



Freedom of Information Act & Public Records Act

Briefing for the Identity Management
Standards Advisory Council

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Virginia Freedom of Information Act (FOIA)

[Chapter 37 of Title 2.2](#)

Virginia Code §§ 2.2-3700 to 2.2-3714

State Council of Higher Education for Virginia FOIA Video:

<https://www.youtube.com/watch?v=50oddI3nUe0>

Notables

- Va. Code § 2.2-3702 requires you to read and become familiar with FOIA
- Email is not always a meeting
- The “magic” number is 3
 - Members for a meeting (or a quorum, if less than 3 members)
 - Working days required for notice of a meeting
- Committees, working groups, etc., of a public body are also public bodies
- For records, content is key, not whether an account or device is business/personal

Procedure for Closed Sessions

- **Before:**

- An affirmative vote in an open meeting approving a motion that:
 - Identifies the subject matter
 - States the purpose of the meeting
 - Refers specifically to the applicable exemption
- Matters contained in the motion must be set forth in detail in the minutes of the meeting

- **During:**

- Discussion restricted to the exempt matters identified in the motion

Procedure for Closed Sessions

- **After:**
 - A roll call or other recorded vote in an open meeting and recorded in the minutes certifying that, to the best of each member's knowledge, the public body heard, discussed, or considered only matters that:
 - Are exempt under FOIA, and
 - Were identified in the motion
 - Members of the public body who believe there has been a departure are to say so before the vote, and their statement is to be recorded in the minutes

Procedure for Closed Sessions

- Members of the public body can always attend closed sessions, even of subgroups they are not part of
- Nonmembers can attend closed sessions if:
 - Such persons are deemed necessary, or
 - Their presence will reasonably aid in the public body's consideration of a subject of the meeting
- No votes or actions taken in closed sessions
- Minutes allowed but not required

FOIA Exemptions

- Exemptions in FOIA are discretionary
- Many exemptions in FOIA (172+), but a lot are specific to particular public bodies
 - Meetings exemptions (§ 2.2-3711) and records exemptions (§§ 2.2-3705.1 to -2705.8) often align, but not always
- FOIA incorporates confidentiality requirements of other laws
- No general exemption because a document is a “draft”

e-Meetings

- A valid meeting always requires a quorum physically assembled in a pre-announced public location
- Members can be in other locations, if those locations are pre-announced, open to the public, and the public is treated the same as at main location
- Members with emergencies or personal matters **MAY** be able to participate remotely with disclosure if allowed under law and Commission policy
 - Be sure to get advice on the specifics!

For More Information on FOIA

- For questions and legal advice on exemptions and other matters, ask your counsel at the OAG
- FOIA Advisory Council
 - <http://foiacouncil.dls.virginia.gov>
 - Creates guides and reference materials
 - Issues advisory opinions



Virginia Public Records Act

[Chapter 7 of Title 42.1](#)

Virginia Code §§ 42.1-76 to 42.1-91

Managing Authority - Library of Virginia

<http://www.lva.virginia.gov/agencies/records/>

Notables

- Va. Code § 42.1-76.1 requires you to read and become familiar with the Public Records Act
- Governs records retention
- Agencies are responsible for their own records, including maintaining their electronic records as systems change
- Extra copies need not be retained
- No disposal except in accordance with the schedules
 - Retention period has expired
 - No litigation, audit, or FOIA request pending
 - Destruction properly documented

Questions?

- Now?
- Later - Contact OAG:
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