

Virginia Freedom of Information Act (FOIA)

**Open Meeting Rules
and other Basics**

**Reviewed by Office of the Attorney General
September 2007**

FOIA Definitions - *Va. Code § 2.2-3701*

"Public body" means any legislative body, authority, board, bureau, commission, district or agency of the Commonwealth or of any political subdivision of the Commonwealth . . . It shall include . . . any committee, subcommittee, or other entity however designated, of the public body created to perform delegated functions of the public body or to advise the public body. It shall not exclude any such committee, subcommittee or entity because it has private sector or citizen members.

FOIA Definitions - *Va. Code § 2.2-3701*

“Meeting” means the meetings including work sessions, when sitting physically, or through telephonic or video equipment, as a body or entity, or as an informal assemblage of 1) as many as three members, or 2) a quorum, if less than three, of the constituent membership, wherever held, with or without minutes being taken, whether or not votes are casts, of any public body. The gathering of employees of a public body shall not be deemed a “meeting” subject to the provisions of FOIA.

FOIA Definitions - *Va. Code § 2.2-3701*

“Public records” means all writings and recordings that consist of letters, words or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photography, magnetic impulse, optical or magneto-optical form, mechanical or electronic recording or other form of data compilation, however stored, and regardless of physical form or characteristics, prepared or owned by, or in the possession of a public body or its officers, employees or agents in the transaction of public business.

Legal Issues - FOIA

- Public records of a public body are open to inspection and copying by any citizen of the Commonwealth. *Va. Code § 2.2-3704(A)*
- There are a number of exceptions listed in *Va. Code § 2.2-3705.1 through 2.2-3705.7*, including personnel records, health records and written legal advice.

Legal Issues - FOIA

- All meetings of public bodies shall be open, except under certain circumstances. *Va. Code § 2.2-3707(A)*
- Some examples of when a closed meeting may be held include review of candidates for appointment, consultation with legal counsel regarding specific legal matters requiring the provision of advice, and discussion of health records. *Va. Code § 2.2-3711*

Legal Issues - FOIA

- Before going into a closed session, a motion must be made that identifies the subject matter, states the purpose of the meeting and makes specific reference to the applicable FOIA exemption. Motion must be made and approved in an open meeting.
- Only those matters qualifying for the exemption and identified in the motion may be discussed in closed session.
- At the conclusion of the closed session, every member must certify that only those matters identified in the motion were discussed. Va. Code § 2.2-3712

Legal Issues - FOIA

- Every public body shall give notice of the date, time, and location of its meetings by placing the notice in a prominent public location at which notices are regularly posted and in the office of the clerk or chief administrator of the public body. State public bodies must also post notice on their websites and the Commonwealth Calendar.
- Notice must be posted at least 3 working days prior to the meeting.
- Notices for public bodies on which the Governor has appointed at least one member shall state whether or not public comment will be received and if so, the approximate point during the meeting. *Va. Code § 2.2-3707*

Legal Issues - FOIA

- Any person may annually file with a public body a written request for notification. The public body shall provide notice of all meetings directly to each person. *Va. Code § 2.2-3707*

Meeting Minutes

- Minutes shall be recorded at all open meetings.
- Minutes shall include:
 - Date, time and place of meeting
 - Members present and members absent
 - Summary of discussions
 - Record of votes taken

Va. Code § 2.2-3707

Meeting Minutes

- Minutes shall be:
 - Posted to the Commonwealth Calendar and on the public body's web site
 - Draft minutes shall be posted no later than ten working days after conclusion of the meeting.
 - Final minutes shall be posted within three working days of final approval.

Va. Code § 2.2-3707.1

Electronic Meetings

- State public bodies may conduct any meeting, except closed meetings, wherein the public business is discussed or transacted through telephonic or video means. Where a quorum of a public body is physically assembled at one location for the purposes of conducting a meeting authorized under this section, additional members of such public body may participate in the meeting through electronic communication means provided such participation is available to the public.

Va. Code § 2.2-3708

Electronic Meetings

- 3 working days notice is generally required for electronic meetings

Va. Code § 2.2-3708(C)

Legal Issues - FOIA

- At least one copy of all agenda packets and, unless exempt, all materials furnished to members of a public body for a meeting shall be made available for public inspection at the same time such documents are furnished to the members of the public body.

Va. Code § 2.2-3707(F)