

The Freedom of Information Act: Meetings

1. Introduction

The Virginia Freedom of Information Act (“FOIA”):

[E]nsures the people of the Commonwealth . . . free entry to meetings of public bodies wherein the business of the people is being conducted. The affairs of government are not intended to be conducted in an atmosphere of secrecy since at all times the public is to be the beneficiary of any action taken at any level of government.

Virginia Code § 2.2-3700(B). FOIA requires that the meetings of a locality’s boards, commissions, and committees appointed by the governing body be open to the public. *Virginia Code § 2.2-3700 et seq. A Citizen Advisory Committee is a public body under FOIA*. Open government is the overriding policy of FOIA. *Taylor v. Worrell Enterprises, Inc.*, 242 Va. 219, 409 S.E.2d 136 (1991). FOIA also requires that records of a public body are public records available for public inspection and copying, unless an exception prohibits their disclosure or allows the public body to not disclose some or all of a particular record.

2. Meetings

- A. A *meeting* may exist when three members of a public body are physically assembled; if a quorum of the public body is less than three, then a meeting exists whenever a quorum is established.
- B. If *three or more members* of a public body are assembled, but not for the purpose of conducting business (*e.g.*, at a dinner or a VDOT informational meeting), a meeting under FOIA is not established provided they do not transact business.
- C. *Electronic communications* such as e-mail communications between three or more members of a public body may be an unlawful meeting if the communications are conducted in real time; e-mail communications where there are periods of time between each correspondence are unlikely to constitute a meeting.
- D. If three or more members of a public body *continue discussions* of public business after a public meeting has adjourned, the gathering is a meeting under FOIA, even if the members are discussing the business with staff.
- E. *Public meetings are the rule; closed meetings are the exception*. A closed meeting is permitted only when an express statutory exemption from the public meeting requirement applies. Generally, the exceptions that might apply in relation to a land use matter (*e.g.*, to receive specific legal advice by an attorney), will not apply to a Citizen Advisory Committee.
- F. A public meeting of the members of a public body may be established under FOIA *even though a quorum of the public body is not established*.
- G. If a *quorum is not established*, the only action the public body may take at a meeting is to adjourn the meeting.
- H. The *date, time, and location* of a public meeting must be posted *3 working days prior to the meeting*.