

# WARREN COUNTY BOARD OF SUPERVISORS

## POLICY RESOLUTION

### LEGAL SERVICES TRANSPARENCY AND REVIEW

12/2/25

Adopted 12/9/2025

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## PREAMBLE

The Warren County Board of Supervisors recognizes that effective governance requires informed decision-making based on appropriate legal review, transparency in public deliberations, and accountability in the expenditure of public funds for legal services. This policy resolution establishes procedures to ensure that Board members have access to the legal work product necessary to fulfill their duties, that closed sessions are used appropriately and in strict compliance with the Virginia Freedom of Information Act (FOIA), and that the Board maintains regular oversight of legal expenditures.

The Board of Supervisors recognizes that elected officials bear ultimate responsibility for policy decisions and must have access to the legal and factual basis for their votes. Legal counsel's role is to inform Board decision-making. Board members have a duty to understand the legal reasoning underlying their policy choices and to refer to that reasoning publicly during deliberation and in communication with inquiring constituents. This duty is heightened when legal guidance is provided in closed session. When the narrow criteria for closed session are met, it is particularly important for Board members to have comprehensive information upon which to base their deliberations, rather than defaulting to a deference to counsel's opinion in the absence of such information.

This policy advances three core principles:

1. **Transparency as the default rule** for Board deliberations, with closed sessions reserved for matters meeting FOIA's narrow statutory criteria;
  2. **Access to written legal work product** for matters of significant policy import, enabling informed Board decision-making and public understanding of legal considerations; and
  3. **Regular accountability** for legal services expenditures to ensure prudent use of public resources.
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# RESOLUTION

**WHEREAS**, the Virginia Freedom of Information Act establishes that "all public bodies and records shall be open, unless specifically exempted by law," Va. Code § 2.2-3700(B), and that "any exemption from public access...shall be narrowly construed"; and

**WHEREAS**, the Board of Supervisors is responsible for making policy decisions affecting the citizens of Warren County and requires adequate legal information to discharge this responsibility effectively; and

**WHEREAS**, written legal work product enables Board members to conduct independent research, verify statutory authorities, and engage in informed collegial deliberation; and

**WHEREAS**, transparency in legal matters strengthens public confidence in County governance and enables informed public participation in policy development; and

**WHEREAS**, the Board has a fiduciary duty to ensure that expenditures for legal services represent prudent use of public funds and serve the public interest; and

**WHEREAS**, regular review of legal expenditures promotes transparency and accountability, and enables the Board to assess whether legal resources are allocated appropriately;

**NOW, THEREFORE, BE IT RESOLVED** by the Warren County Board of Supervisors that the following policy is hereby adopted:

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## I. WRITTEN LEGAL WORK PRODUCT

### A. General Requirement

For matters of significant policy import, including but not limited to proposed ordinances, comprehensive plan amendments, major policy initiatives, and significant regulatory decisions, the County Attorney shall provide written legal work product to the Board of Supervisors. Such written work product shall be available in advance of public meetings to enable Board review before deliberation and action, to enable informed decision-making. The scope and detail of written work product shall be proportionate to the significance and complexity of the matter under consideration.

### B. Benefits of Written Work Product

Written legal work product serves multiple important purposes: it enables Board members to independently evaluate legal reasoning and conduct supplementary research as needed; it ensures all Board members have consistent understanding of the legal framework; it facilitates informed collegial deliberation by providing a common reference point; it creates institutional memory and

documentation of the legal basis for County decisions; and it demonstrates that the Board acted with full knowledge and good faith, thereby strengthening the County's position if decisions are challenged.

### **C. Written Work Product**

For matters of substantial significance, such as ordinances, comprehensive plan amendments, major policy initiatives, and significant regulatory decisions, written legal work product shall constitute analysis that includes, *as applicable to the matter, one or more* of the following:

1. Relevant statutory provisions and their interpretation;
2. Applicable case law and regulatory guidance;
3. Assessment of legal risks with factual basis;
4. Alternative legal approaches or interpretations, where they exist;
5. Counsel's recommendation and the reasoning supporting it.

There is no make-work intention in this policy nor an arbitrary standard checklist for what constitutes sufficient legal analysis. Legal advice requires the same foundational research, analysis, and reasoning whether delivered orally or in writing; written work product merely memorializes analysis that has already been performed. The County Attorney may provide briefer or longer memoranda addressing the specific legal questions presented, with the level of detail appropriate to the matter's significance and complexity. Members of the Board may interact with the County Attorney regarding the work product to achieve the level of support and understanding of the legal issues that they believe equips them to make sound decisions.

### **D. Accessibility**

Written legal work product shall be provided to all Board members and, except as specifically exempted under FOIA, shall be publicly available consistent with Virginia FOIA's mandate that public access to government records serves the public good, shall be publicly available. Va. Code § 2.2-3700(B) establishes that FOIA ensures the people of the Commonwealth ready access to public records, and any exemption from public access "shall be narrowly construed."

Legal work product may only be withheld from public disclosure when the County Attorney specifically cites an applicable FOIA exemption with explanation of how the exemption applies to the particular content. In such cases, Board members shall receive the work product under terms of confidentiality binding to Board members, with appropriate security measures.

The County Attorney bears the burden of identifying to the Board any portions of written work product that qualify for exemption from public disclosure and recommending such exemption to the Board.

### **E. Routine Matters Exception**

This written work product requirement does not apply to routine legal questions requiring brief clarification, time-sensitive operational matters, or other circumstances where written

documentation would be impractical or unnecessary. Written work product is expected for matters of gravity that inform Board policy decisions and public deliberation.

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## II. CLOSED SESSION PROCEDURES

### A. Advance Notice and Specificity Requirements

Any request for closed session may be made by the County Attorney, any individual Board member, or the County Administrator. Regardless of who initiates the request, it shall be submitted to the Board at least **48 hours in advance** of the meeting, except in cases of genuine emergency.

The request shall be in writing and shall include:

1. Specific citation to the FOIA exemption being invoked;
2. A description of the matter to be discussed with sufficient specificity to enable Board members to assess whether the statutory criteria are met;
3. **For probable litigation claims:** documentation of the specific threat or reasonable basis for believing litigation will be commenced, including identification of the potential party and the nature of the dispute;
4. **For specific legal matters claims:** identification of the specific legal transaction or dispute requiring confidential legal advice, and explanation of why public discussion would compromise the County's legal position. As the FOIA Council has clarified:

*“the ‘legal matters’ exception applies only to discussions of specific legal transactions or disputes and may not be used to justify closed meetings involving more general issues, even though those issues eventually may have legal consequences”, and,*

*“[the ‘legal matters’ exception] requires more than a desire to discuss general legal matters and may not, therefore, be used as a catch-all exception to the FOI Act's open meeting requirement and does not justify the discussion of general policy matters in executive session, absent an appropriate legal issue.”*

- FOIA Council Advisory Opinion 01-07 (2007).

### B. Presumption of Open Deliberation

Closed sessions are the exception to Virginia's open meeting requirements. The presence of legal counsel or the discussion of legal considerations does not itself justify closure. Statutory interpretation, policy analysis, and general legal risk assessment relating to proposed ordinances or regulations shall be conducted in open session unless the specific criteria for closure under FOIA are demonstrably met. Discussion of general policy or regulatory matters does not become eligible for closed session merely because such matters may eventually have legal consequences.

### **C. Board Member Inquiry**

Before any vote to enter closed session, Board members may question the basis for the closed session request to ensure FOIA compliance. Such inquiry is appropriate and does not constitute interference with the County Attorney's professional duties. The advance notice period provided in Section II.A shall allow adequate time for Board members to review the request and submit any questions or concerns regarding the justification for closure.

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## **III. QUARTERLY LEGAL SERVICES REVIEW**

### **A. Reporting Requirement**

The County Administrator shall provide to the Board of Supervisors a quarterly report of legal services expenditures. This report shall be presented in open session unless specific line items involve matters properly subject to attorney-client privilege or pending litigation.

### **B. Report Contents**

The quarterly legal services report shall include:

1. Total legal expenditures for the quarter, including County Attorney compensation, benefits, and outside counsel fees;
2. Itemization of expenditures by category, with categories to be developed by the County Administrator in consultation with the Board of Supervisors;
3. Comparison of expenditures to budgeted amounts;
4. Summary description of major legal matters addressed during the quarter and their disposition or status;
5. Any anticipated significant legal expenditures in the upcoming quarter.

### **C. Purpose**

The quarterly review enables the Board to:

1. Ensure that legal expenditures represent prudent use of public funds;
  2. Assess whether legal resources are appropriately allocated to County priorities;
  3. Identify trends or patterns in legal service needs that may inform future budget planning;
  4. Maintain accountability for professional services purchased with public funds.
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## **IV. POLICY IMPLEMENTATION**

### **A. Effective Date**

This policy shall take effect immediately upon adoption by the Board of Supervisors.

### **B. Development of Procedures**

Within 30 days of adoption, the County Administrator, in consultation with the County Attorney and the Board of Supervisors, shall develop administrative procedures for implementing this policy, including:

1. Categories for quarterly legal expenditure reporting;
2. Procedures for distribution of legal work product to Board members.

### **C. Annual Review**

This policy shall be reviewed annually to ensure continued effectiveness and compliance with applicable law.

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## **V. RELATIONSHIP TO OTHER AUTHORITIES**

This policy supplements and does not replace any requirements imposed by the Virginia Freedom of Information Act, the County Attorney's professional responsibilities under the Virginia Rules of Professional Conduct, or any other applicable law. In the event of any conflict between this policy and applicable law, the law shall control.