Virginia Tech Board of Visitors Meeting

Information Session

Monday, August 24, 2020
3:00 – 4:15 p.m.

The Inn – Latham Ballroom A/B
Virginia Tech Campus

Innovation Campus Update
  • Dr. Lance Collins: Vice President and Executive Director for the Innovation Campus
  • Dr. Brandy Salmon, Associate Vice President for Innovation and Partnerships

Planning for Sesquicentennial Celebration
  • Dr. Rosemary Blieszner, Alumni Distinguished Professor and Senior Fellow

New Title IX regulations
  • Dr. Kelly Oaks, Assistant Vice President for Equity & Accessibility
  • Ms. Katie Polidoro, Title IX Coordinator

Legal Environment for Board of Visitors
  • Ms. Kay Heidbreder, Legal Counsel

Constituent Reports
  • Camellia Pastore, Undergraduate Student Representative to the Board
  • Sabrina Sturgeon, Graduate Student Representative to the Board
  • Tamarah Smith, Staff Representative to the Board
  • Eric Kaufman, Faculty Representative to the Board
INNOVATION CAMPUS
Board of Visitors Update | August 2020
Already at work!
Recently Achieved Milestones

- City Council approval for Comprehensive District Design (CDD), Pump Station DSUP, and Infrastructure DSP (Development Site Plan) - June 20th
- Land closing recorded - June 29th
- DSUP (Development Special Use Permit) verification of completeness submissions for entire district – July 23rd

Future Milestones

- Planning commission approval of Infrastructure Site Plan – October 6th
- City Council hearing for DSUP for Buildings - October 17th
- City Council hearing for Potomac Yard Park and Pump Station - December 12th
- Final Stage 2 approvals – January 2021
NIB Lease, Innovation Building Lease, Falls Church

- Innovation Campus Start-Up Space in Potomac Yard expected occupancy on target for late September 2020
- Innovation Building lease expected occupancy late 2023
- Falls Church facility will serve as temporary instruction location starting Fall 2020
Comments following the CDD approval:

“
This is a really exciting and this is a big step. It’s exciting to see a vision come to reality here. I think what’s before us is, quite honestly in some cases, even better than I imagined we would ultimately get to.

The environmental sustainability component is something we will be reading about and talking about for years to come. We have an opportunity to do some amazing transformational things.”

-- Mayor Justin Wilson
Undergraduate
- Projections indicate we are well above expected degree targets

Graduate
- CS and ECE had exceptional recruiting cycles
- Projections indicated great progress toward expected degree targets
- Many have decided to accept our offer to defer to either Spring and/or Fall 2021
- Final enrollment numbers available post census
Fully executed agreements:

- Christopher Newport University (CSA MEng)
- Christopher Newport University (CPE MEng)
- Radford University (CSA MEng)
- Several others pending
Accelerated Masters Undergraduate/Graduate Program
Virginia-resident students who are not on an assistantship, are enrolled full-time as graduate students in an accelerated 4+1 masters program in an eligible graduate degree will receive $5,000 per term (fall, spring, and summer only) for up to three terms, provided those terms are completed between summer 2020 and summer 2022.

Regular Graduate Program (MS or MEng)
Virginia-resident students who are not on an assistantship, are enrolled full-time as regular graduate students in an eligible graduate degree will receive $3,000 per term (fall, spring, and summer only) for up to five terms, provided those terms are completed between summer 2020 and summer 2022.
Meet our scholarship awardees

Student profile

Graduate Area of Study: Master of Engineering - Computer Science

Location: Greater Washington D.C. metro area

Current Employment: Currently employed at ASIS International

Future aspirations: Cybersecurity

In response to this award, Steven said, “I’ve been saving for graduate school for years and was worried about how I was going to pay for it. Now, I’m sure I can not only afford it, but I will be able to graduate faster!”

Steven Barnett
VT ’15 Communications, Computer Science minor
8th Hokie in his family
Meet our scholarship awardees

Student profile
Graduate Area of Study: Master of Engineering- Computer Engineering

Location: Blacksburg

Current Employment: Graf Research (Graduate Intern in Computer Engineering)

Future aspirations: Machine Learning and Computer Vision Techniques

In response to this award, Cody said, “This scholarship is a big help in keeping on me on track to graduate in Spring 2021.”

Cody Crofford
VT ’14 Aerospace Engineering
Incoming CS faculty profile and recruiting metrics

New CS Faculty Profile
Dr. Ismini Lourentzou, Assistant Professor; Blacksburg PhD (2019), University of Illinois Urbana-Champaign
Research Scientist at IBM Research
Research area: Machine learning, Data Science

Faculty Hiring for AY 2020-21

- 7 new faculty started August 10; 3 more in Spring 2021; 2 in Fall 2021
- Based in Blacksburg to support both undergraduate and graduate program; includes 1 instructor, 2 collegiate faculty and 9 tenure track faculty.
Incoming ECE faculty profile and recruiting metrics

New ECE Faculty Profile
Dr. Mary Lancerotti, United States Military Academy, West Point, NY
Collegiate Assistant Professor; Arlington
PhD, MS, Cornell University, 1997, 1994, respectively; MPhil,
University of Cambridge (UK), 1991; AB, Harvard University, 1989

Faculty Hiring for AY 2020-21
- 8 new ECE faculty started August 10
- 5 are based in Blacksburg; 3 are based in the D.C. area
- These hires include 3 collegiate and 5 tenure track faculty.
Virginia Tech’s Sesquicentennial
Presentation to the Board of Visitors
August 24, 2020

Rosemary Blieszner and Anne Khademian
Co-chairs, Sesquicentennial Planning Committee
Vision

Anticipate the Next 150 Years

▪ Enact the Beyond Boundaries vision.
▪ Honor the past, celebrate the present, forecast the future.
▪ Lift up strategic priorities.
▪ Showcase cross-cutting themes.
Engagement

Energize the Effort

- Encourage widespread involvement of the BOV, administration, faculty, staff, students, alumni, donors, friends, and external partners.
- Connect all the Virginia Tech campuses across Virginia and our centers around the globe.
- Align with Boundless Impact campaign at the midpoint.
Timeline for the Sesquicentennial Celebration

- Spring 2020 - Summer 2021: Preparation
- Fall 2021: Launch
- Spring 2022: Signature Events
- Fall 2022: Final Events

- Spring 2020
- Summer 2021
- Fall 2021: State of the University Address
- Spring 2022
- Fall 2022
Planning Structure

Steering Committee
Senior administrators & Co-chairs

Core Team
Co-chairs, Advancement, University Relations

Work Groups
Academic, Engagement, Projects and Products
Communications, Events and Operations
Membership is representative, inclusive, and diverse

Engagement
All Virginia Tech colleges and units, campuses, and constituencies
Signature Events by Location

Blacksburg
- Official launch of the Sesquicentennial Celebration: State of the University Address. September 2021
- Ut Prosim Weekend, Cross-cutting thematic productions. April 2022

Richmond & Greater Washington, DC Area
- Events to highlight government and regional partnerships and the Innovation Campus

Roanoke
- Events to highlight research and education, access and opportunity in the Roanoke Valley
Contributions to an Impactful Celebration

- Support the vision and direction for the next 150 years.
- Share expertise and offer recommendations for topics or events.
- Encourage participation in activities, share feedback.
- And, please provide some guidance today –
In keeping with the Sesquicentennial celebration serving as a stepping-stone in continuous strategic planning and carrying the Beyond Boundaries vision into the future,

1. What will a successful celebration look like…
   a. …in terms of the celebratory activities themselves?
   b. …as a means of advancing future directions and plans?

2. What would be meaningful indicators of success to help with future planning?
Submit suggestions, Ask questions

Sesquicentennial Website:

vt.edu/150

Contact information:

▪ Rosemary Blieszner, rmb@vt.edu
▪ Anne Khademian, akhademi@vt.edu
Adapting to New Title IX Regulations at Virginia Tech

Office for Equity & Accessibility
August 4, 2020
Title IX Work Group

- President Sands appointed a work group and asked for recommendations.

- The group consisted of administrators and stakeholders and has representation from:
  - Human Resources
  - Staff Senate
  - Student Government
  - Faculty Senate
  - Commission on Student Affairs
  - Commission of AP Faculty Affairs
  - Graduate Student Assembly

- Working group submitted recommendations on July 24th.
New Title IX Regulations

• In 2017, the Department of Education rescinded previous guidance on sexual harassment and misconduct. In May, DOE issued final, formal regulations.

• The new regulations include a definition of sexual harassment and detailed process that we must use to address reports of harassment and misconduct that fall under Title IX.

• Existing VT policies and procedures must change to comply with these new rules.
  • A new definition of sexual harassment and new area of jurisdiction;
  • A requirement for live hearings for both student and employee cases; and
  • A requirement for cross examination by each party’s advisor.

• The Department of Education required compliance by August 14th.
Relationship between Policy 1025 and Title IX

Discrimination under Policy 1025/Student Code of Conduct

Title IX Sexual Harassment Process
Necessary Changes

• Remove Title IX sexual harassment from Policy 1025, keeping Policy 1025 in tact.

• Adopt a new, stand alone Title IX Policy that complies with the regulations.

• Clarify Responsible Employee reporting and exclude non-supervisory staff.

• Adopt grievance procedures for adjudicating student and employee matters that comply with the regulations.

• Continue to address non-Title IX sexual harassment and violence through Policy 1025 and the Student Code of Conduct.

• Ensure appropriate resources, personnel, and training for compliance.
Future Work

• Establish an informal resolution process.

• Review and update Policy 1025.

• Clarify handling of non-Title IX sexual harassment and violence.

• Ongoing assessment of new process.

• Outreach and communication to community.
Non-Title IX Sexual Harassment and Violence

- The Student Code of Conduct and Policy 1025 will apply to sexual misconduct that does not meet Title IX definitions.
  - Student Conduct may request an investigation by Equity and Accessibility Investigators and will determine proper resolution.

- The Director of Compliance may determine proper resolution, including an investigation of harassment and discrimination complaint.

Diagram:

- Report to Title IX Coordinator
- Supportive Measures
- Title IX Complaint
  - Investigation
  - Adjudication
- Student Conduct/Policy 1025 Complaint
  - Investigation
  - Adjudication or Resolution
Freedom of Information Act
https://www.youtube.com/watch?v=50oddI3nUe0
&feature=youtu.be
What Every BOV Member Absolutely has to Know about FOIA

Do not underestimate the importance of Virginia's Freedom of Information Act (FOIA). This is very serious business. These are laws – not just corporate bylaws or operating protocols that you may disregard. Violations risk invalidation of board decisions and expose the University and you personally to embarrassment, litigation, and civil penalties of up to $5,000.1 The greatest loss, however, is the resulting damage to public confidence in you and the University. In fact, the Governor could publicly request your resignation.

The idea behind FOIA (which was first enacted in 1968) is that the Commonwealth’s business is the people’s business. FOIA ensures that citizens have the right to inspect and copy public records and to attend public meetings.2

FOIA governs many aspects of the operation of Boards of Visitors, and has wide application to conduct of members, even when they are not at meetings. All members must be aware of the basic requirements of FOIA.

These FAQs are designed to give the Board of Visitors ("BOV" or "Board") members a basic understanding of their personal responsibilities under FOIA and to assure that you are aware that FOIA compliance is your responsibility. This material is not comprehensive. It does not cover all aspects of FOIA. Whenever you have any concerns, questions, or uncertainties about FOIA or its application, you should contact your institution's counsel.

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1 § 2.2-3714
2 § 2.2-3700(B) states "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."
Virginia’s Freedom of Information Act: Synopsis

Documents and Email

- FOIA broadly guarantees public access to public records, including your notes and correspondence concerning University business. This includes e-mail, digital documents (such as texts stored on your personal cell phone or documents on the cloud), and even preliminary drafts of documents.\(^3\) There are numerous exemptions, which are all fact-specific.\(^4\) Always be sensitive to the potential for public disclosure of your written communications. Any request by the press or any person to inspect your documents should be brought immediately to the University’s attention to ensure a timely and proper reply. Oral and informal requests to you are FOIA requests. Any request for records, regardless of the nature of the request, is a FOIA request.

Meetings

- Unlike the private sector, the public (including employees of the institution) and press have a right to be present at your board and committee meetings.\(^5\)

- All meetings of the BOV, including its committees and subcommittees plus any other group or entity appointed by the BOV to advise it or exercise delegated power, must be conducted in public session with at least three working days advance public notice of meeting time and location.\(^6\) It does not matter that a meeting involves no actual voting or transaction of business, such as, for example, retreats.\(^7\) A meeting exists in the eyes of the law whenever three or more Board members meet and discuss any University matter.\(^8\) Voting on any University action must always be conducted in public session.\(^9\) Voting by secret ballot or proxy is always prohibited.\(^10\)

- Once properly convened and in open session, discussions regarding certain limited topics can be held in closed session.\(^11\) The justification for closed session does not depend on whether a subject may be very sensitive or delicate or political, or that a confidential setting might better encourage candid exchanges.\(^12\) Closed sessions must be specifically authorized by FOIA.\(^13\) This can be a difficult adjustment for those more accustomed to the corporate boardroom.

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\(^3\) 2.2-3701
\(^4\) See § 2.2-3705.1-3705.8.
\(^5\) § 2.2-3700
\(^6\) § 2.2-3707
\(^7\) § 2.2-3701 "Meeting" or "meetings" means the meetings including work sessions, when sitting physically, or through telephonic or video equipment pursuant to § 2.2-3708 or 2.2-3708.1, 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."
\(^8\) § 2.2-3701
\(^9\) § 2.2-3711(B)
\(^10\) § 2.2-3710 (A) “Unless otherwise specifically provided by law, no vote of any kind of the membership, or any part thereof, of any public body shall be taken to authorize the transaction of any public business, other than a vote taken at a meeting conducted in accordance with the provisions of this chapter. No public body shall vote by secret or written ballot, and unless expressly provided by this chapter, no public body shall vote by telephone or other electronic communication means.”
\(^11\) § 2.2-3711
\(^12\) § 2.2-3712
\(^13\) § 2.2-3712
• Also, to go into closed session, certain specific procedural steps must be taken, including:\textsuperscript{14}

  o Advance public notice for the meeting must have been given.
  o During the meeting in public session, the Board must vote on a motion authorizing closed session. This public motion must reasonably identify both the purpose for the closed session and the subject for discussion.\textsuperscript{15}
  o While in closed session, the discussion must be related only to the topic identified in the public motion. Take care not to digress into any unrelated areas or other subjects, even if those topics would be eligible for closed session with a proper motion. It is your responsibility both as a matter of law and common sense that you stick to the subject matter described in the motion authorizing the closed session.\textsuperscript{16}
  o Any action the Board wishes to take as a result of discussions in closed session must be voted on in public session.
  o When discussion in closed session is adjourned, the chair of the meeting should immediately direct the opening of doors and inviting public/staff into the room for open session.
  o Once back in open session, each member of the body will then be required to publicly certify that his or her discussion in closed session was proper and related to the permitted subject set forth in the motion convening the closed session.\textsuperscript{17}
  o The law requires that your general counsel or an Office of the Attorney General's representative must be invited to all BOV and committee meetings, including all closed sessions. This also protects the BOV in the event the discussion in closed session is questioned.

• Some BOV members may participate by phone provided (1) there is a quorum of the board or committee physically convened at the main location, (2) all locations are announced ahead of time as places the public and press may participate (3) all locations are equipped with speakerphones, and (4) there is no interruption in communication between or among locations.\textsuperscript{18} There is a limited exception for personal or medical matters. In order to use this exception, the Board must have previously adopted a policy permitting its members to participate electronically due to personal or medical matters.\textsuperscript{19}

\textsuperscript{14} For “closed session” procedures see: § 2.2-3712.
\textsuperscript{15} § 2.2-3712(A)
\textsuperscript{16} § 2.2-3712(C)
\textsuperscript{17} § 2.2-3712(D)
\textsuperscript{18} § 2.2-3708(B)
\textsuperscript{19} § 2.2-3708.1
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FOIA GENERALLY

What does FOIA do?

In general terms, FOIA defines what a meeting is and requires that all meetings be open to the public. It also prohibits discussion of public business among members outside of meetings. There are, however, exceptions to these general meeting requirements that each member should be familiar with.

FOIA also requires that all public records (with some limited exceptions) be made available upon request to members of the public for inspection and copying.

All public records and meetings are presumed open. The BOV and the institution have the burden of proving that there was a legitimate reason for closing meetings or withholding records.

FOIA also requires that its open government provisions be liberally construed, and its exemptions be narrowly construed. This means that you should always err on the side of leaving meetings open rather than closing them, and releasing documents rather than withholding them.

Whenever you have specific questions about FOIA or its requirements, please do not hesitate to contact your counsel with the Attorney General's Office.

FOIA requires that some records be withheld and some meetings be closed, right?

Wrong. The exemptions to disclosure of records and for closed sessions are discretionary, not mandatory. There is no penalty for releasing records that could be withheld under a FOIA exemption (though other provisions of federal and state law, such as FERPA, may prohibit disclosure). There is also nothing that says a meeting must be closed just because it could be closed under a meetings exemption under FOIA. Please contact counsel if you have concerns about federal or state law that might prohibit release of information.

Who does FOIA apply to?

FOIA applies to all public bodies. In the context of state colleges and universities, that means that FOIA applies to the institution and all of its officers (including members of the BOV) and employees. It also applies to the operations of the BOV itself together with all of its committees and subcommittees plus any other groups or entities appointed by the BOV to advise the BOV or exercise delegated functions. For example, a presidential search committee set up to make recommendations to the BOV is subject to FOIA.
MEETINGS

Meetings Generally

Can we meet without telling anyone? 27

FOIA requires that all meetings of the BOV or any committee or subcommittee be advertised to the public for at least three working days prior to the meeting. The notice requirements of FOIA are very specific. The secretary to the BOV will handle the details of complying with these. Members of the BOV, however, should be aware that any meeting called must be far enough in advance that the secretary has time to properly prepare the notice and advertise the meeting for three work days. Also, any materials supplied to the BOV members before the meeting must also be made available for public inspection at the same time the materials are provided to the BOV, with the exception of documents that are specifically exempt under FOIA from disclosure. 28 This includes any materials one BOV member sends to all other members!

If your bylaws call for more notice for meetings than FOIA does, you must comply with the stricter provisions of the bylaws.

Can less than a quorum of the BOV – say three or four members – get together informally to discuss affairs of the institution?

No. A gathering of three of more members of the BOV where business is discussed is illegal, unless the gathering has been properly posted at least three working days prior to the meeting. It does not matter that a quorum was not present. 29 It does not matter that the members took no official action. If more than two BOV members serve on a university-related foundation’s board, FOIA will likely be violated.

This prohibition is generally against three or more members discussing public business. Two members may discuss public business in person, on the phone, or otherwise, with one notable exception. The exemption exists where two members constitute either the entirety or a quorum of a committee or subcommittee, or other group that has been designated by the Board or Rector to advise the BOV or has been delegated some responsibility by the BOV, then any discussions between them must be properly advertised as a meeting. Otherwise, the gathering is an illegal “meeting” under FOIA. 30

Can’t I even go to a cocktail party or dinner with two (or more) other BOV members?

Yes, of course you can. While there, you may even discuss business with one other member at a time.

Three members, however, may not jointly discuss public business. Nor may a third member be listening to the conversation.

27 For details see: § 2.2-3707.
28 § 2.2-3707F
29 § 2.2-3707
30 § 2.2-3701
Please keep in mind that this prohibition applies at all times and in all places – including, for example, lunches, dinners, and social occasions held in conjunction with BOV meetings or at annual professional conferences. For example, if a BOV holds a luncheon between the morning and afternoon sessions of a meeting, the BOV must, both advertise the luncheon as a meeting and have the luncheon open to members of the public, or ensure that no public business is discussed. That’s a difficult task, but a mandatory one.\footnote{2.2-3701}

The BOV wants to take a bus tour of campus and our new facilities during a break at our Board meeting. Any problem with this?

No, no problem – provided arrangements are made also for members of the press and public to be present whenever any institutional business is discussed. That means you might need a big bus if any discussions will take place on the bus. (This was a real-life problem at a University recently.)\footnote{2.2-3700}

Who can come to our meetings?

Anybody who wants to. All meetings must be open to the public. Any member of the public (including, of course, press, employees, and students) has a right to attend, to listen, and to make a video or audio recording of any meeting. The BOV can put reasonable restrictions on recording to ensure that actions of the press or public do not disrupt the meeting.

You will, at times, have outside consultants present at your meetings. They will not be familiar with FOIA and may expect or request confidentiality that FOIA does not permit. The BOV and university staff should provide these consultants with information that will reduce the conflict between their expectations and what FOIA requires.

Do we have to tape record our meetings?

No. Recording meetings is not required. However, proper minutes must be taken and draft minutes, and later final minutes, must be posted to the web. The secretary to the BOV will ordinarily have this responsibility.\footnote{2.2-3707}

Do we have to have minutes taken?

Yes. FOIA requires that minutes be taken of every meeting, including retreats or work sessions. Also, draft minutes that fairly reflect actions taken must be posted on the web within 10 days following the meeting. Final approved meeting minutes must be posted within three working days of final approval of the minutes.\footnote{2.2-3701.1}
Closed Meetings

What are the exceptions to open meetings? When can we hold a closed meeting? 35

FOIA has 48 exceptions to the open meetings requirement, with more being proposed by the General Assembly each year. The exceptions most likely to be utilized by BOVs to justify closed sessions are:

1. the personnel exception: discussion, consideration, or interviewing of prospective candidates for employment; or the discussion of assignment, appointment, promotion, performance, demotion, salaries, discipline, or resignation of specific employees. This exception does not apply to discussion of members of the BOV themselves. BOV members may not go into closed session to discuss the performance of individual board members or the election of BOV officers. The personnel exception is also inapplicable to discussions of general school policy or operations – for example, reorganization – that would refer to reassignment or laying off of employees - unless the discussion centers upon specific employee(s).

2. the scholastic record exception: discussions or consideration of admission or disciplinary matters, or other matters that would involve disclosure of information in scholastic records (as defined in the act) of specific student(s). Generally speaking, however, the student or his lawyer is entitled to attend those closed sessions.

3. the real property exception: discussion or consideration of the acquisition or disposition of real property where open discussion would adversely affect the bargaining position or negotiating strategy of the institution. This exception does not apply once the real property has been acquired or disposed of, and does not include potential use of real property.

4. the investment exception: discussion or consideration of the investment of public funds where competition or bargaining is involved, where, if made public initially, the financial interest of the institution would be adversely affected. This exception might occasionally be invoked during discussion of endowment funds investment.

5. the legal advice exception: consultation with legal counsel for legal advice on specific matters, and briefings by staff members or consultants pertaining to actual or probable litigation.

6. the development exception: discussion or consideration of matters related to gifts, bequests, and fund-raising activities, and grants and contracts for services or work to be performed by the institution.

7. the honorary degree exception: the discussion or consideration of honorary degrees or special awards.

8. the terrorism exception: the discussion of plans to protect public safety as it relates to terrorist activity or specific cybersecurity threats or vulnerabilities.

9. the contract exception: the discussion of the award of a public contract involving the expenditure of public funds where discussion in open session would adversely affect the bargaining position of negotiating strategy of the institution. Foundation contracts do not involve the expenditure of public funds and are not appropriate for closed meetings.

You should always consult with legal counsel well in advance of going into any closed meeting. The above are brief descriptions of exceptions for going into closed sessions – the

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35 For full list of exceptions see: § 2.2-3711(A). The Statute does refer to the exemptions for "closed meetings" but as will be discussed, a more accurate description is that they are a 'closed session' within a meeting. The terminology "closed session" will be used in these FAQs.
"basics". In each case, there are additional, specific legal criteria or requirements to be considered.

When are we required to go into closed session?

You are never required by law to go into closed session. FOIA gives the BOV the option of doing so when the topic of discussion falls within a FOIA open meetings exception.

What must we do to go in order to into closed session?

First, all meetings must have been properly noticed (discussed above). FOIA does not really permit a "closed meeting." All meetings are open, but for limited purposes, you may go into a "closed session." This is the case even if the only subject of the meeting is proper for closed session. A closed session may be held as a small part of a larger, open meeting, or a meeting may be called and noticed specifically for the purpose of having a closed session. But in any event, all meetings must first be convened as an open meeting, and then proper procedures must be followed to go into closed session. Closed sessions must be followed by an open session certification that the closed meeting was proper.

A detailed motion must be made to go into closed session. That motion, which must be included in the open meeting's minutes, must identify: (1) the closed session's specific subject matter; (2) the closed session's specific purpose; and (3) the specific exemption under §2.2-3711(A) that applies. General references to FOIA or to the subject matter of the meeting do not suffice.36

Your counsel can provide the Rector with a "script" to use for going into closed session.

What if we are in open session with only the Board and President in attendance, and we want to discuss something that we would ordinarily discuss in closed session. Can't we do that without going through the formalities since there is no one we need to exclude?

You certainly may hold the discussion without going into closed session, but there are some shortcomings to that approach, including that minutes would have to be taken, whereas minutes would not be mandated in closed session.37

What can we discuss in closed sessions?

Once the BOV properly goes into closed session, you may discuss only those specific matters identified in the motion to go into closed session. For example, if the BOV went into closed session to discuss "personnel matters – specifically the salary of the president," the BOV could not discuss any other matter, not even a different personnel matter, even if that other matter might have been the proper subject of a closed session had it been included in the motion.38

It's easy to stray from the topic identified in the motion for closed session. One responsibility of your counsel is to watch closely and call any deviation to your attention. Ultimately, however, it is the BOV's responsibility to police itself and stick to the topic stated in the motion to go into closed session.

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36 § 2.2-3712
37 § 2.2-3712(D)
38 § 2.2-3712
Who is permitted to go into a closed session with the BOV?

Just because the BOV goes into closed session, it does not mean that everyone other than BOV members must be excluded. The BOV can allow any persons to attend that the Board feels are necessary to the discussion. That said, it is best to only allow those who are necessary to the discussion

BOVs are required by law to invite and include counsel in all meetings, including closed sessions.39

Who decides when closed session is appropriate?

The BOV as a whole is responsible for deciding whether to go into closed session and who should be included and excluded. The BOV decides to go into closed session through passage of the motion to do so. As a matter of governance, the BOV as a whole should also actively decide who should stay and not rely solely on the rector, the secretary to the BOV or the President to make that call.40

Can we vote in closed session?

No. Any action that is required as a result of discussions in closed session must be taken after going back into open meeting. The BOV may, however, take non-binding votes in closed session – straw-polls, of sorts – to get a sense of how a public vote will go. Members are not legally bound to vote in open meeting as they indicated they would in closed session.

What do we do when we have finished our closed session discussions?

The BOV must reconvene, by motion, in open session following closed session, even if they have no more business to conduct. After the room is opened and visitors are informed that the meeting is now open, each member of the body must affirm by roll call or recorded vote that only those matters identified in the motion to close the meeting were discussed. Any member who believes matters outside the scope of the motion were discussed is to say so prior to the vote.

Failure to certify that the meeting was properly held does not affect the validity or confidentiality of matters discussed in the closed session or action taken on those matters later in open session. Deviation from the proper subject of the closed session and failure of a unanimous certification vote could, however, subject the BOV to harsh public criticism and individual members to monetary penalties. 41

May BOV members talk with other people about matters that were discussed in closed session?

There is no legal prohibition against BOV members revealing discussions held in closed sessions; nor may the BOV itself prohibit such. BOV members are officers of the Commonwealth, and within legal parameters, each must decide how to best execute their responsibilities to the Commonwealth and the institution. Common sense, professional norms, and individual consciences must dictate BOV members’ actions. One notable exception from Federal law: FERPA does generally prohibit all school officials, including BOV members, from

39 § 23.1-1303
40 § 2.2-3712
41 § 2.2-3712(D), (E)
revealing information obtained from student records. Other privacy requirements outside of FOIA may exist under federal and state law. Please consult counsel if you have questions.

Are we required to take minutes in closed session?

No. There is no requirement that minutes be taken in closed session.42

We hold an annual retreat. This is a very informal work/training session. No business is conducted and no action is taken. Do we have to advertise this meeting and allow the press and members of the public to attend?

Absolutely. Any get-together of three or more members at which the business or operations of the institution are discussed is a “meeting” under FOIA. Retreats, dinners and work sessions are no exception. They must be properly advertised, and must be open unless an exemption applies to a specific matter under discussion.43

What is an executive session?

The term executive session no longer has any legal significance. Under FOIA there is a meeting and you are either in open session or closed session. For that reason, we strongly suggest that BOVs abandon using the terminology “executive session.” Further, it is common for BOV members and others to confuse “executive session” and “executive committee.”

Electronic Communication Meetings

May the entire board hold a meeting by telephone or video?

Generally, no. Under FOIA, meetings to discuss or transact public business generally may not be conducted by telephone, video, or other electronic communication means. The one, limited exception, are those instances where the Governor as declared a state of emergency.

May individual board members participate by telephone or video?

Yes, so long as the board observes a few requirements. First, a quorum of the board must be physically present at one primary meeting location. Second, the board must notice the remote location as a meeting location at least three business days prior to the meeting. Third, the remote meeting location must be open to the public just like any meeting of the board. For example, if you wish to call in from your home, you will need to open that location to the public. Finally, the board must hold at least one meeting annually where members are physically present and no members participate by electronic communication.44

How much notice must be given of telephone or video meetings?

The notice required for telephone meetings is three (3) working days – the same as for other meetings.

42 § 2.2-3712(H)
43 § 2.2-3701
44 §2.2-3708
May members of the board call in from different locations?

Yes, with some limitations. First, a quorum of the body must be physically assembled at the main meeting location. If a quorum is not gathered in one place, members may not transact business. If a quorum is gathered in one location, other members may call in from remote locations provided the locations were advertised in the notice and other statutory requirements are met.

May a member call in from wherever he or she happens to be at the time of the meeting?

No. In order to conduct a telephone meeting, each remote location must have been determined in advance and advertised to the public as a remote location of the meeting. Further, each and every location from which any member is participating in the meeting must be open to the public, and must be equipped with a speakerphone so the public can hear and participate. Any person attending the meeting at any of the meeting locations must be given the same opportunity to address the BOV as persons attending the primary location where the quorum is located.

If a remote location is noticed for the convenience of a member, then the member decides to attend at another location, may we then omit the original location?

No. Once a location is noticed as a remote location, public access must be provided at that location unless the entire meeting is cancelled and re-noticed for at least 3 days later.

Is it sufficient to only allow public access to the ‘main’ meeting?

No. Every location of the meeting (that is, every location from which a member of the body participates) must be noticed as a public location and must be provided public access. The public at each location must have full access; that is, they must be able to hear (and see, in the case of video) and fully participate, including comment, to the same extent as the public at the ‘main’ meeting location. Also, at least one copy of the agenda and materials made available to the members of the body must at the same time be made available for public inspection; and a copy of those advance materials and materials distributed to the members of the body at the meeting must be made available for public inspection at all meeting locations.

What if I have an emergency or personal matter?

FOIA permits BOV with unexpected emergencies or personal matters to participate via phone or video. In order to do so, the BOV must have adopted written policy permitting BOV members to call in due to unexpected emergencies or personal matters. A quorum of the BOV must still be physically assembled at the main meeting location.

May we use email to communicate between meetings?

Yes. There is nothing improper or illegal about using email in and of itself. Email provides a fast, efficient means of communication for you in your public service life, just as it does for you in your personal and professional life. Nothing prohibits the use of standard email for general communication between or among members.

It is important to note, however, that the nature of e-mail use will determine the legality of its use. No lawful meeting may be held by email. That is to say, if three or more members of a

45 § 2.2-3708.1
public body (or a quorum if less than three) do communicate by instant e-mail (otherwise known as IM, AIM, or ‘chat’, or if members are present at computers to simultaneously receive and send e-mail, that may well constitute an illegal meeting.

Where use of e-mail more resembles traditional communication through ordinary mail, with significant delay between receipt and response, then there is no “meeting” under FOIA. Where an exchange of e-mails resembles an assemblage of members of a public body, in that e-mails are being sent and responded to in quick fashion such that there is a feature of simultaneity, then such an exchange may be a “meeting” under FOIA, albeit an unlawful meeting.

BOV members should exercise extreme caution in the use of email. Use of distribution lists (that is, sending the same email to either the entire BOV or even to just two other members) could set the stage for and illegal meeting. Consider, for example, that a BOV member sends an email to all members of the BOV, and two of those members happen to be sitting at their computers - not an unlikely situation. If those two members respond to the message using function “reply all” within a short timeframe, we have an illegal meeting, subjecting the members to public criticism and the monetary penalties of FOIA.

Keep in mind, though, that emails are "records" under FOIA and must be produced in response to a request. (See below under "Records.") Be careful what you write!

What if a phone or video feed goes out or there is some other problem with communication during the meeting?

If, during the meeting, there is any interruption in the audio or video communication at any location - whether the primary location or a remote location - the meeting must be suspended immediately and may not be resumed until repairs are made.

May a member call in on the telephone so long as he does not vote, speak or participate?

A member may call in from a location that has not been noticed provided the member only listens, and does not otherwise participate in any manner. However, the more conservative, and safer, approach would be to avoid this scenario.

Emergency Meetings

What if the University or BOV have an emergency? Can we meet without 3 days’ notice?

Yes. Notice that is "reasonable under the circumstances" must be given. In an emergency, notice must be given to the public and to BOV members at the same time. While "emergency" is not defined under FOIA, an emergency is best thought of an extremely urgent situation beyond the BOV’s control. Delay or procrastination on the part of the BOV or institution does not make for an “emergency” under FOIA.46

46 § 2.2-3707(D)
If we have an emergency, may we have an electronic meeting without 3 days’ notice?

Yes. An “emergency” is an unforeseen circumstance rendering the notice required by FOIA impossible or impracticable, and which requires immediate action. If an emergency telephone meeting is called, reasonable notice under the circumstances must be provided the public. Generally, that would mean providing notice to the same persons as in a non-emergency by the most expedient method possible. Notice must be given to the public contemporaneously with that given members of the body.\(^{47}\)

If an emergency telephone meeting is held, must public access be provided?

Yes. At an emergency telephone meeting, public access must be provided at all locations, just as in a non-emergency. Except for the requirement of the 3 days’ notice, bodies must meet all other telephone meeting requirements; for example, minutes must be kept. (See above.) Further, the minutes of the meeting must state the nature of the emergency.\(^{48}\)

**RECORDS**

What does FOIA require regarding public records?

In general, FOIA requires that unless an exception applies, all records in the possession of a public employee or officer (including BOV members) that relate to public business must be made available to Virginia citizens and members of the media upon request. They are entitled to read and inspect the document and to make copies. (Generally, institutions find it easier to simply provide requestors with copies rather than requiring the requestor to make the copies.) We generally refer to a request for public records as a “FOIA request.”\(^{49}\)

What is a “public record”?

Public records are basically anything the institution and its officials and employees use to transact public business and record data, whether produced by them or others. Records include (among other things) paper documents such as copies of letters, contracts, memos, etc. Also included are video tapes and audio tapes; digital documents on computer hard drives and servers; and text messages on cell phones - in short, anything that records or documents public business - whether written on a digitally stored or chiseled onto a rock, or anything in-between. If it’s about public business, it’s a public record.\(^{50}\) This includes anything in a member of the BOV’s home or work computer or otherwise in their possession.

Don’t FOIA requests have to be in writing?

Absolutely not. Any request made for records is a FOIA request, whether made orally, by letter, by email, or by carrier pigeon. Nor does the person requesting records have to use

\(^{47}\) § 2.2-3707, § 2.2-3708

\(^{48}\) § 2.2-3707

\(^{49}\) § 2.2-3704

\(^{50}\) § 2.2-3701 ("Public records" means all writings and recordings that consist of letters, words or numbers, or their equivalent, set down by handwriting, typewriting, printing, photo stating, photography, magnetic impulse, optical or magneto-optical form, mechanical or electronic recording or other form of data compilation, 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. Records that are not prepared for or used in the transaction of public business are not public records.)
any magic words, such as "records," or "FOIA." The requestor is not required to tell you why he or she is asking for the records or what they intend to do with them; nor should you ask.

Whenever anyone asks you for anything related in any way to the business of your institution, you should report it immediately to the institution’s FOIA officer – even if you do not have any records you believe to be responsive to the request. Others within the institution may have records responsive, and the institution is under a very tight time frame within which to produce the records or object to production.\textsuperscript{51}

Are there exceptions to the requirement that we produce requested records?

Yes. In fact, there are well over a hundred exceptions. Your responsibility as a BOV member is to report any request for records to your institution’s FOIA officer or counsel. They will help you and others determine what exemptions might apply and how best to respond to the request.\textsuperscript{52} The role of the FOIA officer is to assist in document collection to be responsive. Legal questions should be directed to legal counsel.

How long do I have to produce records in response to a FOIA request?

The institution has only 5 working days to initially respond. The institution’s FOIA officer will assist you and others in gathering documents and properly responding to the request. Even if the institution invokes the permitted extension of time, a final response must be made within 12 work days of the initial request, unless other arrangements are worked out between the FOIA officer and the requestor.

\textit{Never} attempt to respond to a FOIA request on your own without consulting your counsel and institution’s FOIA officer.

Would a FOIA request require me to give an account of some event I witnessed, for example, write a description of a discussion I had with another BOV member?

No. FOIA only requires the production of already-existing documents. FOIA does not require you to create new documents. At times, though, an institution may find it preferable for any number of reasons to create a new document rather than producing the existing documents that were requested. That’s fine, so long as the requester agrees.

What about my personal documents, including for example, handwritten notes such as those from meetings or discussions with alumni, email at home on my personal computer, etc.?

First, understand that any record (letter, memo, scribbled note, email, audio recording, or any other) that in any way relates to the business of the University is not a personal record, it is a public record. This is the case no matter where it resides – whether on campus, in your personal computer, in the cloud or in the glove compartment of your car. So in the event of a FOIA request to you, to the University, or to anyone at the University, those records must be produced if responsive to the request.\textsuperscript{53}

\textsuperscript{51} § 2.2-3700
\textsuperscript{52} To view the exclusions see: 2.2-3705.1-2.2-3705.8.
\textsuperscript{53} § 2.2-3701
So what if we violate FOIA? What's the big deal?

First, the big deal is that members of the BOV are entrusted with the public confidence, and a FOIA violation is breach of that trust. The General Assembly has determined that, with specific exceptions, the public's right to open government must not be violated. Extreme embarrassment to both the University and you personally can result from FOIA violations.

Beyond that, any citizen can file a complaint in court if he believes FOIA has been breached. It is up to the officer or employee to prove that an exception to FOIA was appropriate. If not successful, the offending officer or employee can be personally fined up to $2000 for the first occurrence and up to $5000 for additional occurrences.

\[54\] For violations and penalties see: § 2.2-3714.
Constituent Report by
Undergraduate Student Representative
to the Board, Camellia Pastore,
will be presented at Monday’s
Information Session
Constituent Report by Graduate Student Representative to the Board, Sabrina Sturgeon, will be presented at Monday’s Information Session
Constituent Report by 
President of Staff Senate, 
Tamarah Smith, 
will be presented at Monday’s 
Information Session
Constituent Report by President of Faculty Senate, Eric Kaufman, will be presented at Monday’s Information Session