

Sunshine Report



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FOIA Council study's promise has not yet been realized

Slow start to council's review of FOIA exemptions tempers expectations

In the January 2014 issue of *The Sunshine Report*, we told you about the great opportunity that was headed our way: a chance to review FOIA from top to bottom. Del. Jim LeMunyon, R-Chantilly, who is also a VCOG board member, proposed a resolution in the 2014 General Assembly, and that resolution passed (nearly unanimously). The resolution called for the FOIA Council "to determine the continued applicability or appropriateness of such exemptions and whether the Virginia Freedom of Information Act should be amended to eliminate any exemption from FOIA that the FOIA Council determines is no longer applicable or appropriate."

The resolution was also worded broadly enough to include more than just the exemptions: "The FOIA Council shall also examine the organizational structure of FOIA and make recommendations to improve the readability and clarity of FOIA."

Though we are still grateful that the first comprehensive review of FOIA is underway for the first time in 15 years, progress in the study's first year has been modest at best.

In April, the FOIA Council gave its blessing to the creation of two separate work groups, one tasked with reviewing the records exemptions and procedures, and one for the meetings exemptions and procedures, and to a staff work plan for the next 2.5 years.

Yet at its first meeting in May, the records subcommittee hesitated, saying the text of the resolution didn't allow for the consideration of policy during review of the exemptions. Despite the fact that two subcommittee members were present at the council's April meeting, and despite the fact that the council has independent authority to review policy, the subcommittee insisted it needed more guidance.

Guidance was issued in the form of a June memo from the council's chair (Sen. Richard Stuart, R-Montross) and LeMunyon directing the subcommittees to review each exemption from a "zero-based FOIA approach," meaning that because all records are open to the public, exemptions must be justified using seven factors:

- Public good;
- Attorney/client privilege;
- Application of the narrow construction rule in FOIA;
- Nomenclature that might need updating or clarification;
- Impact of court, FOIA Council and attorney general opinions;
- Legislative history; and
- Review of comparable provisions in other states' laws.

Substantive review finally commenced in July, with exemptions in §§ 2.2-3705.1 (those of general application to public bodies), 2.2-3705.7 (those applicable to specific public bodies) and 2.2-3705.8 (certain limitations on the use of exemptions) considered one by one. The public was invited to weigh in with problems or concerns, and the subcommittee tried to discern which problems arose because of the exemption's wording versus incorrect application of an appropriately worded exemption. Staff to the council compiled worksheets on each exemption, noting how each of the guidance factors was or wasn't met. These worksheets will be invaluable when future reviews or amendments are attempted.

see "STUDY", page 7

The Woodrum Internship

By MEGAN RHYNE
VCOG Executive Director



If you knew the late delegate, Clifton “Chip” Woodrum, you knew he was smart as a whip and that his wit was sharper than any whip crack ever felt. He was

irreverent, and he was always well informed.

His passion for open government depended not on whether people or politicians had Ds or Rs next to their name. He expected it of everyone.

Former House Majority Leader Richard “Dickie” Cranwell, a Democrat, recalled Woodrum (also a Democrat) telling him that he was pushing FOIA reform for Cranwell’s own health. “Dickie, I’m just trying to get you out of all of those smoke-filled rooms.”

Cranwell shared his memory of Woodrum with around 100 friends and colleagues Nov. 13 at Center in the Square in Roanoke in an event sponsored by VCOG.



Current and former legislators gather around a photo of Chip Woodrum.

Woodrum’s death in February 2013 was sudden, and the memorial service held soon after his passing was somber. But on this occasion, the mood was as festive and, at times, as raucous as Woodrum was. Friends he grew up with told of him impersonating the most popular student at another high school at a school reunion. Others joked about their annual golf tournament, where the duffer with the worst score had to display a ridiculous golf-playing dog sculpture in his house for the next year. VCOG founding director Frosty Landon admitted to being dubbed “Frodo” by Woodrum and also given a stamp marked “Governor’s Working Papers - Confidential.”

And there was a rare opportunity for nearly a dozen past and current legislators who served with Woodrum to gather around a poster of his likeness -- in what looks to be full heckling position.

The gathering wasn’t just about remembering the Woodrum’s past. Its primary purpose was to ensure that Woodrum’s legacy will live into the future.

Adding to many of the lasting marks he left through his legislative and legal work, his legacy will now also live on through the Chip Woodrum Legislative Internship at VCOG.

The internship was endowed by a very generous gift from the Woodrum family. His wife, two daughters and one son have been consistently supportive but also humble in their backing of the initiative. That endowment was made even stronger by contributions raised over the past year and at the November gathering.

So I would now like to introduce Zhina



Zhina Kamali

Kamali, the first Chip Woodrum Legislative Intern.

Kamali comes to us from VCU, where she has participated in the school’s Emerging Leaders Program and the Da Vinci Center’s Product Innovation Program, as well as a peer counselor at

the school’s Wellness Resource Center. She is a marketing major and is well versed in social media in particular.

During the upcoming legislative session, Kamali will be roaming the halls with me, but also on her own. She’ll attend subcommittee and committee meetings and floor sessions. She’ll prepare position papers and track legislation. While the dominant theme of the legislation will be open government, Kamali will be free to explore other legislative initiatives that appeal to her. At the end of the session, she will prepare a presentation on some aspect of the legislative process that struck her as particularly noteworthy.

I am thrilled to have Kamali with us. She’s bright, energetic and eager to learn. If you see her this session, please take a moment to get to introduce yourself.

We think Chip would be pleased.

VCOG Bulletin Board

VCOG held two records-management and FOIA workshops in 2014. An April event on the Mary Washington University campus drew more than 100 local and state government employees who handle records management, FOIA requests or both. Seventy-five more attended the September event at the Capitol. Presenters at the three-hour workshops, which garner exceptionally high praise in follow-up surveys, have been VCOG Board President **Craig Fifer**, FOIA Council Executive Director **Maria Everett**, and **Glenn Smith**, a records analyst at the Library of Virginia.



Micael Stowe, managing editor of *The Roanoke Times*, stepped down from his Virginia Press Association-designated director’s seat in August. VPA named **Marisa Porto**, vice president for content at the *Daily Press* in Newport News, to fill the vacancy.



The VCOG Board of Directors added a new board member to its ranks with its approval of **Frank LoMonte** to take the place of **Pam Luecke**, who stepped down after nearly a decade of service. LoMonte is the executive director of the Student Press Law Center.



Eric Loose, now a second-year law student at William & Mary, served as the 2014 Laurence E. Richardson Legal Fellow.

VCOG annual conference in Roanoke highlights open data's potential

VCOG's conference, our 14th in 15 years, once again brought together public officials, citizens, journalists, activists and others with an interest in open government, to talk about the current issues of the day and those that are only recently emerging on the access community's radar.

On current issues, VCOG heard from Chris Piper, the director of the newly created Ethics and Conflicts of Interests Advisory Council. Piper noted that the office lacks funding (Gov. Terry McAuliffe refused to approve funding for the office because it had no enforcement authority) and has not been fully staffed by appointments. (At press time, enough members to constitute a quorum had finally been appointed.) In the meantime, Piper said he has been researching ethics offices in other states to inform the substantive opinions he will be called on to render, and he's been watching the FOIA Council, which the ethics commission is modeled after.

William Fralin reviewed proposed changes to the public-private partnership process aimed at increasing transparency. And Del. Sam Rasoul, whose district includes the O.

Winston Link Museum, where the conference was held, reminded attendees that a representative democracy depends on an informed citizenry.

One panel took on the perennial problem of fees for FOIA requests. Roanoke attorney Stan Barnhill took the Virginia Supreme Court to task over its opinion in the UVA/ATI case (see page 6) allowing government to charge for the time it takes to review FOIA requests for exemptions, and Zach Crizer discussed the high fees he was charged as a reporter with *The Roanoke Times* when he tried to access records of the Tobacco Commission.



William Fralin speaks about proposed changes to increase public input and oversight of public-private transportation projects.

And then there were the new issues. Amy Edwards of Sen. Mark Warner's staff briefed the audience on the Digital Accountability and Transparency Act, which seeks over time to standardize spending data reported by all federal agencies. The new law will be important to state and local government because they will use the same terminology and standards when reporting on federal grants. It is possible the same standards for all accounting reports could filter down to state agencies or local governments.

Lisa Sedlak of the Town of Blacksburg showed how her town's website has evolved over the years, incorporating new tools to interact with citizens along the way. Ewan Simpson from Socrata discussed the work he and his company have done with several large cities in Virginia to open their data up to the public, and Peter Aiken of VCU talked about similar initiatives he's been working on with some state agencies.

Opening and closing the conference was a panel on the use of open data and its potential to engage citizens and to create solutions for problems facing government and the public. VCU professor (and VCOG board member) Jeff South set the stage by highlighting how difficult it is to not only access but to use government data. When PDFs

-- especially those coded as graphics and not as documents -- are used to display numbers and data points, they are difficult for the public and the press to parse and analyze for trends.

South was joined by three individuals

from the coding community who explained how groups like Code for America, Code for Hampton Roads and Code for NOVA use open source software and code to transform government data into useful products and applications, and to encourage governments to adopt open web technologies. The threesome - Albert Bowden, Randy Hill and Ben Schoenfeld -- also came up with a

quick demonstration of what they do: they created a heat map showing the best and worst restaurant health inspections around the state.

When a reporter in attendance mentioned to Schoenfeld that the Virginia Supreme Court's website requires users to type in a name for each and every one of the 119 circuit courts on the system

if they want to find out if a person has criminal charges pending in other jurisdictions, Schoenfeld came up with a solution: www.vacircuitcourtsearch.com.

Now, users can type in a name once and it searches all the courts, including Virginia Beach, which isn't on the Supreme Court's system. An exasperated reporter also in attendance wondered why the court couldn't come up with such a seemingly simple solution.

The conference was also the occasion for VCOG to present its annual open government awards. The citizen award went to Barbara Brown, a Fairfax County mom who worked for four years (and is still working) to bring transparency and accountability to the school division's music classes and clubs.

The Kaine Email Archive at the Library of Virginia received the government award. The multi-year project has reviewed 1.3 million emails of the Kaine administration, organized them, "threaded" them and put them online for free public access.

The conference raised more than any past conference from a record number of sponsors and donors. VCOG wishes to thank all those who helped make that possible. And we hope to see you at the next conference!



VCOG President Craig Fifer (right) presents Barbara Brown with the 2014 open government award for citizens.

JANUARY

Perhaps prompted by a piece of legislation that would have required it to make audio of its oral arguments public, the Supreme Court of Virginia began posting those recordings to its website, and in February, “unpublished” orders were added to the site.

The King George County Board of Supervisors was chastised by residents over members’ use of personal email accounts to conduct public business.

FEBRUARY

Officials from Shenandoah’s board of supervisors and school board wrangled over the cost of accessing salary data for school employees. The school board chair told a supervisor who requested the data under FOIA that it would cost \$700. Neighboring counties reported that they provided the same data to newspapers for free.

Officials in Richmond’s office of Planning and Development Review refused to provide copies of certificates of occupancy for two city elementary schools after the person requesting the public records identified himself as a member of the media.

MARCH

Richmond County supervisor John Haynes bristled at the suggestion that citizens from other counties, even neighboring ones, be allowed to comment at board meetings. Despite the fact that many of them pay business taxes to the county, Haynes stated, “I am a Richmond County Supervisor and this whole concept of us not having sovereignty and other people coming in and telling us how to run our county, I don’t like it and I think it’s a really bad idea.”

A Newport News circuit court judge ruled that jurors in the death penalty trial of a man accused of stabbing his wife and her three kids, and setting their bodies on fire, would remain anonymous. Jurors were referred to by number, and only court staff were allowed access to their names and personal information. The judge’s order did not specify what the “good cause” was for anonymizing the jurors’ names. Lawyers on both sides denied requesting the order.

York County retreated from a retreat when it was revealed that the only notice of it was given at the adjournment of a previous meeting when most of the public had already left. A provision in the Code of Virginia’s title on counties, cities and towns allows for adjournment from one meeting to the next, but board chair Don Wiggins said postponing the retreat was “the right thing to do.”

APRIL

Thanks to a bill sponsored by Sen. Steve Newman, R-Lynchburg, citizens can get certified copies of their birth certificates at local DMV offices around the state. Previously, citizens often had to travel to the Office of Vital Records in Richmond for the records.

The McAuliffe administration launched a website, Data.Virginia.gov, that will provide “big data” sets, including school report cards, the dangerous dog registry and traffic information for use by the public, advocacy groups and information technology entrepreneurs.

MAY

An investigation by the *Daily Press* found that a contract the Isle of Wight school division entered into for the construction of a middle school did not include federal required minimum wage clauses. The Virginia Department of Education said it would not have recommended the project for receipt of federally subsidized bonds if it had known of the incorrect information. The *Daily Press* again used FOIA to get records showing lawyers’ repeated warnings to school officials that problems would come from omitting the information.

The Roanoke Sheriff’s Office launched an online tool that allows anyone to look up the status of an inmate currently booked at the city jail. The database will include inmate booking photos, charges and bond information.

JUNE

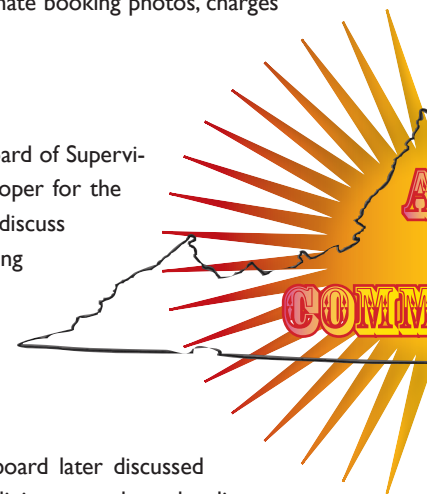
Members of the Amherst County Board of Supervisors argued over whether it was proper for the body to go into closed session to discuss strategy in appointing or reappointing members of the Amherst County School Board. One member claimed the meeting strayed from discussion of individuals into strategy, and she sought guidance from the FOIA Council. The board later discussed revising its internal policies for disciplining a member who discusses publicly what was said in a closed session.

Though its work sessions were closed to the public, records obtained by the *Virginian-Pilot* through FOIA from a Virginia Beach staff-driven review of a proposal to bring a professional sports arena to the city showed the city would be on the hook for millions of dollars in infrastructure improvements.

JULY

Frustrated with the quality and timeliness of the City of Richmond’s website, a Richmond man launched a contest called “Expose the Crappy City Website” that encourages citizens to find pages with outdated information.

After the *Virginian-Pilot* exposed that the Portsmouth city auditor had logged into the city’s financial system only twice in more than a year on the job, the auditor produced his first work plan to city council. It was then learned that the document was remarkably similar to one prepared by his counterpart in Chesapeake, though



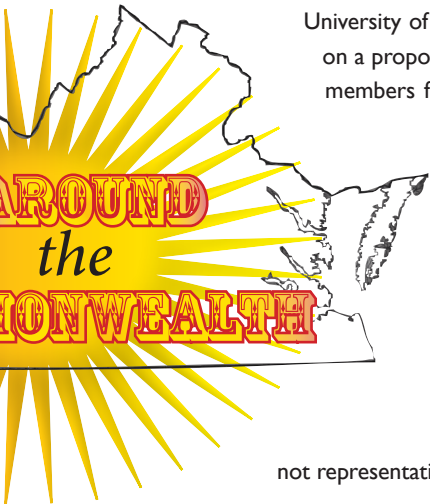
the auditor said it was based on an industry standard template.

The president of the Hampton PTA led a town hall meeting of more than 100 people after she discovered \$30,000 in administrators' raises in the June consent agenda of the Hampton School Board. The community was especially upset at the decision in light of a board vote in April to eliminate more than 300 staff positions to balance the budget.

AUGUST

During the trial of former governor Bob McDonnell, exhibits entered into evidence the previous day were posted online to the federal court system's PACER records system by 10 a.m. the next day. Though access to the PACER system is ostensibly open to the public, users must first register with the service and copies of these electronic records cost 10 cents per page.

After intense public criticism, a committee of the University of Virginia Board of Visitors backed off on a proposal that would have prevented board members from speaking critically of board decisions after they'd been made and prohibited members from initiating discussions about board business with anyone. It further required board members to run media contact past the rector for approval. Now, board members are encouraged to make clear when they speak publicly that their comments are personal, not representative of the board's position.



SEPTEMBER

Following the abrupt resignation of the city's chief administrative officer, Richmond citizens were naturally curious about why. City council and the mayor's office were tight-lipped because the mayor's office required council members to sign a confidentiality agreement in order to get the details of the officer's departure. Some members refused to sign. The city refused to provide copies of the agreement, citing the personnel exemption and the exemption for attorney-client communication. A lawsuit filed by a disgruntled citizen is pending.

Open government innovator Waldo Jaquith posted all 1.7 million Virginia corporation records, sorted by age. "It's still very crude, but you can see a list of all Virginia businesses," Jaquith tweeted Sept. 11.

A Suffolk city council member stepped in when he said he did not want a city/school joint task force to meet publicly, as advised by the city attorney, because, "it's easier to have a conversation when you don't necessarily have to worry about being politically correct."

The Roanoke County School Board decided to keep confidential the qualifications and statements of interest of those applying to be appointed to an empty seat on the board. Disappointed in the board's process, one candidate forwarded her résumé to VCOG so it would be "out in the public view."

OCTOBER

Leaders of the Virginia General Assembly met with FBI officials to clarify what is and isn't allowed under federal law when it comes to corruption. The meeting took place behind closed doors.

Records related to the dismissal of a juror in the trial of former governor Bob McDonnell were sealed, but the reason for the dismissal was revealed in October due to a technical glitch in the way McDonnell's motion for a new trial was prepared. A judge later ruled the records should be unsealed.

NOVEMBER

Henrico County finally began putting court records online. Clerk of Court Yvonne Smith had resisted the move for years, citing concerns over privacy. Staff workloads and increased electronic filings prompted her to flip the switch, the last circuit court in the state to do so. Chesterfield County, the second-to-last hold-out, put its records online in February.

Without notice to the board of supervisors, the Isle of Wight County administrator stopped sending public notices for publication in the two local newspapers (*The Smithfield Times* and *Tidewater News*) and opted for publication in the *Daily Press* of Newport News, which covers only part of the county. The board was not made aware of the switch until November, at which time the administrator said he would need board approval to change back to the old way of notifying the public.

DECEMBER

A trial judge in Rockingham County denied a Washington & Lee professor's petition to open a sealed plea bargain rejected by a W&L student charged in the death of a fellow student in a car accident. Concerned with tainting the jury pool, the judge nonetheless expressed his thanks to the professor and his attorney, Alice Neff Lucan, one of VCOG's founding directors, and called the rejected agreement the most unusual he had seen in the thousands he had reviewed in his career.

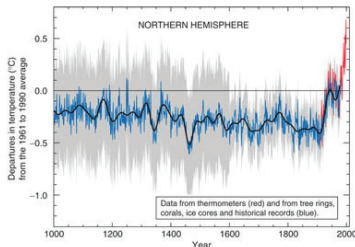
The Office of Executive Secretary refused to disclose an electronic database that underlies the state court system's website. The OES insisted over the summer that the database was not a public record under FOIA. A *Daily Press* reporter then began asking local clerks of court to authorize release of the case information they send to the database. Newport News and Williamsburg/James City County granted permission and the OES complied.

The Year in FOIA Litigation

American Tradition Institute v. Rector and Visitors of the University of Virginia

It only took 39 months, but the saga of the FOIA request for an ex-professor's email wound down in April when the Virginia Supreme Court ruled that the University of Virginia could withhold the records under a FOIA exemption for a university's proprietary records.

The story began in January 2011 when American Tradition Institute (ATI, now known as the Energy & Environment Legal Institute) asked UVA for emails belonging



to Michael Mann, a former UVA professor, now teaching at Pennsylvania State University, who became famous for the “hockey stick” graph purporting to show recent spikes in global temperatures.

A few months later, the parties agreed to a timeline for the release of what UVA whittled down to 8,000 potentially responsive documents.

When the university missed its first deadline, ATI filed suit. A trial court said UVA could designate some of the records as exempt, but it had to turn them over to ATI, who would have 90 days to review them and decide whether to seek court to review of the exemption's applicability.

Just before the 90 days was up, Mann asked to join the case, arguing UVA could

not sufficiently protect privacy, academic freedom and free speech interests. The trial court granted his request.

Over the next year, ATI and UVA agreed to submit 14 “exemplars” for the court to review and determine whether they could be withheld under §2.2-3705.4(4), which allows the withholding of

data, records or information of a proprietary nature produced or collected by or for faculty or staff of public institutions of higher education, other than the institutions' financial or administrative records, in the conduct of or as a result of study or research on medical scientific, technical or scholarly issues, whether sponsored by the institution alone or in conjunction with a governmental body or a private concern, where such data, records or information has not been publicly released, published, copyrighted or patented.

The trial court ruled in UVA's favor, saying the exemption applied, and a unanimous Virginia Supreme Court affirmed.

The court parsed the exemption's seven elements, ultimately agreeing with UVA's definition of the word “proprietary” within the exemption.

Finding a “broader notion of competitive disadvantage” to be the overarching principle, the court concluded that the General Assembly could not have intended to disadvantage the state's public universities in comparison to private ones, which would not be required to release similar records. The court rejected ATI's argument that to be proprietary, the records must relate to financial matters.

A concurring opinion by Justice Bill Mims cautioned that while the majority's interpretation of “proprietary” was limited to this one exemption, the term nonetheless appears in FOIA at least 19 times, and “I am not confident that the General Assembly intended the definition of ‘proprietary’ we endorse today to apply equally to them all.”

The Supreme Court also confirmed that UVA, can charge requesters for the time it takes to review records for the purpose of determining whether an exemption applies.

Weeks later, the court entered an order requiring ATI to pay UVA \$250 in damages. Because the order lacked any explanation, both sides claimed it was symbolic of the court's opinion of their own arguments. On the contrary: Section 8.01-682 states that when a party who won in the lower court where no damages were awarded and then prevails on appeal, the high court should automatically enter a damages award against the losing party of an amount between \$150 and \$2,500.

Town of Greece v. Galloway

Local governments were sent scrambling in the wake of the U.S. Supreme Court's ruling that it does not violate the First Amendment to begin a public meeting with a sectarian prayer. The case came from Greece, N.Y., and had been watched closely by, among others, the Pittsylvania County Board of Supervisors, which has been on the losing end of a court case challenging its prayer practices. In December, a federal judge dismissed the county's appeal, ruling it was filed too late. The county's attorney said his client will now ask that the injunction imposed against the county be lifted in light of the *Greece* decision.



Virginia Senator Mark Warner, D, sat down with VCOG's board of directors in July to discuss the Digital Accountability and Transparency Act (DATA), which he co-sponsored with Sen. Rob Portman (R-Ohio), Rep. Elijah Cummings (D-Maryland) and Rep. Darrell Issa (R-California). DATA will standardize federal financial reporting terms and will put all federal spending and government contracts online in a searchable and downloadable format. Because state and local governments will have to use the standards when they report back to federal agencies on grants they have received, the standards could be adopted in Virginia, too. DATA will take several years to implement fully but will meet multiple benchmarks along the way.

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STUDY*continued from page 1*

The records subcommittee eventually made six recommendations:

1. Combine the personnel records exemption in §2.2-3705.1 with the limitation in §2.2-3705.8 saying that salary and employment contracts must be disclosed;
2. Tweak the section on contact information for government email (where an individual signs up for government news) to clarify that it covers only basic contact information, not all personal information;
3. Eliminate the word “scholastic” from the income tax exemption (since scholastic records are covered by their own exemption);
4. Amend the exemption for access to public utility customer account information to require release of the amount of money charged for utility services, as well as the amount paid;
5. Eliminate the exemption for subscribers to *Virginia Wildlife* magazine; and
6. Eliminate the exemption that purported to protect constituent email when contacting an elected official about a personal matter (by definition, such would not be a public record, since public records deal only with the transaction of public business).

The records subcommittee reported that work is ongoing on redrafted versions of the working papers/correspondence exemptions and the one for General Assembly members’ financial disclosures.

Of the more than 30 exemptions the meetings subcommittee reviewed, it made only one recommendation: To split the legal advice exemption into two, one for probable or actual litigation, and one for legal matters. The subcommittee said it deferred work on some meetings exemptions that have corresponding records exemptions not yet reviewed by the records subcommittee, as well as a few others that affected groups haven’t yet weighed in on.

The council decided it would not sub-



The FOIA Council’s first opinion of the year was a Jan. 29 opinion to a *Washington Post* reporter who wanted records from the Virginia Economic Development Partnership about its business dealings and projects with Governor Terry McAuliffe (who at the time of the reporter’s initial request was still a gubernatorial candidate). The council confirmed that the type of records requested fell under the broad exemption for economic development, which allows records to be withheld if release would harm the Commonwealth’s financial interests. And while sympathetic to the reporter’s suggestion that discretion should be exercised more broadly -- i.e., releasing records that an exemption would allow to be withheld -- the council stated that “so long as the response follows the statutory procedure, nothing more . . . is required under FOIA when a custodian exercises discretion to withhold requested records in their entirety.” **AO-01-14**

Also in January, the council answered several questions posed by the Washington County Attorney regarding access to email by a newly elected member of the board of supervisors. Among other things, the council found (1) a request to see “all email transmissions” for a particular individual over a set period is reasonably specific for FOIA purposes; (2) records of a board member’s service on a non-government board are not public records; and (3) elected officials have the same rights under FOIA as citizens (no fewer and no more). **AO-02-14**

There was not another opinion until April, when the council wrote to a *Smithfield Times* reporter that a member of a board but who is not on a board committee can nonetheless attend that committee’s meetings. The council cautioned, however, that while the non-member could attend, he could not

mit any bills in 2015. Instead, all recommendations will be rolled into an omnibus bill at the study’s end. In other words, none of the proposals will be considered by the legislature until 2017.

In the meantime, state and local

participate. “This type of situation is a reminder that while members of public bodies do retain their rights as citizens under FOIA, at the same time they remain subject to the heightened meeting requirements FOIA imposes on them as members of public bodies,” the council wrote. **AO-03-14**

In a lengthy opinion to a WTKR reporter in May, the council took an in-depth look at access to suicide reports. The council acknowledged that in 2003 it reasoned that suicide were noncriminal records that could be released in the custodian’s discretion. The council rescinded that opinion and instead found that because suicide is a common law felony, suicide reports could be withheld as criminal investigative files. **AO-04-14**

In June, the council addressed the negotiations that can and should take place between government and requesters to facilitate production of records. Agreements outside the parameters of FOIA can be entered into regarding response times and fees, for example. **AO-05-14**

The last opinion of the year was issued in September and confirmed that several requests a citizen made were not responded to in time, without any prior agreement contemplating a deviation from the time limits. The council reiterated, though, that it is unable to enforce violations; those must be handled by the courts. **AO-06-14**

In response to an informal citizen inquiry, council staff commented on the Department of Environmental Quality’s FOIA policy, which allows the agency to refuse to make copies of records, even when the agency has the capability to do so. The policy “impedes practical access to public records because of distance, rather than pursuant to an exemption,” Alan Gernhardt wrote. Further, DEQ’s practice renders “meaningless” FOIA’s fee provisions.

agencies will be offering new exemptions or amendments to existing amendments in the 2015 legislative session.

There’s promise in this study, but it has been slow and its overall significance may not be as great as expected. But there’s still hope.



Sunshine Week began in Florida more than a decade ago as a way to draw the public's attention to the way public records and public meetings inform their everyday lives, from the restaurants they eat at, to the schools their children attend, to the bridges they travel over on their way to work.

Sunshine Week 2015 will be no different. No different except that we want all of our members to participate in what has traditionally been a media-centric event.

CITIZENS - can request records, attend meetings, publish records they've already obtained, review/rate a local government or state agency website or compare responses for the same records from different departments or jurisdictions.

MEDIA - can do stories made possible by records (individually or in databases), compare FOIA compliance across a region, highlight a particular area of access currently in the news and compare it to other states, spotlight access heroes in your area or demystify some of FOIA's intricacies.

GOVERNMENT - can host a Sunshine Week event to explain the access process to citizens, actively publish or distribute frequently requested records, extend public comment periods during a public meeting or write

commentaries about the importance of an active and engaged citizenry.

VCOG's Megan Rhyne will begin teaching a short course on FOIA at William & Mary's adult education program starting March 16.

Do you want get involved? Do you want to co-host an event? Or maybe you want to partner on a project. Contact us: vcog@opengovva.org or **540-353-VCOG**.



The future's so bright, we gotta wear shades!

Sunshine Week is March 15 through March 21, 2015

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Virginia Coalition for Open Government
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