

# Sunshine Report



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## State Corporation Commission Records

*2014 General Assembly will weigh competing proposals, both aiming to shine light on the powerful agency's inner workings*

The State Corporation Commission is an agency of tremendous reach. In increments big and small, its work touches every citizen, every business in the Commonwealth.

The SCC regulates the public utilities: telecommunications, natural gas, electricity. It regulates insurance providers, financial institutions and railroads. It has a hand in securities and investment advisers, not to mention franchises and trademarks. Every company doing business in Virginia must register with the SCC. Any rate change proposed by many of the regulated entities must get approval from the SCC.

But because the SCC was created by the state constitution, unlike other executive branch agencies, the Virginia Supreme Court ruled in December 2011 in *Christian v. State Corporation Commission* that the SCC was different from all other governmental entities and was not subject to the Freedom of Information Act.

There are statutes throughout the Code of Virginia that mandate (and prohibit) release of certain records, and the SCC website (<http://www.scc.virginia.gov>) is jammed full of documents and resources. However, a citizen who wanted to view, say, the commission's payroll, purchase orders or service contracts would not have the same rights of access to those records -- or the procedures by which a request had to be answered -- as she would if she asked any other agency at the state or local level.

Del. Scott Surovell, D-Mount Vernon, has been trying to change that.

In 2013, Surovell's bill to put the SCC was referred to the FOIA Council for study by the council's Rights and Responsibilities Subcommittee. The subcommittee, which included an "industry representative," David Ogburn of Verizon, heard concerns from the SCC and regulated industries, as well as the public, and recommended against studying the issue any further. At its September meeting, however, the council's chair, Sen. Richard Stuart, R-Montross, agreed to give Surovell an opportunity to plead his case, and the council directed the affected stakeholders to work together on possible legislation.

Instead of the subcommittee system, an informal group of stakeholders held two meetings. At the first meeting, industry representatives expressed concern over the FOIA Council staff's draft because it could lead to the inadvertent disclosure of information that could result in detrimental harm.

The SCC's position was that FOIA's presumption that all records are open unless made unavailable by an exemption or other law was the wrong approach for the agency. The SCC preferred an approach whereby only those records listed in a statute would be subject to disclosure. Senior Attorney Arlen Bolstad also expressed concern that the FOIA Council would be interpreting FOIA provisions as applied to the SCC, as it does for all other state agencies and localities in the state.

A second draft addressed many of the concerns raised in earlier meetings -- including keeping the SCC's quasi-judicial hearings, industry trade secrets and regulatory materials -- out of FOIA all together, but the SCC eventually admitted it would offer its own bill in the SCC title of the Virginia Code (Title 12.1). Sen. John Watkins, R-Middlethian, confirmed at the FOIA Council's December meeting that he would carry the final product, which has been numbered SB 119. That bill does not include procedural safeguards for accessing records as are found in FOIA.

*see "SCC", page 7*

## The Woodrum Internship

By MEGAN RHYNE  
VCOG Executive Director



The day before Virginia's Freedom of Information Act was considered in oral arguments by the highest court in the land, Virginia lost that same law's

greatest champion.

Clifton "Chip" Woodrum, former delegate and former VCOG board member, passed away Feb. 19, 2013, while vacationing in Florida.

Woodrum was loved by many, respected by more. His candor and intelligence were honored. His humor was legendary. Members of the House Appropriations Committee still grapple with the Woodrum Rule (requiring the Department of Corrections to determine the cost of extending prison sentences when recommending new get-tough corrections proposals).

He was instrumental in creating the

I last saw Chip in January 2013 in the Library of Virginia. He was exiting a LVA board meeting and we stopped to chat about North Carolina basketball (we both attended UNC) and FOIA bills. He let some colorful language fly when he heard about the bill to include legislative aides in the working papers exemption, and I left the brief encounter with a smile inside and out.

Upon his passing, VCOG's Board of Directors searched for ways to honor his legacy. Knowing how much he valued education and open government, the board hit upon an idea that will ensure both values are carried forward to the next generation.

We call it the **Chip Woodrum Legislative Internship**, and, when properly funded, it will provide a small stipend to a college junior or senior to assist VCOG lobbyists (that's me, for now) during each General Assembly. This is an opportunity for a student to learn not only about the legislative process -- testifying, visiting lawmakers, monitoring committees, staying in touch with stakeholders and constituents -- but about open government, too.

Chip's family -- his wife and three adult children -- are enthusiastic supporters of the effort. So are some current and past members of the General Assembly, including

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*Paul Casalaspì • John Clickener • Kathleen Dooley • John Edwards • Maria Everett • Craig Fifer • Haley Buick GMC • Richard Hammerstrom • Del. Mark Keam • Forrest Landon • Franklin Munyan • Megan Rhyme • Meredith Woodrum Snowden • Jeff South • Mr. & Mrs.*

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*The Chip Woodrum Legislative Internship Steering Committee: Paul Casalaspì, Library of Virginia; Del. Jay DeBoer, Sutherland; Sen. John Edwards, Roanoke; John Edwards, The Smithfield Times; Maria Everett, Virginia FOIA Council; Craig Fifer, City of Alexandria; Bob Gibson, The Sorensen Institute; Forrest Landon, Roanoke; and Ginger Stanley, Virginia Press Association*

Virginia Birth-Related Neurological Injury Compensation Program. And, of great importance to the Virginia Coalition for Open Government, he championed not only open-government principles, generally, but he promoted the legislation that led to the creation of the Freedom of Information Advisory Council.

Woodrum served on VCOG's board of directors, and even after he stepped down, he always made himself available for advice, commentary and moral support.

Senators Creigh Deeds, Bryce Reeves and Frank Ruff, and Delegates Chris Jones and Onzlee Ware.

Many of Chip's family, friends and colleagues have already made financial contributions to the effort. **We are asking VCOG's friends and supporters to also contribute** to this lasting tribute to the memory of someone whose impact on open government in Virginia is still felt today. Please turn to the back page of this newsletter to learn how you can make a contribution today.

## VCOG Bulletin Board

VCOG welcomed five new members to its board of directors in 2013.

**Lou Emerson**, publisher of the FauquierNow.com was nominated to a seat designed for representatives of the Virginia Press Association, while **Stephen Hayes**, general manager of WTVR in Richmond, took up one of the seats reserved for nominees of the Virginia Association of Broadcasters. VCOG also welcomed new at-large members **Paul Fletcher**, editor and publisher of *Virginia Lawyers Weekly*, **Chris Gatewood**, owner of Threshold Counsel in Richmond, and communications and public affairs director at Washington & Lee University, **Brian Eckert**.



Two board members departed in 2013: **Tom Moncure**, general counsel at George Mason University, stepped down in June, while former FOI director at the Reporters Committee for Freedom of the Press, **Mark Caramanica**, left in September for a law firm job in Florida. VCOG thanks them both for their service.



The Society of Professional Journalists, Virginia Pro Chapter, honored **Dick Hammerstrom** of the Fredericksburg *Free Lance-Star*, during its 2013 awards banquet in June. Hammerstrom received the prestigious George Mason Award for his "relentless" efforts in the arena of freedom of information. Hammerstrom is vice president of the VCOG Board of Directors.



**Dorothy Abernathy**, the immediate past president of VCOG, and current board member, was one of five individuals inducted into the Virginia Communications Hall of Fame last spring. Abernathy is the Virginia bureau chief for the Associated Press.

## VCOG annual conference covers gifts, disclosure and The Virginia Way

Virginia's conflicts of interest laws were front and center at the Virginia Coalition for Open Government's 14th conference, held Dec. 6 in Williamsburg.

Speakers on three different panels compared Virginia's laws to laws in other states, examined the continued viability of the so-called Virginia Way and plumbed the depths of reform in 2014.

The panels were punctuated by engaging presentations by the two keynote speakers: Lt. Governor Bill Bolling and former White House Chief Technology Officer Aneesh Chopra.

Chopra gave a slide presentation on the potential for open and easily accessible government data to stimulate economic growth. He noted several examples of how entrepreneurs and "data geeks" have used government data to create products and services, from mapping asthma outbreaks to giving Medicare patients access to their medical records in a handy smartphone app.

Bolling quipped early on that little had "gone right for me politically in the past 18 months," but went on to implore the audience to choose civility in politics and to reward the voices of reason in both parties.

"There's more to this than ideological debates," he said. "There's preserving the future of the greatest country and the greatest state."

Political observer Waldo Jaquith made perhaps the most provocative statement of the day when he said the Virginia Way of governing needs to move away from the model Thomas Jefferson envisioned.

"We maintain this fiction that it's a citizen legislature," he said. He suggested prohibiting lawmakers from having outside

employment and instead pay them a salary worthy of a full-time job.

Meanwhile, Ben Dendy of the Vectre Corporation defended the current system and even suggested that the process was better with the addition of more lobbyists, meaning that legislators had access to more voices and points of view than in the past.

Another political observer, Vivian Paige of Norfolk, said in another panel that Virginia used to be a leader in ethics, but "now we're followers."

"The Virginia Way used to mean that we put Virginia first, regardless of Democrat or Republican. We've lost that."

Gordon Witkin of the Center for Public and Integrity and Sarah Bryner of the Center for Responsive Politics faulted Virginia for the state's lack of comprehensive guidelines for ethics. Virginia's system, built around the notion of "accept whatever but disclose, disclose, disclose" isn't good enough anymore, said Bryner. Ethics laws must have teeth, she added.

Though maligned for its past corrupt practices, Witkin pointed to New Jersey as a model of good ethics laws. He noted that many of the state's better ethics laws were strengthened in the wake of political scandals and now include, for instance, a ban on gifts from anyone doing business with the state.

Another panel discussed reform options, including more frequent reporting and aligning lobbyist disclosure reporting periods with legislators' schedules. Panelist Brian Schoeneman, a contributor to Bearing Drift, said the goal of reform should be more about restoring trust rather than deterrence.

*Virginian-Pilot* political reporter Julian Walker countered that legislators will be asked to police themselves. "How tough do they want to be?" he asked, while Quentin Kidd of the Judy Ford Wason Center for Public Policy reminded panelists that a poll conducted by the center showed that a majority of the state's residents don't believe in "the Virginia Way" anymore. It might mean something to elected officials, but it means much less to the public, he said.

The conference also provided the venue for VCOG to recognize its annual open-government award winners.

Charles Landis won the citizen's award for his two successful FOIA suits against the Eastern Shore town of Onancock. In the second of his suits, a statement was read into

town meeting minutes acknowledging that Landis made his FOIA request for records because he believed in transparent government, not to pursue a personal vendetta.

*Washington Post* reporters Rosalind Helderman and Laura Vozzella were recognized in the media category for their use of public records to expose the gifts bestowed on Gov. Bob McDonnell and his family by the CEO of a tobacco-based nutritional supplement company. Their work has led to widespread acknowledgment that Virginia's gift-disclosure and ethics laws may need to be revised.

John Frey, clerk of court for Fairfax County was recognized in the government category for his initiative in putting circuit court opinions online for free to anyone who clicks on the page. Surprisingly, his is only one of three circuit courts in the whole state to offer these opinions, and the only one to do so without proprietary limits.

The conference raised nearly \$9,000 for VCOG and was supported by more than 45 individual, corporate and non-profit donors.



VCOG President Craig Fifer (right) presents Charles Landis with the 2013 citizens' open government award.



Lt. Governor Bill Bolling speaks about civility in government.



## General Assembly 2014: Will ethics reform be reality or more lip service?



Except for a brief hiatus in the weeks leading up to the election, hardly a day goes by without someone prognosticating that this is the year for ethics reform in Virginia.

When it comes from state lawmakers, it echoes much of what surfaced after Phil Hamilton's prosecution for corruption. Though reform bills were filed then, few passed intact and the system remained virtually unchanged.

Whether the 2014 General Assembly will follow suit is an open question, but there's certainly no shortage of proposals either already announced or said to be in the bill-drafting pipeline.

Some will focus on the definition of gifts and the inclusion of family members to the list of those whose gifts must be reported. Some may place monetary limits on a gift's value, while others may seek to ban gifts all together. Some may examine syncing the filing period for lawmaker and lobbyist disclosure forms and/or requiring more frequent reporting periods. The current cycle requires only once-a-year filings.

At VCOG, we will be looking for bills that contain elements of public disclosure: easily accessible files that can be searched individually or in bulk.

After overzealous ABC agents arrested a UVa co-ed for buying sparkling water, a reporter for the *Daily Progress* wanted to see the financial disclosure forms for agency heads (the disclosure rules apply not only to the governor, lieutenant government, attorney general and General Assembly members, but also state agency heads and to local elected officials), they found that even though the reports were now being accepted electronically, they were harder for employees and the public to review: the sole employee of the state Conflict of Interest Office had to download files one by one.

Some changes to public access can be accommodated without legislation, of course, by posting links to legislators' forms on their Legislative Information Systems website, or, at the local level, on the county, city or town's website.

But true reform will come not just by tweaking the rules on what can and cannot be done. Real reform will be transparent and constructed to enhance the public's ability to monitor the ebb and flow of money and gifts to the government officials entrusted to act in their behalf.

Will 2014 be the year?

## FOIA fixes for '14?

*The following were either already posted to the General Assembly website or were being drafted at press time.*

**FOIA study:** Directs the FOIA Council to study the continued viability of each of FOIA's exemptions. The Council would be required to report its filings by Dec. 1, 2016.

**General Assembly:** Removes the exemptions for records and meetings currently enjoyed by the members of the General Assembly.

**Admin investigations:** Adds a records exemption for administrative investigations conducted by a local inspector general or certain other local investigators.

**Individual remote participation:** Removes the requirement that a public body approve by a majority vote of the members present at a meeting the remote participation in the meeting by one of its members.

**University promotion:** Adds a record exemption for educational institutions for confidential letters and statements of recommendation placed in the records of educational agencies or institutions respecting an application for promotion.

**FOIA charges, part 1:** Caps the hourly fee that may be charged for completing FOIA requests to the lowest paid employee capable of performing the task.

**FOIA charges, part 2:** Requires state agencies to post to their websites a description of expected costs for FOIA requests.

**Public comment:** Requires all public meetings to include a public comment period.

**Out-of-state requests:** Sets out the process for public bodies to respond to record requests made by out-of-state requesters.

**Staff meetings:** Says two or more members of a school board can meet with staff to hold interviews without triggering FOIA's meeting rules.

Keep up with VCOG's efforts at the General Assembly on Twitter ([twitter.com/opengovva](https://twitter.com/opengovva)), Facebook and Storify.



# FOI Advisory Council updates & opinions

In opinion **AO-01-13**, the FOIA Council said that, in general, records submitted by a private company to a state agency as required by regulation are public records subject to FOIA. Marking such records proprietary and confidential does not, by itself, make them exempt from mandatory disclosure; records are only exempt if there is a specific provision of law that allows them to be withheld.

FOIA is silent regarding the logistics of holding a public meeting, the council said in **AO-02-13**. In a situation where the meeting room lacks the capacity to accommodate all those who wish to attend, the best practice is to move to a larger venue and use technology to increase public access, when possible.

In **AO-03-13**, the office restated the requirements for a motion to convene a closed meeting, concluding that while the Cape Charles Town Council could have been more specific, its motions were nonetheless within FOIA's parameters.

In **AO-04-13**, the office confirmed that a committee that does not advise a public body or perform a delegated function is not itself a public body for purposes of FOIA's meetings provisions. But, the council added, the records of that committee would be considered public records subject to disclosure unless exempt.

In **AO-05-13**, the office reviewed allowable charges, noting that it was "not clear how it would actually cost \$53 to attach an electronic document to an electronic mail message, regardless of how many pages it contains."

The Port of Virginia should have released the amount it paid to its outgoing executive director, the council stated in **AO-06-13**. Contracts settling public employment disputes may be withheld as personnel records, but other contracts between a public body and its officers or employees cannot. However, the amount paid in either instance is public information: "the public gets to see how its tax dollars are spent, even while personnel records, including settlement agreements, may be withheld from public disclosure."

The council advised Glen Oder, executive director of the Fort Monroe Authority, on the public body status of various committees used by him and the authority's board of trustees. **AO-07-13** reiterated that any committee designated by a public body to advise or perform a delegated function is itself a public body, regardless of how many trustees or citizen-volunteers are in its membership. The council noted, however, that a committee created to advise the director would not be a public body for meeting purposes, though its records would still be subject to public records laws.

In **AO-08-13**, an opinion to a Norfolk television reporter, the council stressed that the recodification of the criminal law records section that went into effect on July 1, 2013, did not change the substantive terms of access to date of birth information or most any other law enforcement records, for that matter.

The council's leadership turned over quite dramatically in 2013. Sen. Richard Stuart was elected chair of the council at his very first meeting in March. Former Delegate Sal Iaquinto served briefly on the council as vice chair before stepping down from it and from the General Assembly to take up a judgeship in Virginia Beach. Del. Jim LeMunyon, R-Chantilly, was appointed to take his place and was promptly elected vice chair at his first meeting.

Also new to the council this year: Christopher Ashby, an Alexandria lawyer.

A non-council member was appointed to one of the study committees used by the council: David Ogburn of Verizon was named to the FOIA Rights and Responsibilities Subcommittee, ostensibly to weigh in on a proposal to put the State Corporation Commission under FOIA (*see cover story*), though he was also part of the subcommittee's work on behalf of other bills referred to the subcommittee, including opening FOIA to out-of-state requesters and giving government an affirmative defense against abusive FOIA requesters.

An informal council work group met in November to discuss how access to geographic information systems (GIS) data works with FOIA. Those working with government GIS noted how, especially in the age of Google, they view the mapping data as that which should be shared freely. The stakeholders agreed that rather than seek legislative changes, the council would draw up a guidance document.



The Office of the Attorney General advised clerks of court around the state that the new law prohibiting release of applications for concealed handgun permits applies both to future applications and to those granted prior to the law's July 1, 2013, enactment. Furthermore, the July 12 opinion states, "to the extent information contained in an 'Order Book' references the name or other information of an individual subject to such an order, such reference must be withheld from the public." Del. Scott Lingamfelter, R-Woodbridge, introduced a bill for 2014 to counter the law's unintended consequence.

In September, the OAG said that a county supervisor's constituent newsletter may or may not be a public record; it would depend on the newsletter's content and whether it dealt with public business. The opinion to York County Attorney Jim Barnett added, however, that the newsletter's email distribution list was a public record and was not exempt from disclosure. A relatively new exemption for certain personal contact information applied only to correspondence about non-public business between a constituent and his local governing body, not a list assembled in a record separate from any correspondence.

**HANOVER COUNTY:** Asserting that government would be run more efficiently if it was allowed to meet outside of FOIA's purview, the Hanover Board of Supervisors floated a proposal to allow multiple members of a board -- so long as it didn't amount to a quorum -- to meet whenever they wanted to without triggering FOIA's requirements that the meeting be public. Current law says a meeting has occurred when three or more gather to discuss public business. Though roundly criticized by the public and press, the county's attorney nonetheless went before the FOIA Council to ask that body to study the issue. The council declined the offer, but board chair Canova Peterson vowed that the issue was still alive.

**HENRICO COUNTY:** After sacking the embattled school superintendent over an undisclosed personal relationship he had with a former school board member and her husband, Henrico School Board members denied access to many of the emails related to the case, saying they were not "public records," and said only that it would cost the school division at least \$186,434 in severance pay to Patrick Russo. Many board members claimed they were prohibited by law from speaking, though they did not cite which law imposes such a limitation.

**PATRICK COUNTY:** Former Attorney General Mary Sue Terry heated things up in July when she crashed a closed session of the Patrick County School Board. The board announced that Terry would be banned from future public meetings. Terry, who has been at odds with the board over teacher transfers, was later informed that a special prosecutor said he would not prosecute her under the "no trespass" order.

**PRINCE WILLIAM COUNTY:** After Prince William County supervisors vehemently rejected a new county logo, and then hearing that perhaps thousands of dollars had been spent on it, one supervisor filed a FOIA request for records about it. When he was informed of a potential charge to receive the records, his wife launched a mass email decrying the charge and asking for donations to her husband's reelection campaign.

**RICHMOND:** On the last day of September, Lt. Governor Bill Bolling and his Virginia Mainstream Project released a series of proposals designed to "improve the structure and operation of Virginia's state government," according to a news release on Bolling's website. Among the proposals is one to require the FOIA Council to review all current FOIA exemptions "and make recommendations on which exemptions should be removed or amended in order to ensure that Virginia has the fairest open government standards."

**RICHMOND:** The Library of Virginia unveiled a new

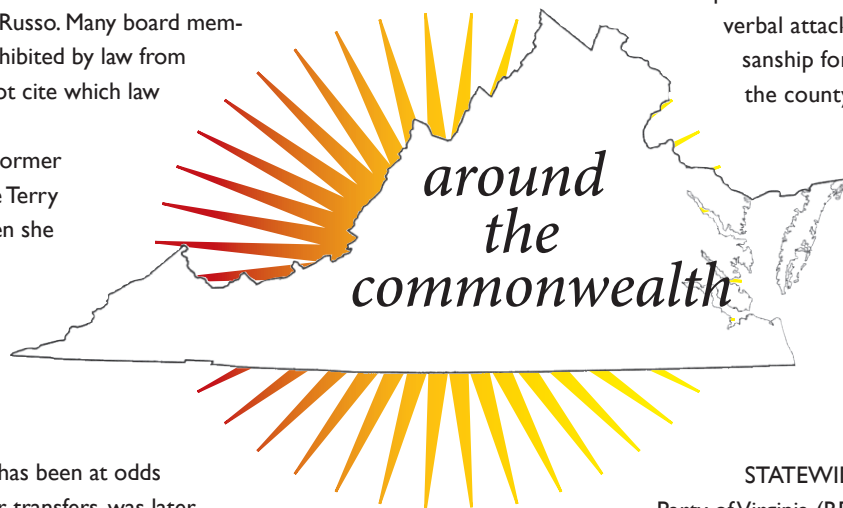
feature of its online records management services: agency-specific records retention schedules. The library already posts the retention schedules of general applicability across state and local government. The agency-specific schedules apply to records held by just that state agency and are a great resource when trying to figure out exactly which records one might seek through a FOIA request

**RICHMOND:** The Virginia Supreme Court said in July that it will no longer provide public access to tapes of oral arguments. "The new digital recording equipment is more sensitive so that the recordings now include any confidential comments any justice makes to another justice during the oral argument," wrote Katya Herndon, director of legislative and public relations for the Office of the Executive Secretary.

**ROANOKE COUNTY:** Saying the job was "not for sissies," Roanoke County Supervisor Butch Church cast the lone vote against a proposed resolution calling for supervisors to abstain from making verbal attacks and to drop partisanship for the betterment of the county. In October, Church

submitted an application for the position of county public information officer, but he declined to comment on the application, saying it was a "personnel matter."

**STATEWIDE:** The Republican Party of Virginia (RPV) surprised many of Virginia's clerks of court in June when it sent requests to all of them asking for a "list" of concealed handgun permit (CHP) holders. "Disclosure of this information is likely to be in the public interest and is not for commercial activities or public posting," wrote RPV executive director Anthony Reedy. The Freedom of Information Act does not apply to access to records required by law to be held by clerks, prompting the clerks to respond in a number of different ways. Richard Francis of Franklin and Southampton County said that he did not maintain a list of CHP holders. He also said that because the 2013 legislature passed a law banning access to CHPs, it was his "personal belief that it would be improper" to release them, even though the law had not yet gone into effect. Jack Kennedy of Wise asked the Attorney General to issue an opinion, noting that it would likely take more than three weeks to complete the request, at which time the new law would go into effect. Ultimately, Reedy withdrew his requests, explaining that the cost would make it impossible for the party to go forward with what he called its voter education effort.



# The Year in FOIA Litigation

In April, none other than the U.S. Supreme Court considered a challenge to the Virginia Freedom of Information Act. The state came up victorious, which is not the same as saying it was a win for open government.

The court ruled in *McBurney v. Young* that the section of FOIA limiting the act's use to citizens of Virginia (and print/broadcast operating in the state) was constitutionally sound.

Despite the 9-0 ruling, which turned back challenges to the law by a Rhode Island father and a California data collector, the provision got a bit of a lashing by the justices during oral argument. Chief Justice John Roberts repeatedly questioned the necessity of the law, and Justice Antonin Scalia quipped that the state was perfectly within its rights to maintain a "pointless law."

Though the ruling did not change existing law -- government can answer out-of-states if it wants to, especially considering denied out-of-state requesters will merely locate in-state contacts to make the same requests for them -- anecdotal evidence sprouted up indicating state and local government agencies that once routinely answered out-of-state requests were now citing the ruling as a basis to deny them.

The FOIA Council has issued guidance on the ruling and has reiterated its recommendation that out-of-state and in-state requests be treated the same.

The Supreme Court of Virginia ruled in October that a judge, without making specific findings in the records, could refuse to allow television cameras into the courtroom during criminal proceedings.

WVIR in Charlottesville brought the case when the judge barred cameras from the sentencing phase of the George Hugely murder trial. The station argued the judge was required by statute to make specific findings in the record before implementing such an order. The Supreme Court disagreed, saying the statute's deference to a judge's "sole discretion" in making such a decision was paramount.

An Onancock man, Charles Landis, settled a lawsuit with the town in October over its failure to turn over a record initialed by town council members agreeing to terminate the town manager.

This was the second FOIA win for Landis, who successfully sued for records in 2011 when the town refused to turn over the town manager's employment contract.

The October settlement included the reading into the minutes of a statement by the town attorney stating that Landis made his request for records out of concern for the town and for open government, not because of a personal vendetta.

Landis was awarded VCOG's citizen's open-government award for 2013.

The Supreme Court of Virginia backed the *Daily Press* of Newport News when it ruled in February that a circuit court judge wrongly denied the newspaper's request to look at a court file, which included autopsy photographs that had been presented in open court.

In reversing the judge's order, the court wrote in *Daily Press v. Commonwealth* that newspapers serve as "surrogates for the public" and are "the first rough draft of history."

The *Daily Press* also successfully beat back a judge's attempt to block access to witness names in a murder trial. Though the witnesses' safety was of concern, they had already testified by name in open court days before the judge's oral order barring publication of their names.

Meanwhile, a federal judge in Roanoke ruled that jurors could remain

anonymous in the extortion trial against former neo-Nazi William White. Saying it was the first time in his 41 years on the bench empanelling an anonymous jury, U.S. District Court Judge James Turk said it was necessary, owing to White's history of and prior conviction for intimidating jurors.

In September, the Supreme Court of Virginia agreed to hear a challenge by the American Tradition Institute over its attempts to access the email of climate scientist Michael Mann when he was a professor at the University of Virginia. The dispute has been raging for three years, and now the Supreme Court will decide whether the records are "of a proprietary nature" that can be withheld under FOIA. The court will also consider whether a requester can be charged to find which documents are responsive to his request.

## SCC

*continued from 1*

The good news is that it looks like *something* will come out of this. The SCC could have ignored the effort, or walked away. Instead, it has taken seriously that the current state of affairs is untenable. A governmental entity of such size and power must have some guaranteed rights of access to information. Whether that access will come through an amendment to FOIA or an amendment to the SCC title will be determined by the session's end. And the public will be the beneficiary.

(An interesting side note to the *Christian* case surfaced in the spring when, in response to a FOIA request by Waldo Jaquith, the Attorney General's office added a footnote that it was responding to the request "as a courtesy," because the holding in *Christian* meant that the AG's office was not subject to FOIA, either. The AG's note did not explain how the provisions in FOIA explicitly mentioning the AG were to be reconciled with this assertion. The AG stated it was merely preserving its right to raise the argument should litigation arise. The office eventually agreed it would not include similar language in future responses, but stopped short of confirming that FOIA applied to the office.)





# The CHIP WOODRUM Legislative Internship

*with the Virginia Coalition for Open Government*

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