

City of Alexandria, Virginia

Virginia Freedom of Information Act, State & Local Government Conflict of Interests Act, and Local Rules

Planning Commission Retreat
September 25, 2026



Virginia Freedom of Information Act (FOIA)

Purpose & Policy of FOIA

§ 2.2-3700



Ready access to public records

Free entry to meetings of public bodies

FOIA is to be liberally construed to promote awareness of governmental activities and operations

Any exemption from public access to records or meetings shall be narrowly construed

No record shall be withheld or meeting closed to the public unless specifically made exempt

Public Records

Public Records General



All public records are presumed open unless specifically exempt

Definition of “public record” (§ 2.2-3701)

- all writings and recordings that consist of letters, words or numbers, or their equivalent . . . 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.
- Note: draft versions are public records

Records Retention



Records must be preserved, maintained, and accessible for period designated by retention schedule

Includes converting and migrating electronic records as necessary to avoid obsolescence or deterioration

Records must be destroyed in a timely manner, pursuant to the retention schedule.

Destruction must be properly documented.

Public Meetings

Public Body - Defined



Traditional public bodies (local governing bodies, school boards, planning commissions, etc.)

“[O]ther organizations, corporations or agencies in the Commonwealth supported wholly or principally by public funds.”

“[A]ny 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.”



Meeting - Defined

Means the meetings including work sessions, when sitting physically, or through electronic communication means pursuant to § 2.2-3708.2 or 2.2-3708.3, as a body or entity, or as an informal assemblage of (i) as many as three members or (ii) a quorum, if less than three, of the constituent membership, wherever held, with or without minutes being taken, whether or not votes are cast, of any public body.

Exception:
gatherings
of
employees

Exception: gatherings where **no part of the purpose** of such gathering or attendance **is the discussion or transaction of any public business**, such gathering or attendance was not called or prearranged with any purpose of discussing or transacting any business of the public body, and **no discussion or transaction of public business takes place among the members** of the public body

Exception: public forum, informational gathering, candidate appearance, meeting of another public body, or debate, the purpose of which is to inform the electorate or to gather information from the public and **not to transact public business or to hold discussions relating to the transaction of public business**, where no discussion or transaction of public business takes place among the members of the public body

Meeting – Defined (cont.)



For purposes of public meetings only, “**public business**” means “*any activity a public body has undertaken or proposes to undertake on behalf of the people it represents.*”

Open Meetings - Requirements



Notice to
the Public

Note that notice to members is not covered by FOIA, but is often stated elsewhere in other laws

Open to
the Public

"Open meeting" or "public meeting" means a meeting at which the public may be present

Minutes

General Notice Requirements

§ 2.2-3707



Contents: date, time, and location of the meeting

For local public bodies, FOIA requires notice to be posted in three locations:

Official public
government website, if
any;

Prominent public
location in which
notices are regularly
posted; and

At the office of the clerk
of the public body OR at
the office of the chief
administrator

General Notice Requirements (continued)



Regular meetings – post three working days before the meeting

- Note: Do not count the day of the meeting as one of the working days

Special, emergency, or continued meetings – two elements:

- Notice must be “reasonable under the circumstance” (varies with circumstances)
- Public notice must be posted at the same time the members are notified

Direct notice to those who request it (usually by an email list)

Open to the Public



“Open meeting” or “public meeting” means a meeting at which the public may be present - § [2.2-3701](#)

Must allow public to record, photograph, film, or otherwise reproduce any portion of a meeting required to be open

FOIA does not address logistics such as room capacity

Public bodies are encouraged to use additional means to increase public awareness (Ex. Live streaming online, broadcasting using television or radio, posting recordings of meetings, etc.)

Meeting Minutes



Only required to be taken at open meetings

Must include:

- Date, time, location of the meeting
- Members of the public body present and absent
- A summary of matters discussed, deliberated, or decided
- A record of any votes taken
- Any motions to enter into a closed meeting and certification after a closed meeting
- **Any additional information required for electronic participation**

Posting Meeting Minutes



Must post on official public government website, if any

If no such website, make copies available at a prominent public location in which meeting notices are regularly posted or the office of the clerk

Post final minutes within seven working days of final approval

Agendas – Inspection & Posting



At least one copy of the proposed agenda and 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

NEW

The public body shall also post the proposed agenda on the public body's official government website, if any, prior to the meeting.

Agendas – Final Actions



No final action may be taken on items added to the agenda after the meeting commences unless they are times-sensitive or are the subject of a closed meeting properly identified in a motion in accordance with Code of Virginia § 2.2-3711.

“Final action” means a vote, adjudication, or other formal action taken by a public body that completes a matter or acts as final consideration of an item. “Final action” does not include:

- Referral to a committee or advisory body;
- Referral to a future meeting for action;
- Direction to staff to provide further information; or
- Issuance of a commending or memorial proclamation.

Voting



All votes taken to authorize the transaction of any public business must be taken and recorded in an open meeting

No written or secret ballots

May take straw polls or reach consensus in closed meetings

Decisions made in closed meetings are not effective until a vote is taken at an open meeting (§ 2.2-3711 (B))

Electronic Meetings

§§ 2.2-3708.2 and 2.2-3708.3



As of September 1, 2022, there are three general categories:

1. Remote participation: “participation by an individual member of a public body by electronic communication means in a public meeting where a quorum of the public body is otherwise physically assembled”
2. All-virtual public meetings: “a public meeting (i) conducted by a public body, other than those excepted pursuant to subsection C of § 2.2-3708.3, using electronic communication means, (ii) during which all members of the public body who participate do so remotely rather than being assembled in one physical location, and (iii) to which public access is provided through electronic communication means”
3. States of emergency declared by the Governor or the locality

Electronic Meetings



Remote participation (may be used by any public body) - § 2.2-3708.3

Four allowed reasons for remote participation:

1. Personal matter that prevents attendance
2. Medical condition or disability that prevents attendance
3. Medical condition of a family members that prevents attendance
4. Principal residence is 60 miles or more from the main meeting location

All of these require a physical quorum and a participation policy

- Persons with disabilities and their caregivers who participate remotely are counted as if physically present for purposes of determining whether there is a quorum

Remote location does not have to be open to the public

Personal matters may be used twice per calendar year per member or 25 percent of the meetings of the public body rounded to the next whole number, whichever is greater

Electronic Meetings

During declared states of emergency (§ [2.2-3708.2](#))



During a Governor-declared or local state of emergency:

- *Purpose:* to provide for the continuity of operations of the public body or the discharge of its lawful purposes, duties, and responsibilities- § [2.2-3708.2](#) (A) (3)

Both may be used by any public body

No requirement for a physical quorum or to have a policy in place

Electronic Meetings

(continued)



Before using remote participation, the public body must adopt a policy on participation at least once annually

Members may monitor (listen/watch) even if they cannot participate

Public & staff participation is always allowed – restrictions only apply to members

Motion, Discussion, Certification
§§ 2.2-3711 and 2.2-3712

Closed Meeting Procedures

Motion to Enter into a Closed Meeting

§ 2.2-3712 (A)



Public body must take an affirmative recorded vote in an open meeting approving a motion that:

Identifies the subject matter for the closed meeting;

Must be more than quoting or paraphrasing the exemption

States the purpose of the closed meeting; and

Quoting or paraphrasing the exemption does state the purpose

Makes specific reference to the applicable exemption from the open meeting requirements

Closed Meeting Discussions

§ 2.2-3712



Restricted to those matters specifically exempted from the provisions of FOIA and identified in the motion (do not stray off topic)

Minutes are not required, and if taken, are exempt from FOIA

Who may attend?

- Nonmembers if they are necessary or will aid consideration of the topic
- Other members of public bodies may attend, but not participate in, closed meetings of committees, subcommittees, and other sub-entities of the parent body

Certification of a Closed Meeting

§ 2.2-3712 (D)



At the conclusion of a closed meeting, ***the public body must certify*** that the only things heard, discussed, or considered in the closed meeting were:

- Public business matters lawfully exempted from the open meeting requirements, and
- Such public business matters as were identified in the motion by which the closed meeting was convened

Extra penalty for improper certification

Commonly Used Exemptions

(Note: All meeting exemptions in FOIA are set out in § 2.2-3711)



Discussion of personnel - § 2.2-3711 (A) (1)

Discussion concerning scholastic records/students - § 2.2-3711 (A) (2)

Consideration of acquisition or disposition of real property - § 2.2-3711 (A) (3)

Discussion of prospective business or industry - § 2.2-3711 (A) (5)

Actual or probable litigation - § 2.2-3711 (A) (7)

Specific legal matters - § 2.2-3711 (A) (8)

Public safety issues - § 2.2-3711 (A) (19)

Discussion of award of public contract - § 2.2-3711 (A) (29)

City of Alexandria, Virginia

Remedies and Penalties

What happens if something goes wrong?



Willful & Knowing Violations

§ 2.2-3714 (A)



Willful & knowing violation of records and meetings requirements

- \$500 to \$2000 civil penalty for first violation
- \$2000 to \$5000 civil penalties for second and subsequent violations
- Paid by the individual to the Literary Fund (not paid by the public body)

May introduce advisory opinions of the FOIA Council as evidence that it was not willful & knowing - § 2.2-3715

Improper alteration or destruction of public records - § 2.2-3714 (B)



Records altered or destroyed before record retention period expires

- With intent to avoid FOIA
- Civil penalty up to \$100 per record
- In addition to any other penalties
- Paid by the individual to the Literary Fund (not paid by the public body)

Note: Record retention periods are set by the Library of Virginia under the Virginia Public Records Act

Improper certification of closed meetings

§ 2.2-3714 (C)



Improper certification of closed meeting

- Civil penalty up to \$1000
- Paid by public body to the Literary Fund
- Mitigating factors: Opinions of the Attorney General, court cases, published Advisory Opinions from the FOIA Council

Enforcement is through the courts

§ 2.2-3713



Petition for mandamus or injunction with affidavit showing good cause

Mandamus: when the court orders a public official or employee to do something

Injunction: When the court orders a public official or employee not to do something

Petitioner may choose to file in general district court or circuit court

Venue against a local body is in the county or city where the body is

A single violation is sufficient to invoke the remedies

City Rules

City Rules

General and Membership



- The following general rules apply unless otherwise specified in the enabling legislation of the board
 - Members are appointed by Council
 - Have 10-year term limits
 - May be removed from the board by Council for neglect of duty or violations of the law
 - Board designates
 - *Chair* – presiding officer
 - *Secretary* – keeper and preparer of minutes or reports

City Rules

Meetings and Reports



- Must have one regular meeting each year
- An annual report must be made to Council for the previous fiscal year
 - Report goes to Council each fall
 - Report must include:
 - Board members
 - Board's primary activities and
 - Any recommendations to improve the functions and duties of the board

City Rules Attendance



- Members of boards and commissions must attend 75% of all meetings
- Absences can be excused by the chairs
 - Excused absences do not count against the 75% attendance rule
- Members who do not meet the 75% attendance rule are removed by Council for non-attendance

Social Media Use



Follow City's Social Media Policy

Social Media is a supplemental resource. The City's website is the primary resource.

Staff liaisons should have access to the platforms of the body.

Postings should be similar to those on the website and free from opinion and political activity. Meeting notices, agendas, projects, vacancies, member highlights.

Boards and Commissions should not speak on behalf of the City or City Council.

When in doubt, do not post!

State & Local Government Conflict of Interests Act (COIA)

Conflict of Interests

Prohibited Conduct



What conduct is prohibited under the Act? (non-exhaustive)

- No member may accept money or any other thing of value or take other advantages based upon his position as a member of the board/commission.
- Use confidential information learned because of public positions for their own economic benefit or that of another party if that information is not available to the public.
- Accept any money, loan, gift, favor, service, or business or professional opportunity that reasonably tends to influence him in the performance of his duties

Conflict of Interests

Prohibited Conduct (cont.)



Members cannot have a “personal interest” in a “contract” or “transaction.”

- A “personal interest” is a financial benefit or liability accruing to a board/commission member or to a member of his immediate family.
- A “contract” is any agreement to which the City is a party or any agreement on behalf of a City that involves the payment of money appropriated by the City.
- A “transaction” is any matter considered by the council on which official action is taken or contemplated.

Conflict of Interests Violations of the Act



Criminal Penalties - Any person who knowingly violates the Act is guilty of a ***Class 1 misdemeanor***, except that knowing violation of the prohibition against a personal interest in a transaction or disclosure of a prohibited interest in a transaction is a Class 3 misdemeanor.

Other Penalties

- Malfeasance
- Invalidation of Contracts
- Rescission of Purchase
- Civil Penalties & Forfeiture

Since the question of whether a conflict of interest exists is fact specific, it is advisable to contact the City Attorney's Office related to a particular situation.