

Freedom of Information Act Overview

Deb Love

Senior Assistant Attorney General
& Chief, Education Section

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Purpose of FOIA

Business of the Commonwealth =
Business of the people

Translation: Citizens and press have the right to:

Inspect and copy public records

Attend public meetings

Importance of FOIA Compliance

Failure to comply can mean

- Litigation
- Civil penalties up to \$5000
- Invalidation of decisions
- Loss of confidence in search process

What's a Meeting?

A function of “how many” AND “why”

How many:

Quorum (7); OR

Three or more

Why:

Discussing or transacting public business

Requirements to Hold a Meeting

- Notice – generally 3 working days
 - Date, time, “location”
- Right of public/press to attend
- To be conducted in open, with limited exceptions
- Minutes

Meetings

1. All physically present in one location

Public and press may attend in primary location

Meetings (cont'd)

2. Quorum in one location

- a. Meeting plans include remote location; OR
- b. Per Council policy, individual members may participate remotely in certain situations:

Individual Remote Participation

1. Temporary or permanent disability or medical condition – UNLIMITED
2. Must care for family member due to medical condition – UNLIMITED
3. Principal resident is more than 60 miles from meeting location – UNLIMITED
4. Personal matter – must specifically disclose – no more than 2 meetings/year or 25% of calendar year, whichever is greater

MUST BE APPROVED BY COMMITTEE

“Meetings” via Email

Email exchanges may constitute a “meeting”

If 3 or more members involved, AND

Manner of communication meeting-like

Watch out for “reply all”

Closed Sessions

Are the exception, not the rule

Must be for purpose set out in FOIA

May have non-members attend; must permit
Committee members, attorney to attend

Require members to certify compliance with FOIA

Closed Session Purposes

- **Personnel** – discussion, consideration, interviewing of prospective candidates for employment
- **Contracts** – discussion of award of public contract involving expenditure of public funds where discussion in open session would adversely affect bargaining position or negotiation strategy
- **Legal advice** – consultation with counsel on “specific legal matters”

Closed Session - Process

- Starts in open session
- Motion stating
 - subject matter
 - Purpose
 - Code §
- Stay on subject!

Returning to Open Session

- Return to open session by motion
- Certification by roll call of each member:
 - Only matters lawfully exempted AND identified in the motion were heard or discussed
- A member who believes this is NOT true must so state prior to the vote

Records

All records in possession of public officers or employees (including Search Committee members) are “public records” that are available for public or press to read, inspect, make copies

What's a Record?

Anything used to transact public business and record data – *wherever found* (e.g., personal email)

Examples:

letters

contracts

memo

audio and video recordings

computer records

text and voicemail messages

FOIA Requests

Citizens of Virginia and most press entitled

+

Need not be in writing

+

Tight timetable to respond

Notify staff of request, right away

Response to FOIA Requests

FOIA provides access to records, not information

Need not create a record (e.g., statement from member)

Records can be withheld or redacted (personnel records, legal advice, etc.)

Penalties

Non-legal: embarrassment, lost of trust

Legal: Litigation

Civil penalties

1st offense: \$2K;

\$5K for additional)

Destruction/alteration of records:

\$100/record

Questions?