

Roanoke County Electoral Board Meeting Minutes

Date: February 24, 2022

Time: 10:00 AM

900 Chestnut St. Vinton, VA 24079

Chair: Ken Srpan

Vice Chair: Jeff Krasnow

Secretary: Gailen Miles

Board Attendance Request: Ken Srpan, Jeff Krasnow, Gailen Miles, Anna Cloeter

Visitors: John Young, Maurice McBride, and Carol Rowan

1. Call to Order and Welcome:

Chairman Ken Srpan called the meeting to order at 10:02 AM and welcomed everyone in attendance.

2. Approval of Agenda:

Jeff Krasnow moved to amend the agenda to take up as the first item of business the resignation of Gailen Miles from the Board. Ken Srpan seconded the motion and it passed unanimously.

3. Resignation of Gailen Miles:

- a. Srpan appointed Jeff Krasnow to serve in the position of acting Secretary of the Roanoke County Electoral Board until such time as a new Secretary is elected.
- b. Mr. Srpan moved to accept the resignation of Galen Miles from the Roanoke County Electoral Board. Mr. Krasnow seconded the motion and it passed unanimously.
- c. Mr. Srpan recommended and Mr. Krasnow agreed that no election for a new Secretary should take place until the new appointee who will replace Ms. Miles has been sworn in, but no formal action was taken.

4. Old Business:

a. Approval of Minutes from January 20, 2022 Meeting:

Mr. Srpan moved to accept the minutes of the January 20, 2022 meeting. Mr. Krasnow seconded the motion and it passed unanimously.

b. Officer of Election Recruitment:

- i. Ken Srpan provided a Memorandum regarding his activities in support of the Board's Officer of Election recruitment plans, a copy of which is attached to these minutes.
- ii. Ms. Miles had previously submitted a Memorandum of her efforts in support of the Board's Officer of Election recruitment plans, a copy of which is attached to these minutes.
- iii. Anna Cloeter reported that she would talk with Professor Lynch at Hollins University about the possibility of recruiting political science majors who are registered to vote in Virginia to serve as Officers of Elections or election day pages.
- iv. Jeff Krasnow reported orally on his contacts with the Roanoke City Bar Association and the Salem and Roanoke County Bar Association. Both Bar Associations are holding luncheon meetings and Mr. Krasnow will attempt to arrange for an announcement to be read at that meeting encouraging members of both associations, their families and their staffs to become Officers of Election. In addition, Mr. Krasnow will attempt to have an announcement placed in both organizations upcoming newsletters to recruit new Officers of Election.
- v. **Future plans** – Ms. Cloeter, Mr. Krasnow and Mr. Srpan will be continuing their efforts to get organizations to support our Officer of Election recruitment campaign. Mr. Krasnow will also compile a list of the top 30 employers in the Valley.

5. New Business:

- a. Settlement of Stephenson Case** – Mr. Krasnow made a motion to accept the proposal made by the plaintiff to resolve the pending Stephenson litigation, with all parties being responsible for their own attorney's fees. Mr. Srpan seconded the motion and it passed unanimously.
- b. FOIA Presentation** – Peter Lubeck, Roanoke County Attorney, presented a lecture accompanied by PowerPoint slides of the requirements of the Virginia Freedom of Information Act. Copies of the PowerPoint slides are attached to these minutes.

6. Chairman's Report:

Mr. Srpan reported that in light of Galen Miles' resignation from the Roanoke County Electoral Board, The Roanoke County Republican Committee, under Virginia law was entitled to submit the names of three potential candidates to the Chief Judge of the Roanoke County Circuit Court from which a successor would be appointed. The deadline for this to occur is March 18, 2022.

7. Director's Report:

Ms. Cloeter reminded the Board and those in attendance that early voting for the June 2022 primary will commence on Friday, May 6, 2022.

8. Comments from the Electoral Board:

No comments were made.

9. Public Comment:

No comments were made.

10. Next Meeting:

A decision on the next meeting of the Roanoke County Electoral Board was deferred pending appointment of the new member.

11. Adjournment:

Mr. Krasnow moved to adjourn the meeting. Mr. Srpan seconded the motion and it passed unanimously. Meeting adjourned at 11:29 AM.

Acting Secretary _____

Chair _____

Vice Chair _____

EB Meeting
Materials

2/24/22



Roanoke County Electoral Board
P.O. Box 20884 Roanoke, VA 24018
900 Chestnut St. Vinton, VA 24179
electoralboard@roanokecountyva.gov

~~DRAFT~~ AGENDA

I. Approval of Agenda

II. Old Business

- a. Approval of Minutes from January 20th Meeting
- b. Update on Officer of Election Recruitment Plans

III. New Business

- a. Resignation of G. Miles
- b. Resolution Authorizing Settlement of Stevenson Case
- c. Training on FOIA Requirements (10:30)

IV. Chairman's Report Mar. 18 new EB member?

V. Director's Report

VI. Comments from the Electoral Board

VII. Public Comment

VIII. Scheduling of Next Meeting TBD

IX. Adjournment

email Peter -
appt. new
person as VC
or see - or
need to reorg.

~~Adjourned~~



Mrs. Gailen Miles
4815 Colonial Ave.
Roanoke, VA 24018

GREENSBORO NC 270
PIEDMONT TRIAD AREA
16 FEB 2022 PM 2 L
FOREVER

Quena Clester
Director of Education
900 Chestnut St.
Vinton, VA 24079

24179-352400

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February 15, 2022

Beth Gunter, Chair
Roanoke County Democrat Committee
3805 Pinevale Rd.
Roanoke, VA 24018

Dear Ms. Gunter, Chair

Please be advised that as of February 16, 2022 I am resigning from the Roanoke County Electoral Board for personal reasons.

Sincerely,


Gailen Miles

CC: Anna Cloeter, Director of Elections
Ken Srpan, Chair of the Board
Jeff Krasnow, Vice Chair of the Board

FROM GAILEN MILES

- Linda Sable, HR with Roanoke County Schools says to send her an email with the message you want shared. Once she has had it approved, she will send the message out by email to all employees. Ken will follow up.
- Carilion 981-7000 HR #9 Said they thought that could happen but took a message and will call back with the correct contact info for the project. Ken will follow up
- Wells Fargo The manager sent me to customer service # 800-869-3557. I could not make contact through this number. . Ken will follow up.
- VA Affairs 827-1000 apparently not the main number, still looking. . Ken will follow up.
- Kroger 776-0500 manager never answered . Ken will follow up.
- Walmart, Clearbrook, 772-3892 #0 couldn't get through . Ken will follow up.
- Virginia Western Community College, HR, 857-7282, left message . Ken will follow up.
- Advanced Auto, 366-3078 spoke with mgr trainee, Mr. Krause, Manager out of office for the week. I've sent an email to Richard Krause with info he will share with Dolly the manager: r.krause@advance-auto.com . Ken will follow up.
- Food Lion 989-1952, (Starkey store) manager Kathy said we could leave a flyer in the breakroom. Each store would need to be called. . Ken will follow up.
- Friendship, 385-8720 HR, Angela, left message. . Ken will follow up.

KEN SRPAN

ROANOKE COLLEGE

Mr. Jonathan E. Lee -Director of Alumni Engagement & Student Enrichment

On the student front, we have a job-board service that all RC students and recent graduates have access to for job and internship opportunities. So this could be a great resource for you.

We use a system called Handshake. This could be a great way to broadcast openings to a large number of recent RC graduates and current students.

Next, our office of *Alumni Engagement & Student Enrichment* is also happy to share this directly with students who might be a great fit.

Dr. Andreea S. Mihalache-O'Keef

Associate Professor Public Affairs

Thank you for reaching out. This is a great opportunity and I will pass it along to the students in my program

ROANOKE VALLEY ASSOC OF REALTORS®

Thank you. Our Officers thought it was a great idea for our Association to solicit volunteers to assist the Roanoke County Electoral Board. I provided specifics taken from our brochure. Laura Benjamin, CEO

Roanoke Regional Home Builders Association, Inc. Yes, I will put this out there in our newsletter. Amy Lowman, Executive Officer (540)389-7135 www.rrhba.com

ROANOKE COUNTY BOS

Contacted all five asking them to spread the word in their travels. Phil North said he would speak about this at a BOS meeting. Martha Hooker found some folks who wanted to work half day and asked about two workers who were willing to split a shift at a precinct.

Meeting with Doug Blount, asst administrator who is the liaison with registrar's office how we can get current and former county employees involved.

NOT HEARD BACK FROM Roanoke Firefighters Assoc, Public Relations Society and Vinton chamber of commerce.

SETTLEMENT AGREEMENT

In the matter of *Aaron Stevenson v. Roanoke County Electoral Board*, Case No. 21000002-00, the parties, for mutual consideration, hereby agree to the following:

1. Defendant, Roanoke County Electoral Board, agrees and commits to comply with its obligations under the Virginia Freedom of Information Act (Virginia Code § 2.2-3700 *et seq.*) and Virginia Code § 24.2-107 – including providing notice of meetings, recording minutes of meetings, and following requirements for entering a closed meeting and certifying the closed meeting.
2. Within 60 days of entering this agreement, Defendant's members will receive training regarding Virginia Freedom of Information Act standards and requirements relevant to its operations from its attorney.
3. Upon reasonable certification of Defendant's compliance with the obligations listed in Paragraph 2, Plaintiff agrees to request dismissal of this matter with prejudice, with each party to bear their own attorneys' fees and costs.
4. Nothing herein shall constrain Plaintiff from bringing suit against Defendant for any future violations of the Virginia Freedom of Information Act.

We agree to this:

Aaron Stevenson, Plaintiff


Ken Srpan
Chairman, Roanoke County Electoral Board
Defendant

The Virginia Freedom of Information Act (FOIA)

Roanoke County Electoral Board & Registrar's Office

February 2022



Presentation overview

- Introduction
- Public meetings
- Public records
- Remedies and penalties

Introduction

- Virginia FOIA first enacted in 1968
- Federal FOIA and most state FOIAs were enacted in the late 1960's or the 1970's as part of a government reform movement
- All 50 states now have some form of FOIA law, variously called FOIA, sunshine laws, open government laws

Introduction

- Appears in Title 2.2 of the Virginia Code, as Chapter 37 – Section 2.2-3700 and subsequent sections
- The entire Virginia Code, including FOIA, is available online at <http://leg1.state.va.us/000/src.htm>

Introduction: purpose & policy of FOIA

§ 2.2-3700. Short title; policy

- By enacting this chapter, the General Assembly ensures the people of the Commonwealth ready access to public records in the custody of a public body or its officers and employees, and 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. Unless a public body or its officers or employees specifically elect to exercise an exemption provided by this chapter or any other statute, every meeting shall be open to the public and all public records shall be available for inspection and copying upon request. All **public records** and **meetings** shall be **presumed open**, unless an exemption is properly invoked.

Introduction: purpose & policy of FOIA

§ 2.2-3700. Short title; policy

- 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** and no record shall be withheld or meeting closed to the public unless specifically made exempt pursuant to this chapter or other specific provision of law. This chapter shall not be construed to discourage the free discussion by government officials or employees of public matters with the citizens of the Commonwealth.
- All public bodies and their officers and employees shall make **reasonable efforts to reach an agreement** with a requester concerning the production of the records requested.

Introduction: purpose & policy of FOIA

§ 2.2-3700

- Ready access to public records
- Free entry to meetings of public bodies
- FOIA is to be liberally construed to promote awareness of governmental activities and operations
- Any exemption from public access to records or meetings shall be narrowly construed
- No record shall be withheld or meeting closed to the public unless specifically made exempt

Introduction to meetings under FOIA

- Policy: all meetings must be open unless closed following an exemption (§ 2.2-3700)
- Open meeting requirements (§ 2.2-3707):
 - Notice (time, date, location – 3 days in advance): on website, office of the clerk, prominent location where notices routinely posted
 - Open to the public
 - Minutes: date, time, who was there, summary of discussion of matters, decisions, reco
- Agendas and materials
 - Make available to public at same time as members of public body
- Definitions of “public body” and “meeting” (§ 2.2-3701)

Definition of “public body”

- “[A]ny legislative body, authority, board, ... of the Commonwealth or any political subdivision of the Commonwealth”

Definition of “meeting”

- Includes meetings including work sessions, when sitting physically, or through electronic communication means as a body or entity, or as an informal assemblage of (i) as many as three members or (ii) a quorum, if less than three, of the constituent membership, wherever held, with or without minutes being taken, whether or not votes are cast, of any public body
- “quorum if less than three” means two members, if they are a quorum of the public body (ex. a subcommittee with only two or three members total would have a quorum of two members)
- Must be **discussing or transacting public business in real time**

Definition of “meeting”

The following are not considered meetings subject to FOIA:

- Gatherings of employees (the meetings rules only apply to members of the public body, not staff)
- Gatherings where no part of the purpose is the discussion or transaction of any public business
- Public forums, candidate appearances, or debates, the purpose of which is to inform the electorate and not to discuss or transact public business

Rufus, the infamous blogger

- Rufus is an infamous Virginia blogger who likes to join local boards of elections on their yearly retreats. He writes the following letter to Mr. Srpan:
 - Dear Mr. Srpan, I understand that the Board of Elections will be having a retreat next Friday and Saturday. Pursuant to the Freedom of Information Act, I am planning on attending. I always enjoy watching other people engage in “trust exercises.” I will probably take some unflattering photos and post them on my infamous blog. Ha! Please save me a chair and some refreshments. – *Rufus, the infamous blogger*
 - Is Rufus entitled to attend the retreat?

Rufus, the infamous blogger, part 2

- At the retreat, Rufus learns that the County Registrar and her staff plan to have a retreat, too.
- Rufus gleefully sends a letter to Ms. Cloeter, advising that he will be attending ...
- Is Rufus entitled to attend?

Closed meetings

- Public bodies may meet in closed sessions only if certain procedures are strictly followed and only for one of the specific, limited purposes listed in the Act
- Closed sessions are *not required* for these stated purposes, but may be convened at the discretion of the public body

Closed meetings: procedural requirements

- Vote to convene (Board must adopt a motion to convene in closed session)
- Contents of the motion (§ 2.2-3712):
 1. Must identify the **subject matter** of the closed session,
 - (*Cole et al v. Smyth County Board of Supervisors – Supreme Court of VA, 2020*): must identify the particular case, controversy, issue
 2. Must state its **purpose**,
 3. Must cite the **specific statutory exemption** under which the **closed meeting** is permitted.

Closed meetings: procedural requirements cont ...

- Limitation to identified subjects (§ 2.2-3711)
 - Voting
 - May take straw polls or reach consensus in closed meetings
 - No decision reached or vote taken is legally effective until confirmed by a vote in an open public meeting
 - Minutes – are not required for closed meetings

Closed meetings: certification following closed meeting

- Immediately following the closed meeting, the public body must reconvene in an open meeting and take a roll call vote to certify that, to the best of each member's knowledge, the only subjects just discussed or considered in the closed session were those:
 1. Lawfully exempted from open-meeting requirements, and
 2. Properly identified in the motion that convened the closed meeting
- Recorded vote – that meeting conformed to the certification requirements
 - If negative vote, must state reasons for conclusion

Public records: topic overview

- **WHAT** are public records?
- **WHO** can make a FOIA request?
- **WHAT** makes a FOIA request?
- **HOW** to respond to a FOIA request?
 - Permissible responses
 - Time limits
 - Costs



Public records

- All public records are presumed open unless specifically exempt
- Definition of “public record” (§ 2.2-3701)
 - all writings and recordings that consist of letters, words or numbers, or their equivalent . . . however stored, and regardless of physical form or characteristics
 - prepared or owned by, or in the possession of a public body or its officers, employees or agents
 - in the transaction of public business
 - Note: draft versions are public records

Who can make a FOIA request for records?

- Citizens of the Commonwealth
- Representatives of newspapers & magazines with circulation in the Commonwealth
- Representatives of radio & television stations broadcasting in or into the Commonwealth

What makes a FOIA request?

- When in doubt, take a broad interpretation
- Written or oral request
- A request with reasonable specificity
- A request for existing records
 - FOIA requests do not have to say “FOIA”, “Freedom of Information Act”, or cite any (or the correct) code sections
 - FOIA does not require the requesting party to state the purpose for his or her request

The Scoop Report

- It is Monday, February 21, 2022, and Samantha Scoop (the reporter) has the story of the decade. She has received good information that Anna Cloeter's appointment as Roanoke County's Registrar was influenced by the Russian government. She needs information and she needs it fast, if she is going to make the weekend edition.
- She writes to Ms. Cloeter, requesting any and all correspondence between Vladimir Putin and either Ms. Cloeter or members of the County Electoral Board:
 - "Anna, today is February 21st. Pursuant to FOIA, you will need to provide me the information by Friday, February 25th."
- How might Anna respond?

How to respond

- **Five working days to respond after request is received**
 - The first day to respond is the day after the request is received
 - Weekends and legal holidays do not count as working days
- **Failure to respond is deemed a denial of the request and a violation of FOIA**
- **Creation of new records not required**
- **Always allowed to make agreements with the requester on the production of records**

How to respond: 5 responses

1. **Provide the requested records**
2. **Requested records are being **entirely withheld****
3. **Requested records are being **provided in part and withheld in part****
4. **Requested records could not be found or **do not exist****
5. **Additional time needed to search for/produce records**

How to respond: exemptions & redaction

- Most FOIA exemptions are not prohibitions – exempt records may be withheld, but they may also be released in the discretion of the custodian
- Only exempt portions of records may be withheld (redacted)
- An entire record may be withheld only if the entire record is exempt

How to respond: exemptions & redaction

- Some common discretionary exemptions:

- Personnel records
- Attorney-client privilege

How to respond: costs for production

- Set by Board Resolution (060821-2)(June 8, 2021)
- Less than \$5 (waived)
- More than \$200 (may require payment in advance)

Copying and printing	<ul style="list-style-type: none">• \$0.10 per one-sided black and white page• \$0.20 per double-sided black and white page• \$0.16 per one-sided color page• \$0.32 per double-sided color page
USB flash drive	\$15 per flash drive
Audio or video CDs	\$5.00 per CD
Maps	<ul style="list-style-type: none">• \$7 per 24 x 36 inch map• \$10 per 36 x 48 inch map
Staff time	<ul style="list-style-type: none">• Per hourly rate of staff member

Remedies & penalties

- Enforcement is through the courts
- Petition for mandamus:
 - Mandamus is when the court orders a public official or employee to do something
 - Expedited hearing within 7 days
- If petitioner wins, shall be awarded court costs, attorney fees, and any expert witness fees (paid by the public body)
- Public body bears burden to prove an exemption applies

Remedies & penalties: petitions for mandamus



Office of the County Attorney

Remedies & penalties: willful & knowing violations

§ 2.2-3714(A)

- In a proceeding commenced against any officer, employee, or member of a public body ...the court, if it finds that a violation was willfully and knowingly made, shall impose upon such officer, employee, or member in his individual capacity, whether a writ of mandamus or injunctive relief is awarded or not, a civil penalty:
 - \$500 to \$2,000 civil penalty for first violation
 - \$2,000 to \$5,000 civil penalties for second and subsequent violations
 - Paid by the individual to the Literary Fund (not paid by the public body)

Remedies & penalties: improper alteration or destruction of public records

§ 2.2-3714(B)

- Records altered or destroyed before record retention period expires
 - With intent to avoid FOIA
 - Civil penalty up to \$100 per record
 - In addition to any other penalties
 - Paid by the individual to the Literary Fund (not paid by the public body)
- Note: record retention periods are set by the Library of Virginia under the Virginia Public Records Act