

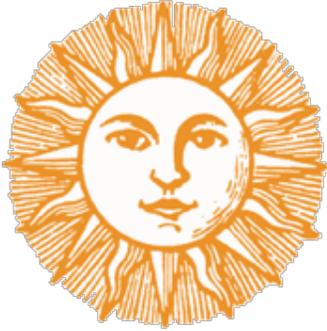
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The Sunshine Report: *Online*

Transparency news from the Virginia Coalition for Open Government

September 2012

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Coalition News

Recently on VCOG Blog

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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.

[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



Greetings, Friend of VCOG!

Rarity: FOIA fines in court case

A judge in Giles County ruled on the last day of August that Glyn Lyn and its town manager willfully withheld records from a citizens group who requested them under the Freedom of Information Act in 2008. And in a move rarely seen in FOIA court cases in Virginia, the judge imposed a \$1,000 fine on the town, which will be paid into the State Literary Fund.

According to [The Roanoke Times](#), the citizens group asked to inspect records under FOIA and specifically asked for a lease agreement. The lease was not included in the records the town provided for review in 2009. Then, this year, the group learned that the lease did exist but was not included.

The group sued to recoup the money it paid to review the records. The town argued that the group should have sued within two years of the 2009 review, while the plaintiffs said they couldn't have sued until this year when they learned of the lease's existence.

The judge sided with the plaintiffs, rejecting the town's testimony at trial that the lease did not in fact exist until this year.

The town has not yet indicated whether it will appeal.

The last known case was in 2008 when a general district judge imposed fines for a FOIA violation. A circuit court judge threw the fines out on appeal the next year.

FOIA Council drafts

Two subcommittees of the FOIA Council have each produced drafts of amendments to FOIA that will be

presented to the full FOIA Council at its Sept. 5 meeting. Read both of the drafts on [the FOIA Council website](#).

The criminal records draft is mostly a rewrite for coherence and better organization. It also clarifies the law of access related to mug shots and 911 calls.

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](#).

You don't speak for me

A new summertime malady was afflicting at least three local government entities during August: Identity theft. Not the kind of ID theft you're thinking of: no stolen Social Security numbers. But the kind of identity theft that had officials pointing fingers and making resolutions about who could talk for who and when.

The Richmond School Board hotly debated whether members could [speak on matters of "personal privilege,"](#) that is, matters that are not on the agenda. The board ultimately voted to not allow such open comments. Then one of the members who wanted the personal privilege rule [distributed a statement complaining](#) that a letter sent to Richmond's mayor was neither voted on nor agreed to by the board, despite the chair's assertion that it represented "the will of the board."

Then it was [Amherst County who approved a procedural rule](#) barring the chair from sending communication on the board's behalf without a prior vote.

Not to be outdone, Pittsylvania County directed its legislative committee to draw up a policy on [when supervisors can use county letterhead](#).

FOIA violation? Yeah, but...

Almost lost in the exciting news last month that the Sacramento Kings would consider moving the NBA franchise to Virginia Beach was this detail: the economic development authority had agreed -- largely in secret -- to pay a Dallas company up to \$895,000 in contracts to woo the team. The authority has already spent \$678,400, as detailed by the *Virginian-Pilot*. [Even city council members were kept in the dark](#), or at least were unaware of the sums being spent by the authority.



Maria Everett of the FOIA Council said that while it was [OK for the authority to discuss terms of the](#)

The e-meetings draft makes two major changes: it eliminates the requirement that a quorum be physically present in one location, and it gives local governments all of the same rights for use of electronic meetings that state agencies currently have.

VCOG opposes the changes for electronic meetings, as there was no consensus that the quorum rules were problematic. [Read our concerns here](#).

Pricing the president's visit

The President of the United States may have visited Hampton Roads in mid-July, at the close of August, but the costs to the area of hosting the world's most powerful man are still unknown.

The Daily Press [submitted FOIA requests to area local governments and the State Police](#) to find out how much they spent in overtime, security and other services during Obama's visit. On July 25, the State Police provided records in response to the paper's July 16.

The City of Hampton said it needed the paper to clarify its request on the same day, which it did on July 23. On Aug. 1, the city stated that it would share "what records, if any, the City maintains responsive to [the] request, . . . providing they are not exempt." As of Aug. 30, the city still had neither provided any records nor updated the paper. The paper has experienced a similar problem with the city's schools.

Government agencies have five working days to respond to a FOIA request. During that time, they can ask for an additional seven working days (for a total of 12). If that's still not enough time, they can ask a judge for more time (but only after first conferring with the requester) or work something out with the requester.

Section 2.2-3704(E) says a failure to respond is a violation. And the Virginia Supreme Court said in 2007 that a statement [acknowledging receipt of a request and promising to get back](#) to the requester later was insufficient under FOIA.

Open government news

Sued by one of its own members for violating the Freedom of Information Act, the Greater Lynchburg Transit Authority signed a statement Aug. 22 promising to ensure board members ["are properly educated and](#)

[informed of all pertinent FOIA requirements."](#) In exchange, Christian DePaul agreed to drop his lawsuit....After the crisis this summer over the ouster of UVa's president, Charlottesville business owner Joan Fenton vowed to keep the Board of Visitors honest by [videotaping meetings and recapping them](#) on her Facebook page, [Reform the UVa BoV](#).....The ACLU of Virginia has filed FOIA requests with several cities around the Commonwealth to learn [how they use automatic license plate readers](#). Specifically, the group wants to know how long the data collected is stored, who it gets shared with and what else they may be doing with it....Dismayed that Essex County frequently ranked lower than neighboring localities on the Sunshine Review's 10-point transparency checklist, [county resident John Clickener wanted to help](#). He created [EssexSunshine.org](#) which he notes has already

[contracts in private](#), the members should not have voted to approve them until they were in an open, public session.

City Attorney Mark Stiles agreed, but then said that the votes were procedural errors, not illegal ones. "Mistakes happen, and this was a mistake," he told the *Pilot*. Virginia Beach Mayor Will Sessoms called the situation "regrettable."

Everett pointed out, however, that the authority had deprived the public of the right to inspect the contract because the citizens didn't even know the contracts existed.

prompted the school board and the board of supervisors to beef up their websites.....Irked that "[a tremendous amount of time](#)" had been "wasted" by processing FOIA requests for records related to issues "that have transpired many years ago" and that are on the county's website, Shenandoah County Supervisor Sharon Baroncelli joined a board colleague in asking for a detailed record of how many FOIA requests the county has processed this summer. [VCOG and the FOIA Council warned](#) against using the information gained through the process to start treating requesters differently.

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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

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