

Like 0

Tweet 0

Share

[Click to view this email in a browser](#)



# The Sunshine Report: *Online*

## Transparency news from the Virginia Coalition for Open Government

### October 2012

#### In this issue

[Climate-change email squall is over...for now](#)

[FOIA Council pauses on electronic meetings change](#)

[Captains' right to protest](#)

[Smile, you're on candid tape recorder](#)

[Open government in the news](#)

#### Coalition News

#### Recently on VCOG Blog

- [Shooting the mug shot messenger](#)
- [The private and the public relations](#)
- [Ask your elected officials about open government](#)

*The VCOG Blog is a weekly post on [VCOG's website](#). The columns are also a regular feature on the [McLean Patch](#) and 15 other Patch outlets in Northern Virginia*

#### VCOG's Annual Conference in Lynchburg

Mark your calendars for **Nov. 30**. That's when VCOG will hold its next annual conference at the [Craddock-Terry Hotel and Event Center](#) in Lynchburg. Details have not been confirmed, but we're generally looking at a schedule from around 10:30 to 4:00. Also, we are currently soliciting nominations for VCOG's FOI awards for citizens, government and media, which are presented at the conference.

Greetings, Friend of VCOG!

#### Climate-change email squall is over...for now

They are exempt.

The emails of Michael Mann, the former UVa professor, now at Penn State University, and author of the so-called hockey-stick graph depicting recent changes in the earth's climate, do not have to be released in response to a Freedom of Information Act request because they are exempt as research records ([Section 2.2-3705.4\(4\)](#)).

It only took 1.75 years and multiple court hearings to reach that conclusion, and there's no indication that Judge Paul Sheridan's ruling on Sept. 17 is really the end of the ongoing battle between the University of Virginia and the American Tradition Institute.

Mann declared the ruling "a victory for science" and one that "is a potentially important precedent," according to a [Tom Jackman column in the Washington Post](#).

But is it? The exemption for such records has always been there, and yet -- for reasons yet unknown -- UVa did not assert the exemption when it first received ATI's request, and it still hadn't a half-year later when it went to court to broker some kind of deal to let ATI -- but not others -- see the records.

The judge did not balance the interests of academic freedom versus the public's right to know, as many in the scientific community wanted. The purpose of a FOIA request is immaterial. The answer should be the same whether climate-change records are at issue or whether it's research on the mating habits of fruit flies.

If the records are exempt under existing law, then they are exempt. If they are not, then release them. By failing

[Make your nomination here](#)

## FOIA car magnets

VCOG FOIA magnets are available for \$5 [on VCOG's website](#). It's also easy to add a VCOG membership to your purchase. Once you have your magnet in place, post a picture of it to [VCOG's Facebook page](#), or attach it to a tweet with the hashtag #vaFOIA.



## Stay up to date on access

Sign up for VCOG's [daily listserv on access and First Amendment news](#) from Virginia and across the country. It's free!

For a steady stream of access-related stories and additional commentary and information, join the more than 400 people who are following [VCOG on Twitter](#). The latest six posts are also carried on [our website](#).

## Captains' right to protest

When Vice Presidential Candidate Paul Ryan president campaign announced he would hold a rally at Christopher Newport University on Sep. 18, some student activists sought permission to protest at the on-campus event two days later. Their request was denied because of CNU's policy requiring 10-business-day notice of a protest (and then, only in designated areas that may or may not be near the target of the protest). The policy did not allow for exceptions.

A week later, university president Paul Trible announced that the policy would be scrapped in favor of one that requires just 24-hour notice and that will allow for exceptions.

"Good leadership requires acknowledging mistakes, learning from those mistakes and correcting them as soon as possible," [Trible told the Daily Press](#).

## Smile, you're on candid recorder

"I think it's kind of creepy that Jerry Hagerman tape records conversations of his constituents without letting anybody know."

So said Sen. Bill Stanley to the [South Boston News & Record](#) after it was revealed by [Bacon's Rebellion](#) that Hagerman, a member of the Pittsylvania County Board of Supervisors, had taped a phone call placed by the senator, urging



to invoke an exemption or release the records when they were first requested, UVa turned this light breeze into an unnecessary hurricane.

## FOIA Council pauses on electronic meetings change

The FOIA Council subcommittee on electronic meetings decided to keep talking about what changes, if any, should be made to the rules governing use of electronic meetings by state, regional and local governments. Several representatives from state and local government provided comments that they wanted more flexibility in the current law, while access advocates spoke of the lack of consensus about what problem actually existed. VCOG and others were concerned about the quality of public meetings if all public bodies were allowed to meet electronically without having a quorum physically present at one site. Council Member George Whitehurst stated that he thought it was too early to move on the proposed draft, a sentiment echoed by members John Selph and Stephanie Hamlett. Committee Chair Kathleen Dooley, in making plans for future meetings to keep the conversation going, asked for input on whether the rules could be relaxed for committees and subcommittees if not for a public body as a whole.

The subcommittee's next meeting is Oct. 17 at 10 a.m.

## Open government in the news

The City of Hampton is now putting daily logs of criminal incidents and fire calls on its website, following [requests from the Daily Press](#) for access to the information....Following the settlement of a FOIA lawsuit brought by one member of the Greater Lynchburg Transit Authority against another, Lynchburg City Manager Kimball Payne said each member of the city's 35 appointed boards [would receive copies of FOIA](#). (Payne said the decision was unrelated to the lawsuit)....Meanwhile, the City of Newport News said it planned to [reduce the number of committees and commissions](#) that serve the city council....Speaking of Newport News, though the [issue was not on the agenda](#) for a regularly-scheduled meeting, the city council nonetheless voted to give the city manager a 4% raise. The manager insisted that "it's not like they created some new, sneaky process.".... Relying in part on crowdsourcing and social media, scholars at George Mason University have painstakingly recreated an archive of [nearly 45,000 documents about the earliest days of the nation](#) that were destroyed in a fire at the War Office in 1800....The Shenandoah County Board of Supervisors [met in closed session to discuss citizen conduct](#) during meetings. FOIA Council Staff Attorney Alan Gernhardt explained that if a specific legal matter were involved, the closed meeting would be okay, while a "discussion of etiquette" would not....Former Attorney General Mary Sue Terry, filed a FOIA lawsuit against

the supervisor not to support a proposed board resolution favoring the lifting of Virginia's ban on uranium mining.

The incident might not have amounted to more than local political intrigue were it not for the fact that Stanley indicated his call came at the behest of Governor Bob McDonnell.

Several times on the tape Stanley mentions the governor, but when the story broke, Stanley insisted that he "misspoke." And the governor's office insisted it had nothing to do with the phone call or any effort one way or the other to influence the board's decision.

Tape recordings (about public business) are public records under Virginia's FOIA.

Patrick County schools, saying the responses she received to a request for credit card purchases, supporting documentation, salaries, leases and rentals, and travel voucher were "contradictory and non-compliant." At a court hearing Sept. 10, the school superintendent said he would turn over more records and a judge asked a retired teacher to [monitor the school district's compilation of additional records](#)....A community activist and a City Hall watchdog are pushing for Richmond's City Council and its boards and commissions to [improve the quality and quantity of information](#) available to the public on the city's website.

**If you find VCOG's services and resources useful,  
PLEASE BECOME A MEMBER.  
We need your support!  
Your dues and/or donations go straight  
toward VCOG's modest operating budget  
and are 100% tax deductible.**

*Our IRS W9 form [can be found here](#),  
and feel free to ask for a copy of our IRS 990 and our FY10-11 financial audit*

---

[Click to view this email in a browser](#)

If you no longer wish to receive these emails, please reply to this message with "Unsubscribe" in the subject line or simply click on the following link:  
[Unsubscribe](#)

[Click here](#) to forward this email to a friend

Virginia Coalition for Open Government  
P.O. Box 2576  
Williamsburg, Virginia 23187  
US

[Read](#) the VerticalResponse marketing policy.

