

# Sunshine Report



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## FOIA in the courts!

**At least 9 court cases, at all court levels, will shape and define the state's FOIA landscape**

This has been a busy year for the Freedom of Information Act in Virginia's courts. From challenges to the residency requirement in the 4th U.S. Circuit Court of Appeals, to the standoff in Onancock over an employment contract, citizens, activists and government took to the courts to right what they considered wrongs in the interpretation or application of FOIA.

At the federal level, two plaintiffs have been arguing for at least two years that the part of FOIA that says the law can be used only by citizens of Virginia (and media circulating in or broadcasting to Virginia) is unconstitutional.

The Department of Social Services denied Mark McBurney of Rhode Island certain records related to the child support enforcement action he filed against his ex-wife because he was not a Virginia citizen, though he had been a few years earlier.

Henrico County denied Roger Hurlbert's request for records related to real estate assessments for the same reason: he was a citizen of California, not Virginia.

The case went up to the **4th Circuit** on a procedural issue before it was returned to the lower courts for consideration on the merits. The government defendants won at the trial level, and at oral arguments in late October, the plaintiffs' attorney faced stiff questioning from Judge Paul V. Niemeyer. In particular, he expressed doubt that Hurlbert had been prevented from practicing his common calling (his job) under the Privileges and Immunities Clause of the U.S. Constitution.

The **Virginia Supreme Court** held that the State Corporation Commission is not subject to FOIA. The November decision capped a long-running dispute between the SCC and Chesapeake resident George Christian. The SCC gave Christian some of the records he asked for, but withheld others, noting that both of its responses were guided by internal rules related to the release of records, not by FOIA.

Writing for the unanimous court, Justice Leroy F. Millette, Jr. wrote that FOIA did not apply to the SCC because it is a constitutionally established office. The Supreme Court indicated in two earlier decisions that the SCC was not subject to FOIA, but did not decide the issue directly until this case.

In **Fairfax**, Judge Leslie Alden ruled on several FOIA issues raised by a group of parent-activists against Fairfax County Public Schools. Fronted by plaintiff Jill Hill, the group argued the board members held a de facto meeting when they conducted a quick-fire exchange of email prior to a board meeting. Alden disagreed but said the board did violate FOIA when it allowed one of its members to participate in a closed session by phone. Alden also ruled that some of the school superintendent's emails should have been released. Nonetheless, Alden refused to impose any penalty. The Virginia Supreme Court said in December that it will review the ruling.

In **Loudoun County**, the local Board of Equalization is claiming that it acted properly when it escorted Beverly Bradford out of a meeting after hearing the click of her camera as she



see "Litigation" on page 5

## VCOG Annual Conference: Monticello

A snowy(!), gray morning yielded to afternoon sun on Mr. Jefferson's mountain, Saturday, Oct. 29, as several dozen citizens, journalists and even a politician or two joined VCOG in discussing open government issues of the day at Access 2011.

The morning at Monticello started with a "reverse press conference," where local elected and appointed officials asked questions of local journalists about access. Local library board member Gary Grant challenged the reporters to keep regular tabs on government officials by routinely asking for or monitoring their email. In turn, all three from the press side (Henry Graff of WVIR, Rob Schilling of The

climate-science professor Michael Mann. Though both agreed that UVA has not responded properly under Virginia law, they disagreed over whether the law of this or any state should be amended to give more protection to scientists in the name of academic freedom.

VCOG also presented its annual awards to citizens, media and government making a difference to FOIA and access to government in Virginia. Jill DeMello Hill received the Laurence E. Richardson citizen award for her work uncovering records from the Fairfax County school system about the surprise closing of a local elementary school.

*The Roanoke Times* was recognized in the media category for its pursuit (and ultimate victory) of records from the City of Radford. The paper asked to see a FOIA request made by an employee, but the city refused, saying it was a personnel record. A judge sided with the paper. The city eventually dropped its appeal.

Delegates Jim LeMunyon (R-Chantilly) and Mark Keam (D-Vienna) shared the government prize for their two-year effort to require legislators' voting records to



Moderator Christian Trejbal of *The Roanoke Times*, Chris Horner of the *American Tradition Institute*, and Michael Halpern of the *Union of Concerned Scientists* discuss ATT's FOIA case against the University of Virginia at VCOG's annual conference.

Schilling Show and Hawes Spencer of *The Hook*) said they felt they had nothing to hide if their email was required to be public (barring constitutional protection, of course!).

Roger Christman from the Library of Virginia gave a presentation on his work in archiving and making searchable the estimated 1.5 million email from Governor Tim Kaine's administration. He showed sample message from when news of the April 2007 shootings at Virginia Tech first trickled in. He also discussed how the decisions he makes about what to disclose and what to withhold from the archive can affect the library's relationship with future governors.

Things got a little heated (pardon the pun) when representatives of the American Tradition Institute and the Union of Concerned Scientists sparred over ATT's FOIA request for emails from former UVA



Del. Jim LeMunyon, right, receives VCOG's annual award for government contribution towards access from VCOG Director Megan Rhyne, left, and VCOG Board of Directors President Dorothy Abernathy. LeMunyon's co-recipient, Del. Mark Keam, was not present.

be incorporated into the online Legislative Information System. The pair originally sought to apply the requirement to both General Assembly houses, but for now, at least, it will apply only to the House of Delegates.

## VCOG Bulletin Board

It's been tough, but VCOG has said farewell to five members of the board of directors in the past five months.

In August, **Ed Reams**, who was an appointee of the Virginia Association of Broadcasters, stepped down when he took a new position at a Milwaukee TV station. Reams had been vice president for news at WHSV in Harrisonburg.

**Waldo Jaquith**, the brains behind Richmond Sunlight and the current creator of Virginia Decoded, stepped down in November to accept a job with the White House. Though he will stay in Charlottesville, Jaquith is now charged with developing the administration's Ethics.gov initiative.

Three longtime VCOG board members left at the end of the year when their terms expired. These were:

- Founding member **Harry Hammitt**, who publishes *Access Reports* from Lynchburg and also works at the State Department in D.C.;
- **Matt Paxton**, appointee of the Virginia Press Association and the publisher of the *News-Gazette* in Lexington; and

- **Lee Albright**, the retiree from Montebello whose simple FOIA request for fish hatchery records led to the implosion and reorganization of the Department of Game and Inland Fisheries.

VCOG was well served by all five men. We thank them for all of their contributions, and wish them well in their careers and endeavors.



VCOG welcomes its newest member to the board of directors: **Jeff Lester**, the news editor of *The Coalfield Progress*, has been appointed by the Virginia Press Association to fill the seat of Matt Paxton, who stepped down at the end of December. Lester is a product of Glade Spring and has been with the paper since 1990.

Welcome, Jeff!

## A grand tribute for a grand man

Nearly 200 luminaries, from comedians and actresses, to First Amendment scholars, U.S. Supreme Court correspondents and Virginia governors, joined together to pay tribute to Bob O'Neil, VCOG's founding president and founding director of the Thomas Jefferson Center for the Protection of Free Expression.

VCOG partnered with the Thomas Jefferson Center to host the dinner Oct. 29 at the University of Virginia law school.

The eclectic evening featured tributes to the former president of UVA and a former clerk to U.S. Supreme Court Justice William Brennan from VCOG's founding director Frosty Landon and founding board member John Edwards, as well as from former governors Gerry Baliles and Linwood

Holton. Holton joked that on this night, he had won the on-going biggest-round-of-applause competition he has with Baliles. All praised O'Neil's intellect and influence, as well as his humility and integrity.

Baker & Hostetler attorney Bruce Sanford, who is chair of the Thomas Jefferson Center Board of Trustees, welcomed the guests as they sat down to dine and sip wine donated by an Oregon winery that was banned from distributing its product in Alabama because a woman's bare breast was pictured on the



label. (Alabama received a "Muzzle" award from the Thomas Jefferson Center in 2010.)

Comedian Chris Bliss, who also hosts the MyBillofRights.com website, drew laughs and groans with his routine that emphasized the First Amendment's protection of free speech, even offensive speech. He also performed his jaw-dropping juggling routine -- a YouTube sensation -- to "Medley," from The Beatles' *Abbey Road* album.

Special guests included Supreme Court and political correspondents Ann Compton, Marcia Coyle, Tony Mauro, Nick Clooney and

Ken Rudin poets Nikki Giovanni and Rita Dove, photographer Sally Mann, the named plaintiff



in a famous school speech case Mary Beth Tinker, UVA president Teresa Sullivan and many others.

The event raised over \$50,000 for a conference to be established by the TJCenter in O'Neil's name and for VCOG's Forrest M. Landon Government in the Sunshine Endowment.



*From top to bottom: The guest of honor, Robert O'Neil; Lawrence McConnell, VCOG's immediate past president; Actress Sissy Spacek, Del. David Toscano and Kelly Carlin (daughter of the late comedian George Carlin); Bob O'Neil and VCOG board member John Edwards; VPAP founder David Poole.*



**Become a VCOG member TODAY!**

Your \$30 annual membership dues support the great open-government work we've been doing in Virginia for 15 years.

Work like:

- Records-management & FOIA seminars
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- Advocacy in the General Assembly;
- Blogs, columns, op-eds;
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- Daily email alerts, monthly VCOG updates and semi-annual print newsletters;
- A citizen's pocket guide to FOIA; and
- The state's only archive of FOIA opinions from the courts, Attorney General and FOIA Council.

To join, go to [www.opengovva.org](http://www.opengovva.org) and click on "Get Involved."



# FOI Advisory Council updates & opinions

The FOIA Council is not recommending any legislation this year. The council created two study committees to consider legislation referred to it from the 2011 session.

After multiple hearings, the council will not recommend legislation related to the bill offered by Sen. Stephen Martin (R-Chesterfield) that would have barred the release of public employee names in connection with their salaries. The council subcommittee, consisting of Fredericksburg City Attorney Kathleen Dooley, *Free Lance-Star* editor Ed Jones and former VCOG director Forrest Landon, voted 2-1 against a suggestion to move the minimum salary-disclosure level up from \$10,000, a level it's been at since the late 1970s.

Another FOIA Council subcommittee has been holding informal stakeholder workgroups to consider a draft proposal offered by the Virginia Press Association to revamp §2.2-3706, which governs access to law enforcement records.

The VPA draft proposes structural changes -- rearranging some sections, for instance -- as well as substantive changes, particularly regarding the release of criminal incident information.

The workgroup -- comprised of access advocates, local government representatives, the Virginia State Police, the sheriff and police chief associations and several local law enforcement agencies -- agreed at its November meeting that it wanted more time to study the draft, a recommendation accepted by the full FOIA Council.

At its November meeting, the FOIA Council heard from representatives of a regional airport authority that it may seek an exemption (if not this session, then next) for certain information contained in its flight manifests and grant applications. The authority noted that the information is exempt in other situations but was concerned that the exemption was written too narrowly for the authority to use.

VCOG "lost" a dear friend in the Virginia Senate on Election Day when Sen. Edd Houck (D-Spotsylvania) was ousted from the seat he has held for 27 years by challenger Bryce Reeves.



With former Del. Chip Woodrum, Lt. Governor Bill Bolling and others, Sen. Houck played a critical role in rewriting Virginia's Freedom of Information Act in 1999 and was the second chair of the Freedom of Information Advisory Council created by that rewrite. He has remained as the Council's chair or vice chair since then. He has also long served as the chair of the Senate General Laws Committee's FOIA subcommittee and has been a loyal VCOG member for a dozen years.

Houck has been a tireless champion for open government in Virginia. And he has always supported consensus-building. At subcommittee and FOIA Council meetings alike he encouraged stakeholders to work together. This consistent voice for compromise and understanding has fostered a trusting, collegial relationship among access advocates and state and local government representatives virtually unmatched in other states.

A *Free Lance-Star* editorial said it best: "We applaud Mr. Houck's longtime efforts on behalf of FOIA and encourage Mr. Reeves to follow in his footsteps in that regard. There is no more important way to serve constituents than to ensure they have appropriate access to information about their government."

Sen. Houck, THANK YOU.

## FOIA COUNCIL OPINIONS: in brief

In **AO-01-11**, the FOIA Council ruled that a settlement sealed by court order is exempt from mandatory disclosure under FOIA.

In **AO-02-11**, the council determined that it was OK for the Department of Corrections to withhold a list of female inmates that shows the inmates' names, state identification numbers and names of the facilities where they are incarcerated.

The council found in **AO-03-11** that certain records related to inspections and violations of relevant health and safety laws held by the Virginia Occupation Safety and Health Compliance Program are exempt from disclosure.

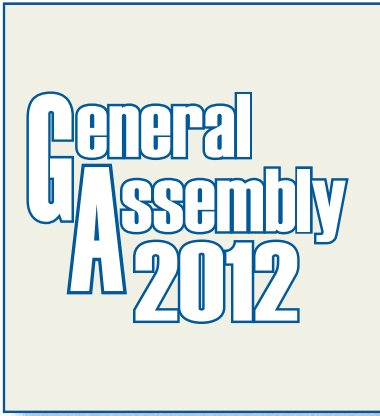
The council reiterated in **AO-04-11** that if a record contains both exempt and non-exempt material, only the exempt material may be withheld. (The council's opinion came in response to a request from

Charles Landis, the Onancock citizen currently in litigation with the town manager over his refusal to release an unredacted copy of his employment contract. The manager said the redaction of his name/signature was "for obvious reasons.")

In **AO-05-11**, the council noted that while a volunteer rescue squad can be a public body for purposes of releasing records under FOIA, it is not a public body for purposes of FOIA's meeting provisions.

In **AO-06-11**, the council rejected the suggestion that mug shots were not public records because they did not have writing on them. Noting that many mug shots *do* have writing on them, the council said that the definition of "public records" clearly would include all photos.

In **AO-07-11**, the council summarized the requirements for making and responding to a FOIA request.



At press time in mid-December, only a handful of bills that deal directly with open government had been filed. Prince William Republicans Del. Bob Marshall and Sen. Richard Black have filed matching bills that would withhold state funding for Phase II of the Dulles Metrorail Project if the project's parent agency (the Metropolitan Washington Airports Authority) does not open its records to view under FOIA.

Del. Mark Cole (R-Fredericksburg) will be carrying this year's effort to close off access to concealed handgun permit applications (CHPs) at the courthouse. The CHP database maintained by the Virginia State Police has been off-limits since 2009, but information can still be obtained locally. Del. Lee Ware (R-Powhatan) sponsored a bill similar to Cole's in 2010. Sen. Emmett Hanger (R-Mount Solon) introduced a bill in 2011 that would have allowed CHP applicants to opt out of public disclosure.

Legislation is expected that would change the publication of public and legal notices in newspapers from mandatory to optional instead. For a number of years, several legislators have sought to make newspaper publication one of a list of optional methods of dissemination along with government websites, public-access cable channels, TV and radio, text messages and email. Proponents have said the change would save money, while opponents believe newspapers are still the best way to reach the greatest number of people.

## Vital Records

The Joint Commission on Health Care considered several options for the release by the State Registrar of vital records, but decided to recommend only one change.

The options were created in response to SB 865, a bill introduced in 2011 by Sen. Harry Blevins (R-Chesapeake) that would have made disclosure of birth records mandatory after 100 years, and death, marriage and divorce records after 50 years. Current law makes the disclosure discretionary.

The commission received 387 written comments, mostly from genealogists (some from out of state), but also from the Virginia Press Association and the Library of Virginia.

Many of the comments stressed that many records are immediately available at the courthouse or already appear on government-mandated lists and databases.

Despite the comments' overwhelming support for making disclosure mandatory and for shortening the time periods, the commission ultimately voted to keep the status quo, though the time-frame for marriage records was shortened to 25 years.

## Litigation

*continued from page 1*

snapped a picture. Bradford sued for not being allowed to record the meeting, while the board argued Bradford did not seek prior permission to record and that her picture-taking disrupted the meeting. The Loudoun Board of Supervisors urged the BOE to settle the case and refused to pay for the BOE to hire outside counsel. Meanwhile, the BOE is seeking a court order that would require the supervisors to pay the BOE's legal bills.

A judge in **Smyth County** was called to review several records related to a former Saltville Town Council member. When the Saltville Publishing Company requested records of communication sent and received by the former member, both he and a town employee objected to the release, saying the records were personal and not related to the transaction of public business. In an unusual twist, the town sought a court declaration on whether the records could be released. Judge Isaac Freeman reviewed all the records in closed chambers and determined that yes, some of the records were personal and could be withheld, but others did have to do with the transaction of public business. Those had to be released.

In **Onancock**, on the Eastern Shore, the town manager (who doubles as the town attorney) refused a citizen's request

to turn over an unredacted copy of his employment contract. Charles Landis requested the record to show that the town hired the manager, who did not live in Onancock, *before* changing its policy that used to prohibit hiring a manager who did not live locally.

**Prince William County** is suing the Department of Homeland Security over the release of records related to the illegal immigrants the county turns over to DHS. The federal FOIA request was prompted when an individual earlier turned over to the department, Carlos Martinelly Montano, was released and later killed a nun while driving drunk.

A federal judge in **Norfolk** ruled that voter registration applications must be disclosed. The judge said federal law trumps Virginia's restriction on access to the applications, which the advocacy group Project Vote sought after Norfolk State students complained their applications were rejected in 2008. VCOG has filed a friend of the court brief in support of the ruling.

Meanwhile, the FOIA dispute between the **University of Virginia** and the American Tradition Institute over access to former professor Michael Mann's email and records dragged on when a judge ruled in early November that Mann could intervene in the case.

ATI filed its FOIA request for Mann's records in January 2010. UVA initially responded that it would respond, but then did not. In May, a court ruled that UVA had 90 days to either release the records or to invoke any applicable exemptions. In a protective order, the judge also said at that time that ATI could privately view even the exempt records to determine if it wanted to challenge the exemption's use. Mann filed his motion to intervene toward the end of the 90-day period.

The judge's new ruling allows UVA to renegotiate the protective order and says the parties can pick a neutral third party to review potentially confidential records.

The case has drawn widespread attention, with the FOIA issue often getting obscured by debates about the underlying data -- climate change -- and academic expression.

UVA has not explained why it did not invoke any available exemptions when ATI's request was first made.

**GOOCHLAND:** Under FOIA's §2.2-3705.1(10), the government can withhold from release the email addresses of citizens who have signed up for government email alerts. There's a catch, though: the exemption is only available when the citizen "has requested that the public body not disclose such information." When the provision was drafted, it was understood that this meant citizens could "opt out" when they signed up for the email alerts. Local governments in particular made use of the exemption by making the opt-out option standard on all their online sign-up forms. In Goochland, however, the school district asked its subscribers if they wanted to opt out after they received a FOIA request for their names and addresses. In a subsequent lawsuit, Judge Timothy Sanner okayed the action, invoking the Government Data Collection and Dissemination Practices Act (which doesn't really apply to FOIA requests) and rejecting the plaintiffs' argument that the district violated FOIA by offering the opt-out option after the request instead of before.

**NORFOLK:** The Virginia Port Authority insisted that its two-day "retreat" was not subject to FOIA. "There will be no votes or action items," the authority's spokesman said, and all materials are exempt from disclosure. FOIA's open-meeting provisions do not, however, depend on whether votes will be taken or whether materials are exempt from disclosure. Even if the closed session is the only item on the agenda, the meeting first has to be convened in the open. An op-ed in *The Hampton Roads Business Journal* complained that the port's action "exemplifies the worst type of disdain for the Hampton Roads public."

**NORFOLK:** Still smarting from revelations that The Tide light-rail project was woefully over-budget, Philip Shucet, the CEO of the Tide's parent agency, Hampton Roads Transit, posted nearly 700 documents on the agency's website. Shucet commented on the more than 50,000 pages of financial reports, budgets, audits, salaries, federal reviews, operational analyses and cost breakdowns that it was the right thing to do, "regardless of the past history."

**ORANGE COUNTY:** When asked for records relating to how much Orange County would be paying its part-time attorney, board chairman Lee Frame said of the contract, "It's not required to be released, so we're not going to release it." FOIA, however, does say that employment contracts must be released.

**PITTSYLVANIA COUNTY:** Two county citizens were taken to task by a member of the board of supervisors for sitting in a witness room adjoining the courtroom where the board was meeting in closed session. The supervisor worried about the

board members' safety and complained that the citizens came to meetings just to "pick at" the board. In early December, the board voted unanimously to approve a new courtroom security policy that requires the bailiff to clear all citizens and staff out of the courtroom, including adjoining witness rooms, during closed meetings. Citizens will have to wait in a hallway during the closed meeting. The bailiff must make sure that no recording devices or cell phones are left in the courtroom. Citizens will also need to pass through metal detectors on their way to the meetings.

**RICHMOND:** The Governor's Government Reform and Restructuring Commission caught some open-government flak after its Aug. 31 meeting when it came to light that work groups had been meeting without notice to the public. The governor's staff said the work groups did not have to comply with FOIA because they were entities appointed by the governor. The issue quickly heated up politically. The governor's office notified the Democratic Party of Virginia that it would cost \$1,622.58 to produce records related to the work group meetings. The

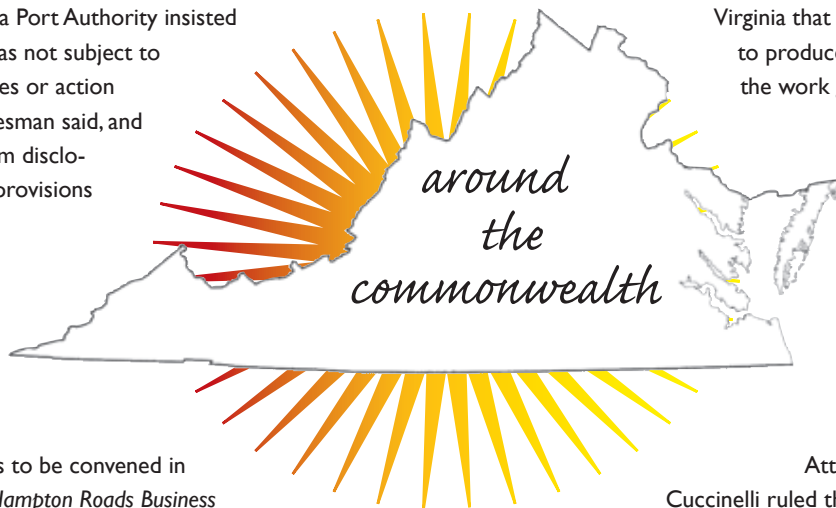
governor's office said it was one of the largest FOIA requests it had received.

**RICHMOND:** In an Aug. 5 opinion to the Goochland County Electoral Board secretary,

Attorney General Ken Cuccinelli ruled that two members of a three-member electoral board could not talk to each other on the phone about board business without following FOIA's procedures on public meetings.

**STAUNTON:** *The News Leader* took the unusual step of publishing a front-page editorial criticizing various actions of the Staunton School Board, including its closed-door meeting about bookkeeper practices. *The News Leader* noted that while a meeting to discuss an employee's performance was permissible, a meeting to discuss overall practices for that employee's position was not. The board released 13 pages of notes from the meeting, though many passages were blacked out, and in a letter defended its decision to close the meeting.

**VIRGINIA:** Danville's website was named the fifth-best city portal and Roanoke County was named the fifth-best county portal in a national competition for the 2011 Best of the Web and Digital Government Achievement Awards, given by the Center for Digital Government. Fourteen Virginia localities were cited in the Top 10 of various population sizes for best "digital cities" and best "digital counties."



## The power to enforce FOIA

By MEGAN RHYNE  
VCOG Executive Director



Much attention this summer was directed at the governor's Government Reform Commission's revelation that it held a series of closed-door workgroups to discuss policy recommendations. Last year the commission used public committees to consider recommendations, so when the commission's staff announced in April that it would use the workgroup format, I don't think anyone thought they would be anything other than open to the public also.

Just a few days after it became clear they were anything but open (and only after some agonizing explanations of how this was some new concept of transparency that many people just might not be able to understand), the governor wisely agreed to require future workgroups to meet in public . . . but only if three or more commission members are present.

(There's an argument to be made that if the workgroups can be characterized as entities set up to advise the commission, the workgroups are open, regardless of how many commission members are present.)

Anyway, it was not surprising that the political long knives came out very quickly. The governor's office jabbed that his predecessor would not have opened up any of his meetings. The Democrats parried, saying they were intentionally excluded.

Then, Alexandria's Del. David Englin, a Democrat, demanded that Attorney General Ken Cuccinelli, a Republican, investigate whether the workgroups had

violated FOIA. The AG declined, saying his office didn't have investigatory authority under FOIA.

Perhaps sensing that this part of the drama was getting lost in the partisan weeds, *The Roanoke Times* penned an editorial on Sept. 15 that raised the question: if the Attorney General is correct (the editorial thought he was not, but regardless), *should* the AG have the power to investigate FOIA violations?

It's an excellent question.

The FOIA Council, set up in 2000, has handled thousands of FOIA inquiries over the years. It issues formal and informal opinions, it sets up workgroups (open to the public, of course) to study changes to FOIA, and conducts statewide "FOIA roadshows" to train government employees on the ins and outs and current trends of Virginia's FOIA.

But, the council doesn't have enforcement authority. It doesn't even have the authority to mediate a FOIA dispute.

Connecticut has that. Its FOIA Commission issues binding opinions. The New York FOIA office's has de facto binding authority.

The attorneys general in Texas, Kentucky and Hawaii all have some sort of authority to investigate and resolve FOIA disputes, as well as the special FOIA divisions to do it.

Given that the FOIA Council has been devoted to studying and interpreting FOIA -- and FOIA only -- for more than 10 years, I think it should also be vested with enforcement authority. But whether it be the FOIA Council or the Attorney General, *someone else* should get some kind of enforcement authority, and that authority should include the power to investigate, to enforce and/or to resolve disputes.

As it now stands, the only option for citizens and government involved in a FOIA dispute is to go to court. This is costly, time-consuming and, at least to citizens, pretty intimidating. District and circuit court opinions also apply only to that locality, setting the stage for different interpretations of the same law in different parts of the state.

So, when will the time be right to create a better way of resolving FOIA disputes in Virginia?

## The VCOG Board of Directors

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**CALENDAR**

**JANUARY 11**  
**VIRGINIA GENERAL ASSEMBLY CONVENES**

Richmond

**MARCH**  
**VCOG BOARD OF DIRECTORS MEETING**

Richmond

**APRIL**  
**FOIA & RECORDS-MANAGEMENT SEMINARS**

Richmond

Here's what Virginia's FOIA says in §2.2-3707(H) about recording meetings:

*Any person may photograph, film, record or otherwise reproduce any portion of a meeting required to be open. The public body conducting the meeting may adopt rules governing the placement and use of equipment necessary for broadcasting, photographing, filming or recording a meeting to prevent interference with the proceedings, but shall not prohibit or otherwise prevent any person from photographing, filming, recording, or otherwise reproducing any portion of a meeting required to be open.*

And here's what §2.2-3700(B) says:  
*Any ordinance adopted by a local governing body that conflicts with the provisions*

*of this chapter shall be void.*

Quoting statutes is pretty boring, I know, especially ones that seem so straight forward.

It seems clear as day: Any person. May record. Any open meeting.

Yes, there can be rules about where the recordings — which include photographs — take place, but a person cannot be prohibited from recording. And any rule that conflicts with FOIA in general, including this provision, is void.

So public bodies shouldn't put citizens who want to record a meeting at the back of the room where no one can hear, or have them sign a waiver or a permission form. Just let them record the meeting (so long as they don't impede the meeting).

It's good protection for everyone.



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