

BOARD BRIEF

Date: January 18, 2019

For ACTION _____

For INFORMATION X_____

Board Agenda: Yes ___

No X_____

FROM: Dr. Elizabeth Hoover, Chief Technology Officer
Jennifer Abbruzzese, Director of Policy & Board Initiatives

THROUGH: Dr. Gregory C. Hutchings, Jr., Ed.D., Superintendent of Schools

TO: The Honorable Cindy Anderson, Chair, and
Members of the Alexandria City School Board

TOPIC: Virginia Freedom of Information Act (VFOIA) Requests under Policy KBA:
Requests for Information

SUMMARY:

On December 20, 2018, the School Board approved revisions to [Policy KBA](#) and its implementing regulation, [KBA-R](#), which govern Alexandria City Public Schools' fulfillment of Virginia Freedom of Information Act (VFOIA) requests. They were updated to reflect the amendment of Va. Code 2.2-3704 by HB 1539 (2017), which contained numerous technical amendments to VFOIA provisions.

The Virginia Freedom of Information Act is the state law governing access by citizens of Virginia and representatives of the media to public records and meetings of public bodies as defined in the Act. VFOIA provides that, with some specific exemptions and exceptions, all meetings of public bodies shall be open to the public and public records shall be open for public inspection. All public meetings and records are presumed open unless an exemption is properly invoked.

Alexandria City Public Schools (ACPS) complies with VFOIA. The Chief Technology Officer is the school division's designated FOIA Officer, and is therefore responsible for following the Code of Virginia when examining and evaluating requests for information under FOIA; determining what information or portions of information may be exempt from release; drafting replies to requests for information; and conducting inquiries and retrieving responsive information to prepare final responses to requests for information.

The substance of the December 2018 policy revision centered on the addition of statutory language that had not previously been included in the *policy*, but that already existed within Va. Code 2.2-3704, which forms the legal basis for Policy KBA. The new *policy* language was:

Except as otherwise specifically provided by law, ACPS public records are open for inspection during its regular office hours to:

- *Citizens of the Commonwealth;*

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- *Representatives of newspapers and magazines with circulation in the Commonwealth; and*
- *Representatives of radio and television stations broadcasting in or into the Commonwealth.*

Although the Board approved the changes to Policy KBA and Regulation KBA-R, supplemental information is provided below in response to Board Member feedback.

1. Board Member Lorber inquired as to whether legal residents are considered “citizens of the Commonwealth” for VFOIA purposes (see the first bullet above in blue).

Staff Response: Regardless of official residency status, if the requester’s mailing address is located within the state of Virginia, or if the requester is a media entity that broadcasts into Virginia or whose print publication circulates within the state of Virginia, the request for information is processed.

2. Board Member Lewis inquired whether Policy KBA’s guidelines regarding which entities may file VFOIA requests should be expanded beyond those limited by Va. Code 2.2-3704 (see blue text above). His inquiry highlighted the potential benefits to national and out-of-state public interest advocacy groups if they were permitted to utilize school division data for research, educational studies, and marketplace analysis, etc.

Staff Response:

[Policy IFB: Approval Process for Research Studies](#) addresses the limited circumstances under which information requests (for research) that fall outside of VFOIA will be considered. It also outlines the Superintendent’s and the Research Screening Committee’s roles in the approval process.

[Policy KFB: Administration of Surveys and Questionnaires](#) outlines the required notifications, limitations on, uses of, and protections regarding any student participation in internal and external surveys or questionnaires.

Although Policies IFB and KFB are mentioned above for reference, Board Member Lewis’ query extended beyond their scope. They were therefore not discussed at the December 20th Board Meeting.

Expanding Policy KBA’s guidelines for which entities may file VFOIA requests beyond those limited by statute is not recommended by staff. Because ACPS may not discriminate based on viewpoint, it could find itself in the position of having to respond

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to almost every request it received. This would not be feasible at current budget and staffing levels. For instance:

- ACPS typically responds to at least 55 VFOIA requests per year, resulting in hundreds of hours of staff time annually.
- Only 2 staff members, the Chief Technology Officer and an Administrative Assistant, officially support this effort, although additional staff time from the Procurement, Student Services, Educational Facilities and Technology Services departments is often required to collect/provide information to fulfill the requests. In addition, both the Chief Technology Officer (who performs all of the reviewing and redacting) and the Administrative Assistant have many other duties beyond fulfilling such requests.
- Additional FTE's dedicated to fulfilling VFOIA requests would not fully address an expansion of the current policy, as staff members from other departments are still needed to compile specific information, and the advice of legal counsel is also often necessary in fulfilling requests.
- Because of VFOIA's 5-day statutory deadline, staff members must often set aside all other duties and dedicate 100% of their time to fulfilling VFOIA requests.
- ACPS has already received 6 VFOIA requests in the last 18 days.
- Even with the existing statutory limitations on requesters in place, fulfilling VFOIA requests often requires staff to work after hours and on weekends to meet the deadlines.
- All requests for documents that require more than 15 minutes of staff time to compile are subject to charges. However, the charges are stipulated by the Code of Virginia and do not fully compensate the time and resources required to fulfill requests. If ACPS was to open up public records requests further, it would not only be expanding what is required by law, but would also further tax ACPS staff and resources.

For the aforementioned reasons, expanding Policy KBA's guidelines for which entities may file VFOIA requests beyond those limited by statute is not recommended by staff.

CONTACT:

Dr. Elizabeth Hoover, Chief Technology Officer, 703-619-8111