

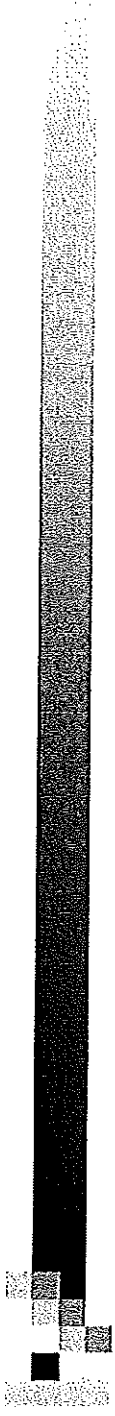
FOIA

VIRGINIA

Freedom of Information Act

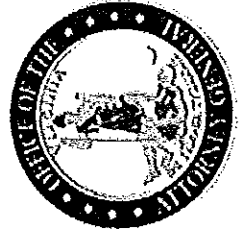


Attorney Work Product



Most Difficult Law You'll Deal With

24/7





What FOIA is not...

- Intuitive
- Up to date (technology)





Importance of Compliance

- Highly scrutinized
 - Employees
 - Press
 - Alumni
 - State officials
 - Potential Donors
- Money
- Negative publicity for the College
- Violation of the public trust





FOIA Requirements, Generally:

- All meetings must be open
- All records must be available to the public





MEETINGS

- All meetings of public bodies must be open with public access permitted *unless there is a specific statutory exemption*





What is a Meeting?

- Three or more members are gathered, and
- Public business is discussed – that is, business related to Committee work



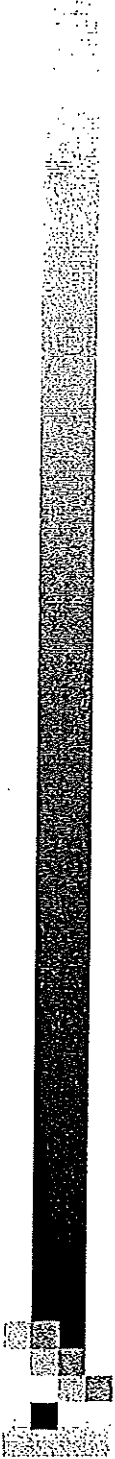


Requirement for a *Legal Meeting*

Meetings Must Be “Noticed”

- Three days’ notice
- Posted on Commonwealth Calendar





Meetings

What does this mean to me?

- Possible violations - Cocktail parties, golf games, school events.
- Avoid discussion of Committee business with *more than two* members.
- Discussion by more than two is a “meeting” but an *illegal* meeting because it has not been “noticed.”



Electronic Meetings


- Limited telephone or video participation by members is permitted provided requirements are met
- “Conference calls” are never permitted
- Non-members may always call in if needed



Requirements for Electronic Meetings

- Quorum must be in one place – at the main location
- Places of remote participation
 - Must be specific and noticed
 - Must be open to public
 - Must have speakerphone
- Meeting *ends* if communication is lost





Electronic Meetings:

What this means to me?

- **Must know in advance** that you wish to participate by phone
- **Must know the specific, open location**
 - Can't be on I-95 or on the beach
- **Must be available for entire meeting**



Emergency/Personal Matter

Exception

- May participate remotely if unable to attend due to personal matter or emergency.
- Notify the Chair
- Committee must approve remote participation
- Specific reason must be stated
- Minutes must reflect specific reason and location
- Quorum required at physical location
- Exception can be used *only once* per member





Closed Meetings

- Common exemptions for closed meetings
 - Legal advice
 - Discussion of contract negotiations
 - Discussion of *identifiable* employees or applicants (“personnel”)
 - Discussion of departmental performance where it is necessary to discuss individual employees
 - Special exemption for interviews of candidates





Requirements for Closed Meeting

- Specific exemption and reason for closed meeting must be cited
- Committee may discuss **only matters identified in the motion** to go into closed meeting – even if subject would otherwise qualify for a closed meeting discussion.
- Certification required after closed meeting





Closed Meetings

What does this mean for me?

- Remember the stated purpose of closed meetings, and don't stray from that discussion
- Gently remind others if discussion strays
- Cast a truthful certification vote
- Counsel is not a "FOIA cop"





RECORDS

- All records must be available for public inspection and copying upon request
- ... unless exempted (e.g., personnel exemption)

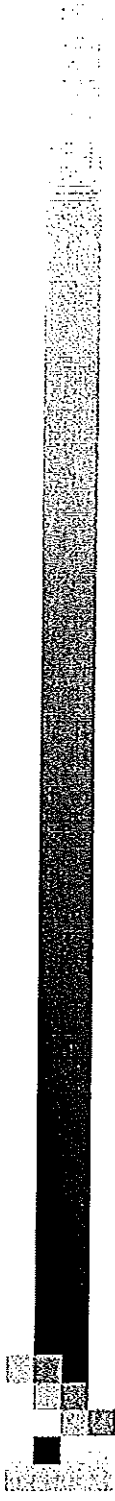




What is a “Record”?

- Anything that records information related to public business are public records
 - Letters or other documents
 - Handwritten notes
 - Video/audio recordings
 - Voice mails
 - Emails
 - Text messages





What is a ‘Record?’

(Continued)

- Location doesn’t matter
 - At the College
 - Your home or personal office or business
 - Computer hard drive
 - Personal or College computer
 - Personal or College e-mail account
 - Cyberspace
 - iPhone





Records

What does this mean for me?

- Be very careful what you write
 - E-mail
 - Notes
- Favor telephone over e-mail
- Report any request immediately to staff
- Don't delete messages or documents, or throw them away





What is a “FOIA Request”?

- Whenever anyone asks for anything
- Does not have to be a written request – oral is fine
- Need not reference “FOIA”
- Five days to respond
- Report immediately to staff and Chair



E-MAIL

- Email is a “Record”
- Email can also be a “Meeting”
 - Simultaneous e-mail can easily result in discussion between “more than two members”
 - *Illegal meeting*
- Recommendation
 - Use the telephone when possible!
 - Avoid e-mail to more than one member when possible
 - Alternatively use BCC function
 - Never* use REPLY ALL

