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The Sunshine Report: *Online*

Transparency news from the
Virginia Coalition
for Open Government
January 2013

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Coalition News

An all-too-quick goodbye

VCOG is disappointed to have to say good-bye to its most recent appointee by the Virginia Press Association. Bill O'Donovan of Williamsburg was appointed by VPA in July and immediately became active in VCOG's work. Because of consolidation moves at the Tribune Company, O'Donovan stepped down from his long-time position as publisher of the *Virginia Gazette*, *Williamsburg Magazine* and *The Tidewater Review*. He resigned from the VCOG board at the same time. Thanks, Bill, and good luck.

FOIA car magnets

VCOG FOIA magnets are available for \$5 [on VCOG's website](#). It's also easy to add a VCOG membership to your purchase. Once you have your magnet in place, post a picture of it to [VCOG's Facebook page](#), or attach it to a tweet with the hashtag #vaFOIA.



Stay up to date on access

Sign up for VCOG's [daily listserv on access and First Amendment news](#) from Virginia and across the country. It's free!

Greetings, Friend of VCOG!

Correction

An item in the December *Sunshine Report* incorrectly reported that Virginia's redistricting process received a failing grade in an survey by the State Integrity Investigation. Virginia actually received a grade of C. My apologies for the error.



Legislative Preview

New bills are being added to the General Assembly's website, but the huge majority of them won't be posted until next week at the earliest. So far, only one bill affecting FOIA has been introduced: [SB802](#) would allow two members of local electoral board to telephone each other to schedule meetings without triggering FOIA's meeting provisions. The bill appears aimed at an [opinion of the Attorney General](#) that confirmed FOIA's application to all communications between members of the three

For a steady stream of access-related stories and additional commentary and information, join the more than 400 people who are following [VCOG on Twitter](#). The latest six posts are also carried on [our website](#).

FOIA Council opinions

The FOI Advisory Council finished 2012 with a flurry, issuing four opinions in October and December, the first opinions since April.

In [AO-04-12](#), the council ruled that a telephone billing record paid for by a public official in his personal capacity and that was not prepared for or used in the transaction of public business is not a public record. A Virginia Beach attorney had been seeking phone records of a member of a public university board of visitors.

In [AO-05-12](#), the council reminded public bodies that agenda packets must be made available for public inspection at the same time they are given to members of the public body.

The council gave a lengthy and somewhat complex discourse in [AO-06-12](#) on when mug shots are available for public release. A mug shot cannot be withheld as a noncriminal incident record, but it may be withheld if its release would jeopardize a felony investigation. Further, it may also be withheld if the subject of the photo is also a witness.

And in [AO-07-12](#), the council ruled that the Crooked Road, a musical heritage nonprofit in Southwest Virginia, was subject to FOIA, not because it was wholly or substantially supported by public funds (only around 25% of the organization's funding came from public funds), but because, by statute, it was an instrumentality of the Southwest Virginia Cultural Heritage Foundation, itself a public body.

Month of the take-down order

Lawyers for the Fairfax County School Board sent a request to Cary Wiedmann, who operates the online bulletin board Fairfax Underground, demanding that he remove a file detailing grades given to more than 2,000 Fairfax High School students. According to the [Washington Post](#), the school then got a temporary restraining order against the website, which is set to expire Jan. 4.

Also in Fairfax, a judge ordered a local woman to delete negative online reviews about a home contractor and to refrain from repeating the claims in future posts. According to the [Richmond Times-Dispatch](#), the ACIU and Public Citizen will pursue

to all conversations between any two or the three members of the electoral board in Goochland.

As expected, bills to remove public notices from newspapers are steadily trickling in. Companion bills [HB1426](#) and [SB765](#) would allow the Towns of Damascus and Glade Spring to publish public notices on the towns' websites or on television instead of the newspaper. (It should be noted that that currently neither town has public notices prominently displayed on their sites, even though putting public notices online is allowable under current law.)

[HB1373](#) would allow localities of more than 50,000 people to use websites, radio or television instead of newspapers, while [HB1378](#) would allow for website publication in lieu of newspapers for all localities. The governor's Local Government Mandate Review Task Force is also expected to put forth bills eliminating the newspaper requirement.

The FOIA Council will also be recommending two pieces of legislation, each having to do with when and how public bodies can hold electronic meetings. One bill would give members of any state, regional and local public bodies a "personal matters" excuse for participating via electronic means, though there would be a two-per-year limit. Another would allow certain committees of state agencies to meet electronically without a quorum in one location, provided they use audio and visual technology and provided that a central location for public participation is designated. The proposal will have a one-year sunset clause attached to it. The Council rejected both a two-year sunset and a proposal by the Virginia Press Association to create a pilot program limited to a select few agencies designated by the governor.

VCOG will be tracking access-related legislation with the help of Christopher Newport University student Kelli Montgomery. And, as always, VCOG will be lobbying for and against bills. ***Please let us know of your availability to testify at committee meetings and/or to write or call your legislators to voice your opinion about pending legislation. YOUR VOICE MATTERS!!***

Open government in the news

Was it just lunch or was it a public meeting? That was what Richmond County citizens were asking when two supervisors sitting down to lunch with the county administrator were suddenly joined by a third supervisor. [According to a witness](#), the newly joined supervisor indicated he did not want to talk about public business but the discussion nonetheless stayed on matters brought up in the recently concluded public meeting....Fallout in Hampton over a questionable cigarette sting operation continued in December when [the Daily Press reported](#) that withdrawals from the operation's account were often lacking in detailed

[operation](#), the [FOIA](#) and [Public Citizen](#) will pursue the woman's appeal, which the groups say is a matter of free speech.

Meanwhile, also according to the [Richmond Times-Dispatch](#), a Richmond judge ordered Mo Karn, a self-described anarchist, and Nathan Cox of Virginia CopBlock, to remove "sensitive police department information," including personal contract information for employees of the Richmond Police Department, from a website they run. It's not the first clash between Karn and the police department: in January 2011, police tried to take legal action against her to get back documents they previously gave her in response to a FOIA request.

Finally, the founder and chancellor of Patrick Henry College invoked inapplicable copyright law in an attempt to force the operators of a gay-themed blog called Queer at Patrick Henry College to close the site down. According to the [Loudoun Times-Mirror](#), Dr. Michael Farris backed off his demand the next day, this time referring to trademark law, but also saying litigation would not be appropriate.

operation's account were often lacking in detailed receipts. Charges of \$485 at a Las Vegas steakhouse were not itemized, for instance, not to mention the nearly \$29,000 in purchases made on the operation's debit card....The York County Emergency Communications [became the first locality in the country](#) to receive 911 text messages. The county said the service should be used for emergencies involving the hearing impaired, medical emergencies where a caller is unable to speak, or maybe for a home invasion/abduction where the victim doesn't want to talk aloud....A federal appeals court [affirmed the conviction](#) of former Delegate Philip Hamilton on bribery and extortion charges, ruling that he had no expectation of privacy in emails exchanged with his wife on Newport News school system computers or email accounts....A Moneta man won a FOIA case against Bedford County that requires the county to turn over certain geographic information system mapping data, rejecting the county's argument that it would be required to create a new record (FOIA does not require the creation of new records to fill FOIA requests). [County Attorney Carl Boggess told the News & Advance](#) that "producing such a map would be con suing to citizens as it would appear that the county has condoned [the requester's] maps when we do not know if the data that he has supplied is accurate or not."...Despite a prior history of releasing summaries of the Norfolk Bar Task Force's activities, the city's attorney abruptly halted the practice in December, saying FOIA exemptions for attorney-client privilege and criminal investigatory information [would now be used to withhold the records](#). The Bar Task Force, comprised of several different city officials, makes surprise visits to city restaurants and bars to check for building and fire code violations....Retired Franklin police officer Ronnie McClenny got an answer he did not expect [when he asked for information](#) on whether or not the city had collected money from drivers who were drunk, driving recklessly or driving without a license when they had an accident: the city does not keep such records. An ordinance authorizing the fee collection was adopted in 2008 in part because of McClenny's using.

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and feel free to ask for a copy of our IRS 990 and our FY10-11 financial audit*

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