshops were held every year in multiple locations in an effort to maximize the availability of training throughout the Commonwealth. From 2005 through 2012, the workshops were held every other year instead due to declining attendance as many interested persons had already attended a conference just the year before and as a sign that its basic training mission had been successfully accomplished. However, staff still receives requests for the workshops every year. Beginning in 2013, in an effort to satisfy the demand for annual programs without over-saturating any particular area, the Council resumed presenting the workshops annually, but at only a few locations per year (note that other individualized free training presentations will remain available by request, as always). While FOIA training is the most critical mission of the Council, in 2015, the annual statewide FOIA Workshops conducted by Council staff were discontinued. The statewide workshops posed considerable administrative burdens in their planning and execution, especially in light of the small Council staff. Essentially, staff proposed that in fulfilling its statutory mission to conduct educational programs about FOIA, it would provide training upon request to interested groups, such as the staff of state and local agencies, members of local governing bodies,

media organizations, citizen organizations, and any other group that wishes to learn more about FOIA. Council staff will travel to the location of the group requesting training. The training is and would be tailored to meet the needs of the particular group, can range from 45 minutes to several hours, and can present a general overview of FOIA or focus specifically on particular exemptions or portions of FOIA frequently used by that group or organization. Organizations requesting training are strongly encouraged, but not required, to consolidate training by including other like organizations within a single or neighboring jurisdiction(s) wherever possible. Council staff is available to conduct FOIA training throughout Virginia, upon request, for governmental entities, media groups and others interested in receiving a FOIA program that is tailored to meet the needs of the requesting organization. This service is provided free of charge. The Council also develops and continually updates free educational materials to aid in the understanding and application of FOIA. During this reporting period, the Council, with its staff of two, responded to 1,730 inquiries and conducted 67 training seminars statewide. A list of these trainings appears as Appendix A to this report.

As is customary, the Council's training programs are approved by the State Bar of Virginia for continuing legal education credit (CLE) for attorneys, in-service credit for law-enforcement personnel by the Department of Criminal Justice Services, academy points for school board officials by the Virginia School Board Association, and continuing education credit for municipal clerks by the Virginia Municipal Clerks Association. Additionally, in 2016 the Council designed an online training program for FOIA Officers available through the Knowledge Center administered by the Department of Human Resource Management.

Educational Materials

The Council continuously creates and updates educational materials that are relevant to requesters and helpful to government officials and employees in responding to requests and conducting public meetings. Publications range from documents explaining the basic procedural requirements of FOIA to documents exploring less-settled areas of the law. These materials are available on the website and are frequently distributed at the training seminars described above. Specifically, the Council offers the following educational materials:

- Access to Public Records
- Access to Public Meetings
- Guides to Electronic Meetings
 - Local and Regional Public Bodies
 - State Public Bodies
- Basic Meetings (PowerPoint presentation)
- Basic Records (PowerPoint presentation)
- E-Mail: Use, Access & Retention
- E-Mail & Meetings
- Taking the Shock Out of FOIA Charges
- FOIA & Access Bill Summaries
- FOIA Guide for Local Officials³²

³² Developed in cooperation with VACo and VML.

- Legislators Guide to FOIA
- FOIA Guide for Boards of Visitors
- FOIA Guide for Local Government Officials
- FOIA Guide for Members of Deliberative Bodies
- Law-Enforcement Records and FOIA
- Law-Enforcement Guide for Handling 911 Requests
- Quick Reference Guide for Responding to FOIA Requests
- Guide to Geographic Information Systems Records
- Citizens' Guide to Making FOIA Requests

In addition to these educational materials, the Council has also developed a series of sample letters to provide examples of how to make and respond to FOIA requests. Response letters were developed by the Council to facilitate compliance with the procedural requirements of FOIA by public bodies. The Council website also includes a FOIA petition should enforcement of the rights granted under FOIA be necessary.

CONCLUSION

In fulfilling its statutory charge, the Council strives to keep abreast of trends, developments in judicial decisions, and emerging issues related to FOIA and access generally. The Council has gained recognition as a forum for the discussion, study, and resolution of FOIA and related public access issues based on sound public policy considerations. The Council continued to serve as a resource for the public, representatives of state and local government, and members of the media, responding to 1,730 inquiries. It formed two subcommittees and two work groups to examine FOIA and related access issues, and encouraged the participation of many individuals and groups in Council studies. Through its website, the Council provides increased public awareness of and participation in its work, and publishes a variety of educational materials on the application of FOIA. Its commitment to facilitating compliance with FOIA through training continued in the form of 79 specialized training sessions throughout the Commonwealth. The Council would like to express its gratitude to all who participated in the work of Council for their hard work and dedication.

Respectfully submitted,

Delegate James M. LeMunyon, Chair
 Senator Richard H. Stuart, Vice-Chair
 Shawri King-Casey
 Kathleen Dooley
 Stephanie Hamlett
 Edward Jones
 Mark Vucci
 Marisa Porto
 Sandra G. Treadway
 William "Billy" Coleburn
 Michael Stern

APPENDIX A

TRAINING/EDUCATIONAL PRESENTATIONS

An important aspect of the Council's work involves efforts to educate citizens, government officials, and media representatives by means of seminars, workshops, and various other public presentations.

From December 1, 2015 through November 30, 2016, Council staff conducted 67 training seminars, which are listed below in chronological order identifying the group/agency requesting the training.

December 1, 2015	Spotsylvania County Spotsylvania, VA
December 2, 2015	New Sheriffs Orientation Virginia Sheriffs' Association Richmond, VA
December 4, 2015	Virginia Commonwealth University Division of Student Affairs Richmond, VA
December 9, 2015	State Compensation Board New Officer Training Richmond, VA
December 14, 2015	Department of Rail and Public Transportation Richmond, VA
December 15, 2015	Department of Social Services Community Services Block Grant Program Richmond, VA
January 4, 2016	Pittsylvania County Chatham, VA
January 9, 2016	Virginia Association of Counties Richmond, VA
February 1, 2016	Virginia Commonwealth University Communications Law & Ethics Class Richmond, VA
February 9, 2016	Washington and Lee University School of Law Local Government Law Practicum Lexington, VA

February 11, 2016	Board of Historic Resources and State Review Board Department of Historic Resources Richmond, VA
February 17, 2016	Virginia Port Authority Norfolk, VA
March 2, 2016	Crater Criminal Justice Academy FOIA Overview for Law Enforcement Disputanta, VA
March 2, 2016	Virginia Commonwealth University Open World Program - Ukraine Delegation Richmond, VA
March 16, 2016	Department of Housing and Community Development Permit Technician's Course Manassas, VA
April 5, 2016	Virginia Information Technologies Agency Information Security Officers' Advisory Group Chester, VA
April 28, 2016	Virginia School Boards Association School Board Clerks Conference Charlottesville, VA
April 29, 2016	Virginia Sheriff's Institute Spring Conference Hampton, VA
May 11, 2016	Crater Criminal Justice Academy FOIA Overview for Law Enforcement Disputanta, VA
May 12, 2016	Rockingham County Sheriff's Office Harrisonburg, VA
May 19, 2016	Virginia Coalition for Open Government Making Your FOIA Life Easier Workshop Richmond, VA
May 19, 2016	Virginia Department of Transportation Richmond, VA
May 23, 2016	Central Shenandoah Criminal Justice Training Academy Weyers Cave, VA

May 24, 2016	Office of the State Inspector General Richmond, VA
May 26, 2016	Virginia Commonwealth University Communications Law & Ethics Class Richmond, VA
June 8, 2016	Crater Criminal Justice Academy FOIA Overview for Law Enforcement Disputanta, VA
June 10, 2016	Northern Virginia Criminal Justice Training Academy Ashburn, VA
June 15, 2016	Hampton Roads Media Council Newport News, VA
June 16, 2016	New River Community Action Radford, VA
June 24, 2016	Local Government Attorneys of Virginia Lexington, VA
June 28, 2016	Frederick County Winchester, VA
June 29, 2016	King George County Sheriff's Office King George, VA
July 13, 2016	Town of Christiansburg (and neighboring localities) Christiansburg, VA
July 23, 2016	Virginia Municipal League Richmond, VA
July 27, 2016	Crater Criminal Justice Academy FOIA Overview for Law Enforcement Disputanta, VA
August 8, 2016	Joint Treasurer and Commissioner of the Revenue Summer Conference Virginia Beach, VA
August 9, 2016	Department of Environmental Quality Piedmont Regional Office FOIA Coordinator's Workshop Glen Allen, VA

August 10, 2016	Crater Criminal Justice Academy FOIA Overview for Law Enforcement Disputanta, VA
August 10, 2016	Westmoreland County Public Schools Montross, VA
August 15, 2016	Leesburg Police Department Leesburg, VA
August 23, 2016	Hampton Roads Sanitation District Commission Virginia Beach, VA
August 26, 2016	Town of Mineral Mineral, VA
September 9, 2016	Sorensen Institute for Political Leadership Winchester, VA
September 21, 2016	Virginia Commonwealth University Communications Law & Ethics Class Richmond, VA
September 27, 2016	Virginia Municipal Clerks Association Annual Institutes and Academy Glen Allen, VA
September 28, 2016	Wakefield, Waverly, and neighboring Towns Wakefield, VA
October 3, 2016	Loudoun County Public Schools Ashburn, VA
October 4, 2016	Stafford County Public Schools Stafford, VA
October 7, 2016	Virginia Board of Accountancy Henrico, VA
October 14, 2016	Virginia Association of Local Tax Auditors Manassas, VA
October 19, 2016	State Council of Higher Education for Virginia Richmond, VA
October 24, 2016	Virginia Department of Health Professions Henrico, VA

October 26, 2016	Augusta County, Middle River Regional Jail, Shenandoah Valley Social Services, Augusta County Service Authority, and Augusta County School Board Verona, VA
October 26, 2016	Virginia Government Finance Officers Association Short Pump, VA
October 27, 2016	Halifax County (and neighboring localities) Halifax, VA
November 2, 2016	Office of the Attorney General Education Section Conference Richmond, VA
November 7, 2016	Goochland County Goochland, VA
November 7, 2016	Lynchburg Police Department (and neighboring localities) Lynchburg, VA
November 10, 2016	Virginia Information Technologies Agency Roanoke, VA
November 12, 2016	Department of Environmental Quality Virginia Beach, VA
November 14, 2016	Hampton Roads Sanitation District Via teleconference
November 14, 2016	Richmond County Public Schools Via teleconference
November 15, 2016	Department of Housing and Community Development Permit Technician's Course Sandston, VA
November 16, 2016	Crater Criminal Justice Academy FOIA Overview for Law Enforcement Disputanta, VA
November 16, 2016	Henrico County Henrico, VA

November 17, 2016

Virginia School Board Association
Workshop for School Board Clerks
Williamsburg, VA

November 19, 2016

Town of Glade Spring
Glade Spring, VA

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APPENDIX B

Index of Written Advisory Opinions December 1, 2015 through November 30, 2016 ADVISORY OPINIONS ISSUED

<u>No.</u>	<u>Opinion</u>	<u>Issue(s)</u>
<hr/>		
July		
<hr/>		
AO-01-16		Records that have been prepared by or for the Office of the Governor for personal or deliberative use may be withheld as working papers. However, if those records are disseminated by the Office of the Governor to another agency for that agency's use in carrying out its statutory duties, then the records may not be withheld as working papers because they are no longer for personal or deliberative use of the Office of the Governor. Pursuant to subsection B of § 24.2-404, FOIA does not apply to records about individuals maintained in the voter registration system.
<hr/>		
August		
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AO-02-16		A motion to convene a closed meeting that contains a general reference to the subject matter to be discussed does not satisfy the requirement to identify the subject. If a member feels that a closed meeting discussion strays beyond the matters identified in the motion to convene, that member shall make a statement to that effect to be included in the minutes before the public body votes to certify the closed meeting. In such a situation, it is expected that the member who feels that the discussion strayed will vote against the motion to certify when the vote is called. Further, if the motion to convene a closed meeting purports to discuss a subject (or subjects) but the actual discussion is of some other topic not addressed in the motion, that would be a violation of FOIA.
<hr/>		
September		
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AO-03-16		Generally, requests for information (RFI's) are preliminary to a procurement transaction or contract negotiations, and not directly part of such transactions or negotiations. FOIA does not contain any specific exclusion from mandatory disclosure that would allow information received in response to an RFI to be withheld. Whether other exclusions apply to such information, such as those exclusions applicable to contract negotiation records or proprietary records and trade secrets, must be considered on a case-by-case basis.
<hr/>		
December		
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AO-04-16		Under FOIA, a teacher has a right of access to the teacher's own personnel records, but not necessarily to scholastic records of a student. Generally, if a teacher requests a record that is both a personnel record and a scholastic record, the response should provide those portions which are the teacher's own personnel records but may redact those portions which are exempt as scholastic records. Other laws outside FOIA may also affect access to scholastic records, but this office's statutory authority is limited to providing guidance on FOIA.

APPENDIX C

2016 Meetings of the Council

Wednesday, May 4, 2016

House Room C, General Assembly Building, Richmond

Recap of the 2016 legislative session, review of the bills referred to the Council by the 2016 Session of the General Assembly, discussion of FOIA study as per HJR 96 (2014), and Progress reports from the Council's two HJR 96 study subcommittees, the Meetings Subcommittee and the Records Subcommittee.

Thursday, July 23, 2016

House Room D, General Assembly Building, Richmond

Review of bills referred to the Council by the 2016 Session of the General Assembly, progress reports from the Council's two HJR 96 study subcommittees, the Meetings Subcommittee and the Records Subcommittee, FOIA Officer online training, expiration of terms of Council members Forrest "Frosty" Landon, John Selph, and Christopher Ashby, retirement of Ginger Stanley (VPA).

Monday, July 18, 2016

Meeting cancelled.

Monday, September 19, 2016

House Room C, General Assembly Building, Richmond

Welcome new Council members William "Billy" Coleburn and Michael Stern, Esq., review of bills referred to the Council by the 2016 Session of the General Assembly, legislative recommendations and progress reports from the Council's two HJR 96 study subcommittees, the Meetings Subcommittee and the Records Subcommittee. Annual legislative preview, part I. Discussion of how Council members to be notified when advisory opinions are published.

Monday, October 17, 2016

House Room D, General assembly Building, Richmond

Review of bills referred to the Council by the 2016 Session of the General Assembly, legislative recommendations and progress reports from the Council's two HJR 96 study subcommittees, the Meetings Subcommittee and the Records Subcommittee. Annual legislative preview, part II.

Monday, November 21, 2016

House Room C, General Assembly Building, Richmond

Guidance documents of the Virginia Parole Board (Delegate Hope), review of bills referred to the Council by the 2016 Session of the General Assembly, legislative recommendations from the Council's two HJR 96 study subcommittees, the Meetings Subcommittee and the Records Subcommittee. Issues to be studied in 2017.

Monday, December 5, 2016

House Room 1, Capitol Building, Richmond

Vote to recommend to the 2017 Session of the General Assembly omnibus legislation from HJR 96 (2014) study.

APPENDIX D

STATUS OF FREEDOM OF INFORMATION AND OTHER RELATED ACCESS BILLS 2016 FOIA LEGISLATIVE UPDATE

NOTE: Unless otherwise stated, the changes in the law described herein took effect July 1, 2016.

I. Introduction

The General Assembly passed a total of 16 bills amending the Virginia Freedom of Information Act (FOIA) during the 2016 Session. Note that while the Virginia Freedom of Information Advisory Council (the Council) heard several proposals in 2015 as part of its annual Legislative Preview, the Council did not vote to recommend any specific legislation this year. The Council in 2015 completed the second year of the three-year study of FOIA directed by HJR 96 (2014). As part of that study the Council has stated that it will recommend omnibus legislation to the 2017 Session of the General Assembly incorporating all of its recommend changes, rather than recommending individual pieces of legislation each year.

Three bills create two new sections in FOIA and amend existing provisions as follows:

- Reverses the holding of the Virginia Supreme Court in the case of *Department of Corrections v. Surovell*, by setting out the general rule of redaction, which provides that no provision of FOIA is intended, nor shall it be construed or applied, to authorize a public body to withhold a public record in its entirety on the grounds that some portion of the public record is excluded from disclosure by FOIA or by any other provision of law. Further, the bill states that a public record may be withheld from disclosure in its entirety only to the extent that an exclusion from disclosure under FOIA or other provision of law applies to the entire content of the public record. Otherwise, only those portions of the public record containing information subject to an exclusion under FOIA or other provision of law may be withheld, and all portions of the public record that are not so excluded shall be disclosed. The bill defines the term "information" and provides that it is declaratory of the law as it existed prior to the September 17, 2015, decision of the Supreme Court of Virginia in the case of the *Department of Corrections v. Surovell*. The bill also reverses that part of the holding of the Virginia Supreme Court in the case of *Department of Corrections v. Surovell* by providing that in a FOIA enforcement action, no court shall be required to accord any weight to the determination of a public body as to whether an exclusion applies. The bill contains technical amendments. HB 817 and SB 494, adding new § 2.2-3704.01 and amending §§ 2.2-3701, 2.2-3704, 2.2-3705.1 through 2.2-3705.7, 2.2-3711, and 2.2-3713;

- Requires certain local public bodies to post a FOIA rights and responsibilities document on their respective public government website. The bill also requires all state public bodies and all local public bodies that are subject to FOIA to designate and publicly identify one or more FOIA officers whose responsibility is to serve as a point of contact for members of the public in requesting public records and to coordinate the public body's compliance with the provisions of FOIA. The bill sets out where contact information for the designated FOIA officer is to be posted. The bill requires that any such FOIA officer shall possess specific knowledge of the provisions of FOIA and be trained at least annually by legal counsel for the public body or the Virginia Freedom of Information Advisory Council. HB 818 adding new § 2.2-3704.2 and amending § 2.2-3704.1.

Three bills add three new records exemptions in FOIA as follows:

- Excludes from the Virginia Freedom of Information Act any records received by the Department of Criminal Justice Services pursuant to the operation of or for the purposes of evaluating threat assessment teams and oversight committees, school safety audits, and school crisis, emergency management, and medical emergency response plans of public schools and threat assessment teams of public institutions of higher education, to the extent that such records reveal security plans, walk-through checklists, or vulnerability and threat assessment components. The bill allows criminal record, juvenile record, and health record information to be disseminated to members of a threat assessment team established by a local school board. Current law allows only threat assessment teams established by an institution of higher education to access such information. The bill provides that no member of a threat assessment team shall redisclose any such information or use the information beyond the purpose for which the disclosure was made. HB 1013 adding a new exemption in § 2.2-3705.2 and amending existing provisions of § 2.2-3705.4;
- Excludes records reflecting the substance of meetings in which individual sexual assault cases are discussed by a sexual assault response team from mandatory disclosure under the Virginia Freedom of Information Act. The findings of a sexual assault response team may be disclosed or published in statistical or other aggregated form that does not disclose the identity of specific individuals. HB 1016 adding a new exemption in § 2.2-3705.7;
- Establishes the Virginia Research Investment Committee (the Committee) to administer grants and loans from the Virginia Research Investment Fund (the Fund), created by this bill, to promote research, development, and commercialization in the Commonwealth. The bill provides that the State Council of Higher Education for Virginia (SCHEV) will establish guidelines related to administration and award of grants from the Fund, in consultation with the Committee. Upon receipt of completed grant applications, SCHEV will forward them to an entity with recognized science and technology expertise to review and rank the applications. Applications will then be forwarded to the Committee to make a final decision about the award of grants and funds. The bill contains corresponding exemptions for certain grant or loan application records and for the discussion or consideration of

- such records in closed meetings. HB 1343 adding new exemptions in §§ 2.2-3705.6 and 2.2-3711.

Three bills add two new meetings exemptions in FOIA as follows:

- Establishes the Virginia Growth and Opportunity Board to administer grants from the Virginia Growth and Opportunity Fund for regional economic and workforce development projects. The bill provides that regional councils will be established across the Commonwealth, consisting of representatives of government and the business and education communities, and councils may submit applications for collaborative projects in their regions that enhance private-sector growth, competitiveness, and workforce development. The bill creates a corresponding meeting exemption for the discussion or development of such grant proposals by a regional council. HB 834 and SB 449 amending 2.2-3711;
- Establishes the Virginia Research Investment Committee (the Committee) to administer grants and loans from the Virginia Research Investment Fund (the Fund), created by this bill, to promote research, development, and commercialization in the Commonwealth. The bill provides that the State Council of Higher Education for Virginia (SCHEV) will establish guidelines related to administration and award of grants from the Fund, in consultation with the Committee. Upon receipt of completed grant applications, SCHEV will forward them to an entity with recognized science and technology expertise to review and rank the applications. Applications will then be forwarded to the Committee to make a final decision about the award of grants and funds. The bill contains corresponding exemptions for certain grant or loan application records and for the discussion or consideration of such records in closed meetings. HB 1343 adding new exemptions in §§ 2.2-3705.6 and 2.2-3711.

Eight bills amend existing provisions of FOIA as follows:

- Provides that the personnel, working papers, and correspondence record exemption shall not be construed to authorize the withholding of any resumes or applications submitted by persons who are appointed by the Governor. The bill further provides that the resumes and applications for appointment submitted by persons who are appointed by the Governor shall be available to the public upon request. The bill provides that its provisions apply to persons appointed by the Governor on or after July 1, 2016. The bill contains technical amendments. HB 220 amending §§ 2.2-3705.1 and 2.2-3705.7;
- Makes various changes to the Board of Directors (the Board) of the BVU Authority (the Authority) and alters the methods of their appointment and their powers and duties. The bill also amends the powers and duties of the Authority. Among other changes, the bill eliminates several Authority-related records and open meeting exemptions from the Freedom of Information Act. The bill also contains an emergency clause. HB 1255 and SB 329 amending §§ 2.2-3705.6 and 2.2-3711. [NOTE: Due to the emergency clause, both bills were enacted effective April 8, 2016.]

- Clarifies that the FOIA exclusion for noncriminal incidents and reports applies to any public body that engages in criminal law-enforcement activities and does not rely on the definition of "noncriminal incidents records" in § 15.2-1722 of the Code of Virginia. The bill addresses a decision of the Virginia Supreme Court in *Fitzgerald v. Loudoun County Sheriff's Office*, which held that a noncriminal record must be a compilation in order for the exemption for noncriminal records to apply. The bill was also the subject of a Virginia Freedom of Information Advisory Council opinion (AO-08-15) concerning this exemption, which highlighted the need for clarification of this exemption based on the Fitzgerald holding. HB 1318 amending § 2.2-3706;
- Clarifies that nothing in the personnel exemption in the open meetings law of FOIA shall be construed to authorize a closed meeting by a local governing body or an elected school board to discuss compensation matters that affect the membership of such body or board collectively. SB 493 amending § 2.2-3711;
- Amends an existing exemption to exclude from mandatory disclosure records of an application for licensure or renewal of a license for teachers and other school personnel, including transcripts or other documents submitted in support of an application. SB 564 amending § 2.2-3705.3;
- Defines the term "critical infrastructure information" for purposes of FOIA. The bill also provides that any public body receiving a request for such records shall notify the Secretary of Public Safety and Homeland Security or his designee of the request and the response made by the public body. The bill contains an emergency clause. SB 645 amending § 2.2-3705.2. **[NOTE: Due to the emergency clause, this bill was enacted effective April 6, 2016.];**
- Clarifies public access to noncriminal records maintained by public bodies engaged in criminal law-enforcement activities. The bill reverses an April 2015 Virginia Supreme Court decision in *Fitzgerald v. Loudoun County Sheriff's Office*, which held that a noncriminal record must be a compilation in order for the exemption for noncriminal records to apply. The bill was also the subject of a Virginia Freedom of Information Advisory Council opinion (AO-08-15) concerning this exemption, which highlighted the need for clarification of this exemption based on the *Fitzgerald* holding. SB 727 amending § 2.2-3706.

Section II of this update presents a brief overview of amendments to FOIA section by section in order to provide context and organization to the numerous bills. Section III presents a brief overview of other access-related legislation passed during the 2016 Session of the General Assembly.

For more specific information on the particulars of each bill, please see the bill itself. Unless otherwise indicated, the changes will become effective July 1, 2016.

II. Amendments to the Freedom of Information Act

§ 2.2-3701 Definitions.

Virginia Freedom of Information Act (FOIA); record exclusions; rule of redaction; no weight accorded to public body's determination. Reverses the holding of the Virginia Supreme Court in the case of *Department of Corrections v. Surovell*, by setting out the general rule of redaction, which provides that no provision of FOIA is intended, nor shall it be construed or applied, to authorize a public body to withhold a public record in its entirety on the grounds that some portion of the public record is excluded from disclosure by FOIA or by any other provision of law. Further, the bill states that a public record may be withheld from disclosure in its entirety only to the extent that an exclusion from disclosure under FOIA or other provision of law applies to the entire content of the public record. Otherwise, only those portions of the public record containing information subject to an exclusion under FOIA or other provision of law may be withheld, and all portions of the public record that are not so excluded shall be disclosed. The bill defines the term "information" and provides that it is declaratory of the law as is it existed prior to the September 17, 2015, decision of the Supreme Court of Virginia in the case of the *Department of Corrections v. Surovell*. The bill also reverses that part of the holding of the Virginia Supreme Court in the case of *Department of Corrections v. Surovell* by providing that in a FOIA enforcement action, no court shall be required to accord any weight to the determination of a public body as to whether an exclusion applies. The bill contains technical amendments. HB 817 (2016 Acts of Assembly, c. 620) and SB 494 (2016 Acts of Assembly, c. 716).

§ 2.2-3704. Public records to be open to inspection; procedure for requesting records and responding to request; charges; transfer of records for storage, etc.

Virginia Freedom of Information Act (FOIA); record exclusions; rule of redaction; no weight accorded to public body's determination. See summary under § 2.2-3701, *supra*. HB 817 (2016 Acts of Assembly, c. 620) and SB 494 (2016 Acts of Assembly, c. 716).

§ 2.2-3704.01. Records containing both excluded and nonexcluded information; duty to redact.

Virginia Freedom of Information Act (FOIA); record exclusions; rule of redaction; no weight accorded to public body's determination. See summary under § 2.2-3701, *supra*. HB 817 (2016 Acts of Assembly, c. 620) and SB 494 (2016 Acts of Assembly, c. 716). [NOTE: Section 2.2-3704.01 is a new section added by HB 817 and SB 494.]

§ 2.2-3704.1. Posting of notice of rights and responsibilities by state public bodies; assistance by the Freedom of Information Advisory Council.

Virginia Freedom of Information Act (FOIA); designation of FOIA officer; posting of FOIA rights and responsibilities. Requires certain local public bodies to post a FOIA rights and responsibilities document on their respective public government website. The bill also requires all state public bodies and all local public bodies that are subject to FOIA to designate and publicly identify one or more FOIA officers whose responsibility is to serve as a point of contact for members of the public in requesting public records and to coordinate the public body's compliance with the provisions of FOIA. The bill sets out where contact information for the designated FOIA officer is to be posted. The bill requires that any such FOIA officer shall possess specific knowledge of the provisions of FOIA and be trained at least annually by legal counsel for the public body or the Virginia Freedom of Information Advisory Council. HB 818 (2016 Acts of Assembly, c. 748).

§ 2.2-3704.2. Public bodies to designate FOIA officer.

Virginia Freedom of Information Act (FOIA); designation of FOIA officer; posting of FOIA rights and responsibilities. *See summary under § 2.2-3704.1, supra.* HB 818 (2016 Acts of Assembly, c. 748). [NOTE: Section 2.2-3704.2 is a new section added by HB 818.]

§ 2.2-3705.1. Exclusions to application of chapter; exclusions of general application to public bodies.

Virginia Freedom of Information Act; public access to resumes and other information related to gubernatorial appointees. Provides that the personnel, working papers, and correspondence record exemption shall not be construed to authorize the withholding of any resumes or applications submitted by persons who are appointed by the Governor. The bill further provides that the resumes and applications for appointment submitted by persons who are appointed by the Governor shall be available to the public upon request. The bill provides that its provisions apply to persons appointed by the Governor on or after July 1, 2016. The bill contains technical amendments. HB 220 (2016 Acts of Assembly, c. 729).

Virginia Freedom of Information Act (FOIA); record exclusions; rule of redaction; no weight accorded to public body's determination. *See summary under § 2.2-3701, supra.* HB 817 (2016 Acts of Assembly, c. 620) and SB 494 (2016 Acts of Assembly, c. 716).

§ 2.2-3705.2. Exclusions to application of chapter; records relating to public safety.

Virginia Freedom of Information Act (FOIA); record exclusions; rule of redaction; no weight accorded to public body's determination. *See summary under § 2.2-3701, supra.* HB 817 (2016 Acts of Assembly, c. 620) and SB 494 (2016 Acts of Assembly, c. 716).

Threat assessment teams; local school boards. Excludes from the Virginia Freedom of Information Act any records received by the Department of Criminal Justice Services pursuant to the operation of or for the purposes of evaluating threat assessment teams and oversight committees, school safety audits, and school crisis, emergency management, and medical emergency response plans of public schools and threat assessment teams of public

institutions of higher education, to the extent that such records reveal security plans, walk-through checklists, or vulnerability and threat assessment components. The bill allows criminal record, juvenile record, and health record information to be disseminated to members of a threat assessment team established by a local school board. Current law allows only threat assessment teams established by an institution of higher education to access such information. The bill provides that no member of a threat assessment team shall redisclose any such information or use the information beyond the purpose for which the disclosure was made. HB 1013 (2016 Acts of Assembly, c. 554).

Virginia Freedom of Information Act (FOIA); exempt records concerning critical infrastructure information. Defines the term "critical infrastructure information" for purposes of FOIA. The bill also provides that any public body receiving a request for such records shall notify the Secretary of Public Safety and Homeland Security or his designee of the request and the response made by the public body. The bill contains an emergency clause. SB 645 (2016 Acts of Assembly, c. 717). [NOTE: *Due to the emergency clause, this bill was enacted effective April 6, 2016.*]

§ 2.2-3705.3. Exclusions to application of chapter; records relating to administrative investigations.

Virginia Freedom of Information Act (FOIA); record exclusions; rule of redaction; no weight accorded to public body's determination. See summary under § 2.2-3701, *supra*. HB 817 (2016 Acts of Assembly, c. 620) and SB 494 (2016 Acts of Assembly, c. 716).

Freedom of Information Act; exclusions for school personnel licensure applications. Excludes records of an application for licensure or renewal of a license for teachers and other school personnel, including transcripts or other documents submitted in support of an application, from the provisions of the Freedom of Information Act. SB 564 (2016 Acts of Assembly, c. 272).

§ 2.2-3705.4. Exclusions to application of chapter; educational records and certain records of educational institutions.

Virginia Freedom of Information Act (FOIA); record exclusions; rule of redaction; no weight accorded to public body's determination. See summary under § 2.2-3701, *supra*. HB 817 (2016 Acts of Assembly, c. 620) and SB 494 (2016 Acts of Assembly, c. 716).

Threat assessment teams; local school boards. See summary under § 2.2-3705.2, *supra*. HB 1013 (2016 Acts of Assembly, c. 554).

§ 2.2-3705.5. Exclusions to application of chapter; health and social services records.

Virginia Freedom of Information Act (FOIA); record exclusions; rule of redaction; no weight accorded to public body's determination. See summary under § 2.2-3701, *supra*. HB 817 (2016 Acts of Assembly, c. 620) and SB 494 (2016 Acts of Assembly, c. 716).

§ 2.2-3705.6. Exclusions to application of chapter; proprietary records and trade secrets.

Virginia Freedom of Information Act (FOIA); record exclusions; rule of redaction; no weight accorded to public body's determination. *See summary under § 2.2-3701, supra.* HB 817 (2016 Acts of Assembly, c. 620) and SB 494 (2016 Acts of Assembly, c. 716).

Virginia Research Investment Committee and Fund established; report. Establishes the Virginia Research Investment Committee (the Committee) to administer grants and loans from the Virginia Research Investment Fund (the Fund), created by this bill, to promote research, development, and commercialization in the Commonwealth. The bill provides that the State Council of Higher Education for Virginia (SCHEV) will establish guidelines related to administration and award of grants from the Fund, in consultation with the Committee. Upon receipt of completed grant applications, SCHEV will forward them to an entity with recognized science and technology expertise to review and rank the applications. Applications will then be forwarded to the Committee to make a final decision about the award of grants and funds. The Committee will be comprised of the Director of SCHEV, who will also serve as chairman, the Secretary of Finance, the staff directors of the House Appropriations and Senate Finance Committees, and three citizen members. The Speaker of the House of Delegates, the Senate Committee on Rules, and the Governor would each appoint one citizen member, to be selected from the nonlegislative citizen members of the Go Virginia Board if such Board is created by the 2016 Session of the General Assembly and becomes law. Of the moneys appropriated to the Fund, the General Assembly may specifically designate a portion of the moneys to be invested by the Board of the Virginia Retirement System. Only \$4 million of such invested funds may be awarded in any given year, and if the Committee decides to award a loan, such loan must come out of this \$4 million. HB 1343 (2016 Acts of Assembly, c. 775).

BVU Authority; Board powers, officers; broadband; FOIA. Makes various changes to the Board of Directors (the Board) of the BVU Authority (the Authority) and alters the methods of their appointment and their powers and duties. The bill also amends the powers and duties of the Authority. Among other changes, the bill eliminates several Authority-related records and open meeting exemptions from the Freedom of Information Act. The bill also contains an emergency clause. HB 1255 (2016 Acts of Assembly, c. 725) and SB 329 (2016 Acts of Assembly, c. 724). [NOTE: *Due to the emergency clause, both bills were enacted effective April 8, 2016.*]

§ 2.2-3705.7. Exclusions to application of chapter; records of specific public bodies and certain other limited exemptions.

Virginia Freedom of Information Act; public access to resumes and other information related to gubernatorial appointees. *See summary under § 2.2-3705.1, supra.* HB 220 (2016 Acts of Assembly, c. 729).

Virginia Freedom of Information Act (FOIA); record exclusions; rule of redaction; no weight accorded to public body's determination. See summary under § 2.2-3701, *supra*. HB 817 (2016 Acts of Assembly, c. 620) and SB 494 (2016 Acts of Assembly, c. 716).

Sexual assault response teams; participants; FOIA exclusion. Adds the Title IX coordinator; representatives from the office of student affairs, human resources, and counseling services; and a representative of campus security of any institution of higher education in the jurisdiction to the list of persons invited to participate in the annual meeting of a sexual assault response team. The bill also excludes records reflecting the substance of meetings in which individual sexual assault cases are discussed by a sexual assault response team from mandatory disclosure under the Virginia Freedom of Information Act. The findings of a sexual assault response team may be disclosed or published in statistical or other aggregated form that does not disclose the identity of specific individuals. HB 1016 (2016 Acts of Assembly, c.550).

§ 2.2-3706. Disclosure of criminal records; limitations.

Virginia Freedom of Information Act (FOIA); noncriminal incidents and reports. Clarifies that the FOIA exclusion for noncriminal incidents and reports applies to any public body that engages in criminal law-enforcement activities and does not rely on the definition of "noncriminal incidents records" in § 15.2-1722 of the Code of Virginia. The bill addresses a decision of the Virginia Supreme Court in *Fitzgerald v. Loudoun County Sheriff's Office*, which held that a noncriminal record must be a compilation in order for the exemption for noncriminal records to apply. The bill was also the subject of a Virginia Freedom of Information Advisory Council opinion (AO-08-15) concerning this exemption, which highlighted the need for clarification of this exemption based on the Fitzgerald holding. HB 1318 (2016 Acts of Assembly, c. 546).

Virginia Freedom of Information Act; public access to noncriminal records. Clarifies public access to noncriminal records maintained by public bodies engaged in criminal law-enforcement activities. The bill reverses an April 2015 Virginia Supreme Court decision in *Fitzgerald v. Loudoun County Sheriff's Office*, which held that a noncriminal record must be a compilation in order for the exemption for noncriminal records to apply. The bill was also the subject of a Virginia Freedom of Information Advisory Council opinion (AO-08-15) concerning this exemption, which highlighted the need for clarification of this exemption based on the *Fitzgerald* holding. SB 727 (2016 Acts of Assembly, c. 184).

§ 2.2-3711. Closed meetings authorized for certain limited purposes.

Virginia Freedom of Information Act (FOIA); record exclusions; rule of redaction; no weight accorded to public body's determination. See summary under § 2.2-3701, *supra*. HB 817 (2016 Acts of Assembly, c. 620) and SB 494 (2016 Acts of Assembly, c. 716).

Virginia Growth and Opportunity Act; report. Establishes the Virginia Growth and Opportunity Board to administer grants from the Virginia Growth and Opportunity Fund for regional economic and workforce development projects. The bill provides that regional councils will be established across the Commonwealth, consisting of representatives of

government and the business and education communities, and councils may submit applications for collaborative projects in their regions that enhance private-sector growth, competitiveness, and workforce development. A portion of the grant funds will be awarded on a population basis and a portion on a competitive basis. HB 834 (2016 Acts of Assembly, c. 779) and SB 449 (2016 Acts of Assembly, c. 778).

BVU Authority; Board powers, officers; broadband; FOIA. *See summary under § 2.2-3705.6, supra.* HB 1255 (2016 Acts of Assembly, c. 725) and SB 329 (2016 Acts of Assembly, c. 724). [NOTE: Both bills were enacted and took effect on April 8, 2016.]

Virginia Research Investment Committee and Fund established; report. *See summary under § 2.2-3705.6, supra.* HB 1343 (2016 Acts of Assembly, c. 775).

Virginia Freedom of Information Act (FOIA); closed meeting not authorized for discussion of compensation matters for local governing bodies and elected school boards. Clarifies that nothing in the personnel exemption in the open meetings law of FOIA shall be construed to authorize a closed meeting by a local governing body or an elected school board to discuss compensation matters that affect the membership of such body or board collectively. SB 493 (2016 Acts of Assembly, c. 544).

§ 2.2-3713. Proceedings for enforcement of chapter.

Virginia Freedom of Information Act (FOIA); record exclusions; rule of redaction; no weight accorded to public body's determination. *See summary under § 2.2-3701, supra.* HB 817 (2016 Acts of Assembly, c. 620) and SB 494 (2016 Acts of Assembly, c. 716).

III. Other Access-Related Legislation

Resolutions

Commending the Virginia Coalition for Open Government. House Joint Resolution 91.

Title 2.2 Administration of Government.

Duties and responsibilities of the Virginia Information Technologies Agency; reorganization and recodification. Makes numerous technical or organizational changes to Chapter 20.1 (§ 2.2-2005 et seq.) of Title 2.2 related to the establishment and operation of the Virginia Information Technologies Agency (VITA). The bill does not make substantive changes to VITA's powers and duties. The bill was developed by a staff workgroup led by the Division of Legislative Services pursuant to § 1-6 of the 2015 Appropriation Act to address concerns identified in the Joint Legislative Audit and Review Commission's 2014 Report on Virginia's Information Technology Governance Structure. HB 1064 (2016 Acts of Assembly, c. 296). [NOTE: The bill includes several FOIA-related provisions.]

Lobbyist reporting, the State and Local Government Conflict of Interests Act, and the General Assembly Conflicts of Interests Act; annual filing of required disclosures;

definition of gift; separate report of gifts; definition of procurement transaction; technical amendments. Requires the disclosure forms filed by lobbyists and persons subject to the conflict of interests acts to be filed annually. Lobbyists are required to file by July 1 for the preceding 12-month period complete through the last day of April, and persons subject to the conflict of interests acts are required to file on or before January 15. The bill also requires the Governor, Lieutenant Governor, and Attorney General, members of the Governor's Cabinet, and members of the General Assembly to file on or before May 1 a separate report of gifts received during the period beginning January 1 through adjournment sine die of the regular session of the General Assembly. Effective January 1, 2017, the bill removes from the Code the disclosure forms filed by lobbyists and persons subject to the conflict of interests acts and requires the Virginia Conflict of Interest and Ethics Advisory Council (Council) to prescribe the forms to be used to comply with disclosure requirements.

The bill also makes numerous other changes related to lobbyist reporting and the conflict of interests acts, including (i) exempting from the definition of a gift any gift with a value of less than \$20; (ii) providing that the filing of a single disclosure form by a person subject to the conflict of interests acts satisfies the filing requirement for all positions or offices held or sought by such person; (iii) clarifying that lobbying disclosure forms are filed with the Council and are open to public inspection and copying in the office of the Council, and not the Secretary of the Commonwealth; (iv) clarifying that candidates for statewide office, the General Assembly, and constitutional office are required to file a statement of economic interests with the Council; (v) authorizing travel provided to facilitate attendance by a legislator at certain meetings where attendance is approved by the Chairman of the House or Senate Committee on Rules in addition to approval by either committee; (vi) clarifying that gifts to certain members of a lobbyist's family are not considered gifts; (vii) providing that the definition of procurement transaction for purposes of the laws governing lobbyists is limited to those transactions in which the stated or expected value of the contract is \$5 million or more; (viii) providing that records relating to formal advisory opinions or informal advice of the Council shall be confidential and excluded from the mandatory disclosure provisions of the Virginia Freedom of Information Act; (ix) providing that a lobbyist's principal is not required to disclose the name of a legislative or executive official, or a member of his immediate family, who attends a reportable entertainment event if that legislative or executive official reimburses the principal for, or otherwise pays for, his attendance or the attendance of a member of his immediate family at the entertainment event; and (x) authorizes the Council to grant an extension from a filing deadline for good cause. The bill contains an emergency clause that applies to the changes described in clauses (vii) through (x).

Finally, the bill requires that the Supreme Court of Virginia report to the Council by October 1, 2016, on the application of the conflict of interests acts on members of the judiciary and evaluate the feasibility of creating separate provisions that would apply to such member. HB 1362 (2016 Acts of Assembly, c. 773) and SB 692 (2016 Acts of Assembly, c. 774).

Title 8.01 Civil remedies and procedure.

Immunity of persons at public hearing; attorney fees and costs. Allows the award of reasonable attorney fees and costs to any person who has a suit against him dismissed pursuant to immunity provided to him when appearing at a public hearing before the governing body of a locality or other local governmental entity. HB 1117 (2016 Acts of Assembly, c. 239).

Title 12.1 State Corporation Commission

Regulation of water and sewer utilities. Makes water and sewer companies subject to the rules of the State Corporation Commission (SCC) regarding meetings and communications between SCC commissioners and any party, or between commissioners and staff, concerning any fact or issue arising out of a proceeding involving the regulation of rates, charges, services, or facilities of a utility. The bill requires a public utility to send notice of a proposed rate increase electronically to customers who receive bills electronically. Every public utility providing water or sewer service is required to publish notice of changes in rates, tolls, charges, rules, and regulations at least once in one or more newspapers in circulation in its franchise area. The measure bars the SCC from dispensing with notice requirements applicable to water and sewer companies. HB 611 (2016 Acts of Assembly, c. 283) and SB 85 (2016 Acts of Assembly, c. 191).

Title 15.2 Counties, Cities, and Towns.

Sexual assault response teams; participants; FOIA exclusion. *See summary under § 2.2-3705.7, supra.* HB 1016 (2016 Acts of Assembly, c.550).

BVU Authority; Board powers, officers; broadband; FOIA. *See summary under § 2.2-3705.6, supra.* HB 1255 (2016 Acts of Assembly, c. 725) and SB 329 (2016 Acts of Assembly, c. 724). [NOTE: Both bills were enacted and took effect on April 8, 2016.]

Title 16.1 Courts Not of Records.

Law-enforcement records concerning juveniles; disclosure. Allows the disclosure of law-enforcement records concerning a juvenile who is referred to a court services unit-authorized diversion program. The bill prohibits further disclosure of such records by the diversion program or participants in the program. Law-enforcement officers may prohibit disclosure to protect a criminal investigation or intelligence information. HB 541 (2016 Acts of Assembly, c. 234).

Title 17.1 Courts of Record.

Retention of court records; violent felonies and acts of violence. Requires that the circuit court case files involving a conviction on crimes that are considered to be violent felonies or acts of violence be retained for 50 years or until the sentence term ends, whichever comes later. HB 624 (2016 Acts of Assembly, c. 180).

Title 18.2 Crimes and Offenses Generally.

Cannabidiol oil and THC-A oil; permitting of pharmaceutical processors to manufacture and provide. Authorizes a pharmaceutical processor, after obtaining a permit from the Board of Pharmacy (the Board) and under the supervision of a licensed pharmacist, to manufacture and provide cannabidiol oil and THC-A oil to be used for the treatment of intractable epilepsy. The bill sets limits on the number of permits that the Board may issue and requires that the Board adopt regulations establishing health, safety, and security requirements for permitted processors. The bill provides that only a licensed practitioner of medicine or osteopathy who is a neurologist or who specializes in the treatment of epilepsy may issue a written certification to a patient for the use of cannabidiol oil or THC-A oil. The bill also requires that a practitioner who issues a written certification for cannabidiol oil or THC-A oil, the patient issued such certification, and, if the patient is a minor or incapacitated, the patient's parent or legal guardian register with the Board. The bill requires further that a pharmaceutical processor shall not provide cannabidiol oil or THC-A oil to a patient or a patient's parent or legal guardian without first verifying that the patient, the patient's parent or legal guardian if the patient is a minor or incapacitated, and the practitioner who issued the written certification have registered with the Board. Finally, the bill provides an affirmative defense for agents and employees of pharmaceutical processors in a prosecution for the manufacture, possession, or distribution of marijuana. An enactment clause provides that except for provisions requiring the Board to promulgate regulations, the provisions of the bill do not become effective unless reenacted by the 2017 Session of the General Assembly. SB 701 (2016 Acts of Assembly, c. 577). [NOTE: Exempts registration information from FOIA while providing access to certain persons.]

Title 19.2 Criminal Procedure.

Threat assessment teams; local school boards. See summary under § 2.2-3705.2, *supra*. HB 1013 (2016 Acts of Assembly, c. 554).

Title 22.1 Education.

Data on teacher performance and quality; confidentiality. Requires data collected by or for the Department of Education or the local school board or made available to and able to be used by the local school board to judge the performance or quality of a teacher, maintained in a teacher's personnel file or otherwise, to be confidential in most instances. Current law requires such data to be confidential only if it is used by a local school board to make such a judgment. The bill provides that if such data is disclosed pursuant to court order, for the purposes of a grievance proceeding involving the teacher, or as otherwise required by state or federal law, such disclosure shall be made in a form that does not personally identify any student or other teacher. HB 524 (2016 Acts of Assembly, c. 390).

Threat assessment teams; local school boards. See summary under § 2.2-3705.2, *supra*. HB 1013 (2016 Acts of Assembly, c. 554).

Public charter schools. Makes several changes to the provisions for the establishment and operation of public charter schools, including making changes and providing greater specificity regarding (i) the applicability of various laws, regulations, policies, and procedures to public charter schools; (ii) the contents of charter applications; and (iii) the procedure for executing charter contracts and the contents of such contracts. SB 734 (2016 Acts of Assembly, c. 770). [NOTE: States explicitly that management committees of public charter schools are subject to FOIA.]

Title 23 Educational Institutions.

Revision of Title 23, Educational Institutions. Creates proposed Title 23.1 (Institutions of Higher Education; Other Educational and Cultural Institutions) as a revision of existing Title 23 (Educational Institutions). Proposed Title 23.1 consists of 32 chapters divided into five subtitles: Subtitle I (General Provisions); Subtitle II (Students and Campus); Subtitle III (Management and Financing); Subtitle IV (Public Institutions of Higher Education); and Subtitle V (Other Educational and Cultural Institutions). The bill organizes the laws in a more logical manner, removes obsolete and duplicative provisions, and improves the structure and clarity of statutes pertaining to institutions of higher education and other educational and cultural institutions in the Commonwealth. The bill is a recommendation of the Virginia Code Commission and has a delayed effective date of October 1, 2016. HB 209 (2016 Acts of Assembly, c. 588). [NOTE: The bill contains numerous access-related provisions.]

Public institutions of higher education; personal social media accounts. Prohibits a public or private institution of higher education from requiring a student to disclose the username or password to any of such student's personal social media accounts, as defined in the bill. The bill further provides that such a prohibition shall not prevent a campus police officer appointed by a public or private institution of higher education from performing his official duties. SB 438 (2016 Acts of Assembly, c. 597).

Title 24.2 Elections.

Lobbyist reporting, the State and Local Government Conflict of Interests Act, and the General Assembly Conflicts of Interests Act; annual filing of required disclosures; definition of gift; separate report of gifts; definition of procurement transaction; technical amendments. See summary under Title 2.2, *supra*. HB 1362 (2016 Acts of Assembly, c. 773) and SB 692 (2016 Acts of Assembly, c. 774).

Local electoral boards; meeting minutes. Requires the posting of minutes of the local electoral boards' meetings on the local electoral board's website or the official website of the county or city when such means are available. Minutes of meetings are required to be posted as soon as possible but no later than one week prior to the following meeting of the electoral board. SB 89 (2016 Acts of Assembly, c. 403).

Title 30 General Assembly.

Commission on Employee Retirement Security and Pension Reform established. Creates the Commission on Employee Retirement Security and Pension Reform (the Commission) in the legislative branch to study and make recommendations relating to the financial soundness of retirement plans covering state and local government employees; the suitability of retirement plans offered or maintained for current state and local government employees and the attributes of retirement plans that will be suitable for future employees; the impact on state and local governments of the anticipated retirement of experienced employees between 2016 and 2026 and strategies for replacing such employees; and the elements of compensation and benefits packages that are essential to attracting and retaining a highly productive state and local government workforce. HB 665 (2016 Acts of Assembly, c. 683.) [NOTE: Among other provisions, contains an exemption from FOIA for certain proprietary records of the Virginia Retirement System or its subsidiary corporations provided to the Commission.]

Lobbyist reporting, the State and Local Government Conflict of Interests Act, and the General Assembly Conflicts of Interests Act; annual filing of required disclosures; definition of gift; separate report of gifts; definition of procurement transaction; technical amendments. See summary under Title 2.2, *supra*. HB 1362 (2016 Acts of Assembly, c. 773) and SB 692 (2016 Acts of Assembly, c. 774).

Title 32.1 Health.

Threat assessment teams; local school boards. See summary under § 2.2-3705.2, *supra*. HB 1013 (2016 Acts of Assembly, c. 554).

Title 53.1 Prisons and Other Methods of Correction.

Method of execution. Authorizes the Director of the Department of Corrections to enter into contracts with a pharmacy or outsourcing facility for the compounding of drugs necessary to carry out an execution by lethal injection and provides that the compounding of such drugs (i) does not constitute the practice of pharmacy; (ii) is not subject to the jurisdiction of the Board of Pharmacy, the Board of Medicine, or the Department of Health Professions; and (iii) is exempt from the laws governing pharmacies and the Drug Control Act (§ 54.1-3400 et seq.). The bill also provides that the identities of any pharmacy or outsourcing facilities that enters into such a contract with the Department of Corrections, any officer or employee of such pharmacy or outsourcing facility, and any person or entity used by such pharmacy or outsourcing facility to facilitate the compounding of such drugs shall be confidential and exempt from the Freedom of Information Act (§ 2.2-3700 et seq.) and shall not be subject to discovery or introduction as evidence in any civil proceeding unless good cause is shown. The bill also sets forth labeling requirements for any drug compounded pursuant to such a contract. HB 815 (2016 Acts of Assembly, c. 747).

Title 54.1 Professions and Occupations.

Confidentiality of certain information obtained by health regulatory boards in disciplinary proceedings. Provides that in disciplinary actions involving allegations that a practitioner is or may be unable to practice with reasonable skill and safety to patients and the public because of a mental or physical disability, a health regulatory board shall consider whether to disclose and may decide not to disclose in its notice or order the practitioner's health records or his health services, although such information may be considered by the board in a closed hearing and included in a confidential exhibit to a notice or order. The bill provides that the public notice or order shall identify, if known, the practitioner's mental or physical disability that is the basis of its determination. HB 586 (2016 Acts of Assembly, c. 222).

Prescribers of covered substances; continuing education. Authorizes the Director of the Department of Health Professions to disclose information to the Board of Medicine about prescribers who meet a certain threshold for prescribing covered substances for the purpose of requiring relevant continuing education. The threshold shall be determined by the Board of Medicine in consultation with the Prescription Monitoring Program. The bill also directs the Board of Medicine to require prescribers identified by the Director of the Department of Health Professions to complete two hours of continuing education in each biennium on topics related to pain management, the responsible prescribing of covered substances, and the diagnosis and management of addiction. Prescribers required to complete continuing education shall be notified of such requirement no later than January 1 of each odd-numbered year. The provisions of the bill will expire on July 1, 2022. HB 829 (2016 Acts of Assembly, c. 447).

Prescription Monitoring Program; disclosures. Provides that the Director of the Department of Health Professions may disclose information in the possession of the Prescription Monitoring Program about a specific recipient who is a member of a Virginia Medicaid managed care program to a physician or pharmacist licensed in the Commonwealth and employed by the Virginia Medicaid managed care program to determine eligibility for and to manage the care of the specific recipient in a Patient Utilization Management Safety or similar program. The bill also requires the Prescription Monitoring Program advisory committee to provide guidance to the Director regarding such disclosures. HB 1044 (2016 Acts of Assembly, c. 410) and SB 491 (2016 Acts of Assembly, c. 568).

Prescription Monitoring Program. Provides that, beginning January 1, 2017, reports by dispensers to the Prescription Monitoring Program (the Program) shall be made within 24 hours or the dispenser's next business day, whichever comes later. The bill also allows the Director of the Department of Health Professions to disclose information about a specific recipient to a prescriber for the purpose of establishing the treatment history of the specific recipient when the prescriber is consulting on the treatment of such recipient; allows the Director to disclose information on a specific recipient to a dispenser for the purpose of establishing a prescription history to assist the dispenser in providing clinical consultation on the care and treatment of the recipient; removes the requirement that information disclosed to a dispenser for the purpose of determining the validity of a prescription be

disclosed only when the recipient is seeking a covered substance from the dispenser or the facility in which the dispenser practices; and provides that a prescriber may include information obtained from the Program for the purpose of establishing the treatment history of a specific recipient in the recipient's medical record. SB 287 (2016 Acts of Assembly, c. 309).

Cannabidiol oil and THC-A oil; permitting of pharmaceutical processors to manufacture and provide. *See summary under Title 18.2, supra.* SB 701 (2016 Acts of Assembly, c. 577). [NOTE: Exempts registration information from FOIA while providing access to certain persons.]

Title 55 Property and Conveyances.

Landlord and tenant laws. Provides under the landlord and tenant law and the Virginia Residential Landlord and Tenant Act (VRLTA) that unless a tenant is at fault in cases of mold needing remediation, the landlord is obliged to pay all costs associated with the tenant's temporary relocation as well as the costs of mold remediation. Among other things, the bill (i) provides that, except for applicable lawful householder's exemptions, nothing affects the right of a landlord with respect to an inchoate or perfected lien of a landlord on the personal property of a tenant of any leased or rented commercial or residential premises or the right of such landlord to distress, levy, and seize such personal property as otherwise provided by law; (ii) clarifies that residential provisions under the landlord and tenant law do not apply to dwelling units under the VRLTA; (iii) provides that a landlord's collection agency and a third party providing background screening or credit reporting services to the landlord or his managing agent may have access to tenant records; (iv) allows the landlord to charge a tenant for his records, if the rental agreement so provides; (v) clarifies that a landlord is not obligated to make repairs to address damages identified in the move-in inspection report unless otherwise required to do so under the VRLTA; (vi) requires a tenant to maintain carbon monoxide detectors to the standards established in the Uniform Statewide Building Code; and (vii) provides that if, upon inspection of the dwelling unit, the landlord determines that repairs are necessary, the landlord may make such repairs and send the tenant an invoice for payment. If, upon inspection of the dwelling unit, the landlord discovers a violation of the rental agreement, the VRLTA, or other applicable law, the landlord may send a written notice of termination. If a tenant declines to permit the landlord or managing agent to exhibit the dwelling unit for sale or lease, the landlord may recover damages, costs, and reasonable attorney fees against such tenant. The bill contains technical amendments. HB 735 (2016 Acts of Assembly, c. 744).

Limited Residential Lodging Act; penalty. Establishes the Limited Residential Lodging Act (the Act), which allows persons to rent out their primary residences or portions thereof for charge for periods of less than 30 consecutive days or do so through a hosting platform. Localities are preempted from adopting ordinances or zoning restriction prohibiting such short-term rentals, but authorized to adopt ordinances requiring persons renting their primary residences to have a minimum of \$500,000 of liability insurance, prohibiting persons from renting their primary residences if they fail to pay applicable taxes, and requiring persons renting their primary residences to register with the locality. A hosting platform must register with the Department of Taxation to collect and remit all applicable

taxes on behalf of the property owner using the hosting platform. The bill defines "limited residential lodging," "booking transaction," and "hosting platform" and provides for penalties for violations of the Act. The bill contains a reenactment clause and directs the Virginia Housing Commission to convene a work group to further study the issues presented in the bill and make recommendations for consideration by the 2017 Session of the General Assembly. SB 416 (2016 Acts of Assembly, c. 674). [NOTE: The bill provides that certain agreements between hosting platforms and the Department of Taxation are not confidential tax information and are subject to disclosure under FOIA.]

Title 56 Public Service Companies.

BVU Authority; Board powers, officers; broadband; FOIA. *See summary under § 2.2-3705.6, supra.* HB 1255 (2016 Acts of Assembly, c. 725) and SB 329 (2016 Acts of Assembly, c. 724). [NOTE: Both bills were enacted and took effect on April 8, 2016.]

Regulation of water and sewer utilities. *See summary under Title 12.1, supra.* HB 611 (2016 Acts of Assembly, c. 283) and SB 85 (2016 Acts of Assembly, c. 191).

Title 58.1 Taxation.

Department of Taxation; disclosure of certain tax information. Permits the Department of Taxation (the Department) to disclose to a taxpayer whether the taxpayer's employer submitted withholding records to the Department as required. The bill also requires the Department to maintain a list of licensed cigarette stamping agents and make it available upon request to any federal, state, or local law-enforcement agency. HB 951 (2016 Acts of Assembly, c. 344) and SB 325 (2016 Acts of Assembly, c. 227).

Title 59.1 Trade and Commerce.

Fantasy Contests Act; registration required; conditions of registration; civil penalty. Creates the Fantasy Contests Act (the Act), which applies to fantasy contests with an entry fee offered in Virginia. The bill defines "fantasy contest" as any online fantasy or simulated game or contest in which (i) the value of all prizes and awards offered to winning participants is established and made known to the participants in advance of the contest; (ii) all winning outcomes reflect the relative knowledge and skill of the participants and are determined predominantly by accumulated statistical results of the performance of individuals, including athletes in the case of sports events; and (iii) no winning outcome is based on the score, the point spread, or any performance of any single actual team or combination of teams or solely on any single performance of an individual athlete or player in any single actual event. The bill requires operators of fantasy contests to register annually with the Department of Agriculture and Consumer Services. The bill sets forth the conditions for registration and penalties for violation of the Act. The bill provides that such contests are not illegal gambling. HB 775 (2016 Acts of Assembly, c. 703). [NOTE: Among other provisions, the bill contains an exemption for certain records submitted to the Department pursuant to the audit requirements of § 59.1-559 and records submitted to the Department as part of an application for registration or renewal that contain information about the character or financial responsibility of the operator or its principal stockholders.]

Fantasy Contests Act; registration required; conditions of registration; civil penalty. Creates the Fantasy Contests Act (the Act), which applies to fantasy contests with an entry fee offered in Virginia. The bill defines "fantasy contest" as any online fantasy or simulated game or contest in which (i) the value of all prizes and awards offered to winning participants is established and made known to the participants in advance of the contest; (ii) all winning outcomes reflect the relative knowledge and skill of the participants and are determined predominantly by accumulated statistical results of the performance of individuals, including athletes in the case of sports events; and (iii) no winning outcome is based on the score, the point spread, or any performance of any single actual team or combination of teams or solely on any single performance of an individual athlete or player in any single actual event. The bill requires a fantasy contest operator, as a condition for registration, to establish procedures that include ensuring that players who are the subject of a fantasy contest are restricted from entering a fantasy contest that is determined, in whole or part, on the accumulated statistical results of a team of individuals in which such players are participants. The bill requires operators of fantasy contests to register annually with the Department of Agriculture and Consumer Services and to contract with a testing laboratory to verify the procedures for fantasy contests. The bill sets forth penalties for violation of the Act. The bill provides that fantasy contests conducted in accordance with these measures are not illegal gambling. SB 646 (2016 Acts of Assembly, c. 318). [NOTE: Among other provisions, the bill contains an exemption for certain records submitted to the Department pursuant to the audit requirements of § 59.1-559 and records submitted to the Department as part of an application for registration or renewal that contain information about the character or financial responsibility of the operator or its principal stockholders.]

Title 63.2 Welfare (Social Services).

Confidentiality of information about victims of certain crimes. Provides that, in order to ensure the safety of any adult or child victim of a violation of § 18.2-48, 18.2-355, 18.2-356, 18.2-357, or 18.2-357.1 and their families, programs and individuals providing services to such victims shall protect the confidentiality and privacy of persons receiving services by limiting the disclosure of information about such victims, including by prohibiting the release of individual client information without the informed consent of the minor and his parent or legal guardian, in cases in which the client is an unemancipated minor. The bill also clarifies that a person is a victim for purposes of such confidentiality and privacy protections regardless of whether any person has been charged with or convicted of any offense. The bill also provides that an alleged abuser of a minor or incapacitated person or of the minor's other parent may not consent to the release of confidential information. HB 373 (2016 Acts of Assembly, c. 670) and SB 253 (2016 Acts of Assembly, c. 666).

Title 65.2. Worker's Compensation.

Workers' compensation; fee schedules for medical services. Directs the Workers' Compensation Commission (the Commission) to adopt regulations establishing fee schedules setting the maximum pecuniary liability of the employer for medical services provided to an injured person pursuant to the Virginia Workers' Compensation Act, in the

absence of a contract under which the provider has agreed to accept a specified amount for the medical service. Among other provisions, contains a FOIA exemption for certain records and information relating to payments or reimbursements to providers used in development of the fee schedules. The bill contains an emergency clause, as well as other enactment clauses. HB 378 (2016 Acts of Assembly, c. 279) and SB 631 (2016 Acts of Assembly, c. 290). [NOTE: *Due to the emergency clause, both bills were enacted effective March 7, 2016.*]

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APPENDIX E

Bills referred to the FOIA Council by the 2016 Session of the General Assembly:

- **HB 61 Morris - Virginia Freedom of Information Act; misdemeanor violations; penalty.** Provides that in addition to the civil enforcement provisions of the Virginia Freedom of Information Act (FOIA), any officer, employee, or member of a public body who, without legal excuse or justification, deliberately, willfully, and knowingly violates certain FOIA provisions is guilty of a Class 1 misdemeanor.
- **HB 280 Marshall RG - Site plans; submission for approval by local planning commission; Freedom of Information Act.** Provides that any proposed plat, site plan, or plan of development that is officially submitted to the local planning commission for approval shall be considered a public record subject to disclosure under the Virginia Freedom of Information Act.
- **HB 281 Marshall, RG - FOIA; exclusion pursuant to nondisclosure agreement; building permits.** Removes any building permit submitted to a locality for final approval from an exclusion from the provisions of the Freedom of Information Act (FOIA) that otherwise protects confidential proprietary records of a private business pursuant to a nondisclosure agreement made with a public body.
- **HB 282 Marshal, RG - FOIA; exclusion pursuant to nondisclosure agreement.** Requires that a nondisclosure agreement by a public body be approved at an open meeting if it is to serve as the basis for an exclusion from the provisions of the Freedom of Information Act (FOIA) of confidential proprietary records of a private business. Such an approval must be renewed at least every three months at further open meetings if it is to continue to supply the basis for the FOIA exclusion.
- **HB 334 Pogge - Virginia Freedom of Information Act; proceeding for enforcement.** Provides that in an enforcement action, if the court finds the public body violated certain meeting notice requirements, the court may invalidate any action of the public body taken at such meeting.
- **HB336 Pogge - Virginia Freedom of Information Act; public access to library records of minors.** Protects from mandatory disclosure library records that can be used to identify any library patron under the age of 18 years. The bill provides that access shall not be denied to the parent, including a noncustodial parent, or guardian of such person, unless the parent's parental rights have been terminated or a court of competent jurisdiction has restricted or denied such access. For records of persons under the age of 18 years who are emancipated, the right of access may be asserted by the subject thereof. Any parent or emancipated person under the age of 18 years who is the subject of the record may waive, in writing, the protections afforded by

- the bill. If the protections are so waived, the public body shall open such records for inspection and copying.
- **HB 383 Marshall, RG - FOIA; exclusion pursuant to nondisclosure agreement; building permits; site plans.** Removes any building permit submitted to a locality for final approval from an exclusion from the provisions of the Freedom of Information Act (FOIA) that otherwise protects confidential proprietary records of a private business pursuant to a nondisclosure agreement made with a public body and provides that any proposed plat, site plan, or plan of development that is officially submitted to the local planning commission for approval shall be considered a public record subject to disclosure under FOIA.
- **HB 432 Villanueva - Virginia Freedom of Information Act; public access to certain criminal investigative files.** Limits the application of the exemption for criminal investigative files to active criminal investigative files. As a result, closed or inactive criminal investigative files would be subject to mandatory disclosure, if requested.
- **HB 698 Kory - Virginia Freedom of Information Act; right to speak at open meetings.** Requires that every public body afford an opportunity for public comment during any open meeting. A public body may adopt reasonable rules governing the public comment portion of the meeting, including imposing reasonable restrictions on time, place, and manner. The bill contains technical amendments.
- **HB 757 Bell, RB - Meetings of local or regional public bodies; public comment.** Requires a local or regional public body to disseminate to the public an agenda for a public meeting at least seven days prior to the meeting or 24 hours prior to an emergency meeting. The bill also requires such body to provide at least five minutes for public comment on each agenda item at the public meeting.
- **HB 819 LeMunyon - Virginia Freedom of Information Act; public access to certain audio and video recordings.** Requires the release of any audio or video recording or combination thereof made by a correctional officer, jail officer, or deputy sheriff of an individual imprisoned in a penal institution in the Commonwealth being subdued by the correctional officer, jail officer, or deputy sheriff in a manner that results in the death of the individual being subdued or rendering him unconscious. The bill defines "correctional officer," "jail officer," and "deputy sheriff." The requirement applies to any audio or video recording that exists on or after July 1, 2016, regardless of when the audio or video recording was made. The bill contains a technical amendment.
- **SB 202 Stuart - Virginia Freedom of Information Act; disclosure of salaries of public employees.** Provides that public access to records of the official salaries or rates of pay of public employees whose annual rate of pay is the annual equivalent of twice the federal minimum wage or less is not required under FOIA. Currently, public access to salary information is required for public employees whose annual rate of pay is more than \$10,000. The bill also provides that publicly available

- databases of public employees' salaries shall not include the name of any public officer, appointee, or employee. The bill contains a technical amendment.
- **SB 492 Surovell - Virginia Freedom of Information Act (FOIA); limitation on exemption for certain criminal investigative files.** Limits the application of the criminal investigative file exemption by providing that nothing in FOIA shall be construed to authorize the withholding of information from the records of completed unattended death investigations from immediate family members of the victim, provided that (i) such information is in a form that does not reveal the identity of persons supplying information or other individuals involved in the investigation and (ii) the immediate family members of the victim have been ruled out as suspects.
- **SB 678 Garrett - Virginia Freedom of Information Act (FOIA); time period for responding to requests for records.** Allows any county, city, or town with a population of less than 10,000 to have an additional 30 working days to respond to a FOIA request in cases where it is practically impossible to provide the requested records or to determine whether they are available within the initial five-work-day period. Currently, in such cases, a public body has seven additional working days to respond. The bill contains a technical amendment.

FOIA Council action on each bill:

- **HB 61 Morris - Virginia Freedom of Information Act; misdemeanor violations; penalty.** Delegate Morris spoke to his bill at the Council's September 19, 2016 meeting but consideration was deferred. At its October 17, 2016 meeting the Council recommended taking no action on the bill.
- **HB 280 Marshall RG - Site plans; submission for approval by local planning commission; Freedom of Information Act.** Referred to the Records Subcommittee for further study. After hearing from the patron and interested parties, the Records Subcommittee voted at its August 18, 2016 meeting to return the subject matter to the full Council without recommendation. After again hearing from the patron and interested parties, the Council voted at its November 21, 2016 meeting to recommend no action on the bill.
- **HB 281 Marshall, RG - FOIA; exclusion pursuant to nondisclosure agreement; building permits.** Referred to the Records Subcommittee for further study. After hearing from the patron and interested parties, the Records Subcommittee voted at its August 18, 2016 meeting to return the subject matter to the full Council without recommendation. After again hearing from the patron and interested parties, the Council voted at its November 21, 2016 meeting to recommend no action on the bill.
- **HB 282 Marshal, RG - FOIA; exclusion pursuant to nondisclosure agreement.** Referred to the Records Subcommittee for further study. After hearing from the patron and interested parties, the Records Subcommittee voted at its August 18, 2016 meeting to return the subject matter to the full Council without recommendation.

- After again hearing from the patron and interested parties, the Council voted at its November 21, 2016 meeting to recommend no action on the bill.
- **HB 334 Pogge - Virginia Freedom of Information Act; proceeding for enforcement.** The Council heard from the patron and voted against recommending the bill at its November 21, 2016 meeting.
- **HB336 Pogge - Virginia Freedom of Information Act; public access to library records of minors.** The Council heard from the patron and voted to recommend the bill at its November 21, 2016 meeting.
- **HB 383 Marshall, RG - FOIA; exclusion pursuant to nondisclosure agreement; building permits; site plans.** Referred to the Records Subcommittee for further study. After hearing from the patron and interested parties, the Records Subcommittee voted at its August 18, 2016 meeting to return the subject matter to the full Council without recommendation. After again hearing from the patron and interested parties, the Council voted at its November 21, 2016 meeting to recommend no action on the bill.
- **HB 432 Villanueva - Virginia Freedom of Information Act; public access to certain criminal investigative files.** The Council did not hear from the patron, but considered the subject matter of the bill along with SB 492 (Surovell). At its October 17, 2016 meeting the Council recommended taking no action on the bill.
- **HB 698 Kory - Virginia Freedom of Information Act; right to speak at open meetings.** Referred to Meetings Subcommittee, which voted at its October 17, 2016 meeting to return the subject matter to the full Council without recommendation. The Council heard from the patron at its November 21, 2016 meeting. A motion to recommend the bill failed for lack of a second.
- **HB 757 Bell, RB - Meetings of local or regional public bodies; public comment.** Referred to Meetings Subcommittee, which voted at its October 17, 2016 meeting to return the subject matter to the full Council without recommendation. The Council did not hear from the patron, but considered the subject matter of the bill along with HB 698 (Kory). The Council made no recommendation on HB 757.
- **HB 819 LeMunyon - Virginia Freedom of Information Act; public access to certain audio and video recordings.** Delegate LeMunyon, speaking as the bill's patron, recommended taking no action on this bill and the Council agreed by consensus at its June 23, 2016 meeting.
- **SB 202 Stuart - Virginia Freedom of Information Act; disclosure of salaries of public employees.** On recommendation from Senator Stuart as patron, the Council agreed by consensus at its June 23, 2016 meeting to take no action on the bill.

- **SB 492 Surovell - Virginia Freedom of Information Act (FOIA); limitation on exemption for certain criminal investigative files.** Senator Surovell addressed his bill at the September 19, 2016 and October 17, 2016 Council meetings. A motion to recommend the bill failed for lack of a second at the October 17, 2016 meeting.
- **SB 678 Garrett - Virginia Freedom of Information Act (FOIA); time period for responding to requests for records.** The Council did not hear from the patron. At its October 17, 2016 meeting the Council recommended taking no action on the bill.

APPENDIX F

Breakdown of Inquiries to Council December 1, 2015 through November 30, 2016

The Council offers FOIA guidance to the public, representatives and employees of state and local government, and members of the news media. The Council issues both formal, written opinions as well as more informal opinions via the telephone or e-mail. At the direction of the Council, the staff has kept logs of all FOIA inquiries. In an effort to identify the users of the Council's services, the logs characterize callers as members of government, media, or citizens. The logs help to keep track of the general types of questions posed to the Council and are also invaluable to the Council in rendering consistent opinions and monitoring its efficiency in responding to inquiries. All opinions, whether written or verbal, are based on the facts and information provided to the Council by the person requesting the opinion. During this reporting period, the Council has answered a broad spectrum of questions about FOIA. This appendix provides a general breakdown of the type and number of issues raised by the inquiries received by the Council.

Time period: December 1, 2015 through November 30, 2016

Total number of inquiries: 1,730

A. REQUESTS FOR WRITTEN ADVISORY OPINIONS, BY MONTH:													
	Dec	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Total
Government	0	0	0	0	0	0	0	0	0	0	0	0	0
Citizens	0	0	0	0	0	0	0	0	1	1	0	0	2
News Media	0	0	0	0	0	0	0	1	0	0	0	0	1
TOTAL	0	0	0	0	0	0	0	1	1	1	0	0	3
B. TELEPHONE & EMAIL INQUIRIES, BY MONTH:													
	Dec	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Total
Government	75	71	78	91	82	100	122	123	105	89	67	55	1058
Citizens	46	43	38	49	38	29	54	41	62	55	63	43	561
News Media	11	12	9	13	7	8	11	12	11	3	9	2	108
TOTAL	132	126	125	153	127	137	187	176	178	147	139	100	1727
C. TOTAL NUMBER OF ALL INQUIRIES, BY MONTH:													
	Dec	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Total
Government	75	71	78	91	82	100	122	123	105	89	67	55	1058
Citizens	46	43	38	49	38	29	54	41	63	56	63	43	563
News Media	11	12	9	13	7	8	11	13	11	3	9	2	109
TOTAL	132	126	125	153	127	137	187	177	179	148	139	100	1730

A. REQUESTS FOR WRITTEN ADVISORY OPINIONS, BY CATEGORY:			
	Records	Meetings	Other
Government	0	0	0
Citizens	1	1	0
News Media	1	0	0
TOTAL	2	1	0
B. TELEPHONE & EMAIL INQUIRIES, BY CATEGORY:			
	Records	Meetings	Other
Government	658	202	275
Citizens	348	55	214
News Media	61	28	36
TOTAL	1067	285	525
C. TOTAL NUMBER OF ALL INQUIRIES, BY CATEGORY:			
	Records	Meetings	Other
Government	658	202	275
Citizens	349	56	214
News Media	62	28	36
TOTAL	1069	286	525

APPENDIX G

OPINIONS ISSUED BY THE COUNCIL DECEMBER 2006 THROUGH NOVEMBER 2015

The purpose of this appendix is to show trends over time. In order to save space, we have chosen to present a ten-year timespan rather than the full history of all opinions issued since the inception of the Council in July, 2000. For opinion count totals from prior years not shown in this appendix, please see previously issued Annual Reports.

Written Opinions:

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Government	2	1	3	2	3	3	2	1	3	0
Citizens	8	8	10	3	4	2	5	2	3	2
News Media	3	2	0	1	0	0	3	3	3	1

Informal Opinions:

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Government	854	827	910	899	820	846	872	873	802	1058
Public	674	641	618	620	560	433	452	467	467	561
News Media	167	206	150	165	152	124	173	148	146	108

Total Number of Opinions:

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Government	856	828	913	901	823	849	874	874	805	1058
Public	682	649	628	623	564	435	457	469	470	563
News Media	170	208	150	166	152	124	176	151	149	109
GRAND TOTAL	1708	1685	1691	1690	1539	1408	1507	1494	1424	1730