

MEMORANDUM

TO: Warren County Board of Supervisors, Supervisors Elect, and County Administrator

FROM: Rich Jamieson, North River District Supervisor

DATE: 12/24/2025

RE: FOIA Compliance Concern - Anticipated January 8 Closed Session Motion

I am writing to raise a concern about an anticipated closed session motion for our January 8, 2026 meeting, based upon the motion used January 7, 2025 specifically the portion invoking § 2.2-3711(A)(8) for discussion of "Board of Supervisors meeting policy and procedures."

The Legal Standard

Virginia Code § 2.2-3711(A)(8) permits closed meetings for:

"Consultation with legal counsel employed or retained by a public body regarding specific legal matters requiring the provision of legal advice by such counsel."

The statute further states in § 2.2-3712(A):

"A **general reference** to the provisions of this chapter, the authorized exemptions from open meeting requirements, or **the subject matter** of the closed meeting **shall not be sufficient** to satisfy the requirements for holding a closed meeting."

Moreover, § 2.2-3700(B) establishes the fundamental principle of statutory construction:

"The provisions of this chapter shall be liberally construed to promote an increased awareness by all persons of governmental activities and afford every opportunity to citizens to witness the operations of government. **Any exemption from public access to records or meetings shall be narrowly construed.**"

FOIA Council Guidance

The Virginia FOIA Council addressed policy discussions in Advisory Opinion AO-01-07 (https://foiacouncil.dls.virginia.gov/ops/07/AO_01_07.htm). The Council emphasized that the legal matters exemption "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.**"

Furthermore, the Council stated: "Following prior opinions of the Supreme Court and the Attorney General, the legal matters exemption could not be properly invoked absent such *contractual negotiation* or other *specific legal transaction* or *dispute*."

The Council made clear that:

- Policy discussions do not qualify for closed session under subsection (A)(8) simply because legal counsel is present
- The exemption requires "specific legal matters requiring the provision of legal advice"
- General policy deliberations are not "legal matters" within the meaning of the statute

Application to Proposed Motion

If substantially the same motion language from January 7, 2025 is to be used, it states the subject matter as "Board of Supervisors meeting policy and procedures." This is a policy discussion, not a *specific* legal matter requiring legal advice. There is no contract, specific legal transaction, or dispute on which to properly invoke a closed session. Discussing how we structure our meetings, organize our agendas, or conduct public meetings are policy choices that belong in open session where the public can participate in and observe our deliberative process.

Conclusion

A closed session under subsection (A)(8) for "meeting policy and procedures" does not satisfy FOIA's requirements per the citations of statute and FOIA council opinion above. Such discussions should occur in open session consistent with the transparency principles underlying Virginia's Freedom of Information Act.

I would remind colleagues that each Board member has an individual responsibility to know and follow the FOIA statute and may rely upon the opinions of the FOIA Advisory Council as authoritative. I am simply placing the literal words of the statute and the Advisory Council before you. Deference to the County Attorney's advice does not shield Board members from liability for FOIA violations - each of us must independently ascertain that closed session motions we vote for comply with statutory requirements.