



DEPARTMENT OF COMMUNITY PLANNING, HOUSING AND DEVELOPMENT

Neighborhood Services Division

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Edith Wilson
2720 S Arlington Mill Drive #1017
Arlington VA 22206

Dear Edie:

I am writing in response to your initial verbal request regarding the use of a Listserv tool to facilitate online communications among 4MRV Working Group members, and your subsequent letter dated December 29, 2016, requesting additional information about the County's policy regarding the use of electronic communications by advisory groups.

This letter outlines the background and reasons for not supporting the use of certain types of electronic communications, such as Listservs, by Arlington County Board appointed advisory groups. The reason for this is to limit potential risks associated with electronic communications on substantive matters possibly becoming an illegal meeting among County Board appointed advisory group members in violation of the Freedom of Information Act (the Act).

The Act prohibits contemporaneous electronic communications among three or more members of a public body (which includes advisory bodies appointed by a governing body) involving substantive matters before the public body. Pertinent sections of the Act include the following:

- o Section 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.
- o Section 2.2-3707.B (in relevant part) No meeting shall be conducted through telephonic, video, electronic or other communication means where the members are not physically assembled to discuss or transact business.
- o Section 2.2-3708.A Except as expressly provided in subsection G of this section or 2.2-3708.1,¹ no local governing body, school board, or any authority, board, bureau, commission, district or agency or local government, any committee thereof or any entity

¹ Subsection G permits a public body to meet electronically when the Governor has declared a state of emergency and the purpose of the electronic meeting is to address the emergency. Section 2.2-3708.1 permits members of a public body to participate in a meeting electronically under certain limited circumstances in accordance with an adopted policy provided a quorum of the body is physically assembled.

created by a local governing body school board, or any local authority, board,, or commission shall conduct a meeting wherein the public business is discussed or transacted through telephonic, video, electronic or other communications means where the members are not physically assembled. Nothing in this section shall be construed to prohibit the use of interactive audio or video means to expand public participation.

We are also providing a link to a guide published by the Virginia Municipal League which provides additional background on the Act as well as the Virginia Conflict of Interests Act, and the Virginia Public Records Act. The guide can be found at:
<http://www.vml.org/publications/legal-resources>.

Staff recognizes the value that electronic communications could have in the work of an advisory body. However, some forms of electronic communication make it easy for members of an advisory body to inadvertently enter into a real time dialogue that could violate the Act. Accordingly, staff's position on this issue is based on the potential for Working Group members being found in violation of the Act which could call into question the integrity of the Working Group's recommendations and also creates the potential for delays or other impacts to the 4MRV process. It should be noted that, under the Act, individual members of the Working Group who are found to be in violation of the Act face civil penalties of between \$500 and \$2,000 for a first offense. Subsequent violations could result in civil penalties ranging between \$2,000 and \$5,000.

Staff recognizes that other advisory groups have used Listservs or similar tools to facilitate electronic communications among their memberships. Because of the above concerns, we will be evaluating this practice across all County Board appointed bodies. We will also continue working to ensure that new members of County Board appointed commissions, advisory boards, and working groups receive the [Arlington County Advisory Board Handbook](#) and also receive an orientation about the Act to avoid any confusion in the future.

We are committed to working with County Board appointed advisory bodies to strengthen engagement with the broader public. It is permissible to do this through electronic and other means, including online surveys, virtual online dialogue tools, tools for submitting comments, and other strategies consistent with the Act. We continue to be interested in working with you and others to explore creative ways to enhance public participation and gather input from the broader community.

I hope this clarifies staff's position and the responsibilities of the Working Group as it pertains to the Freedom of Information Act. Please let me know if I can provide anything further concerning this matter.

Sincerely,



Chikwe Njoku

4MRV Coordinator

Neighborhood Services Division Chief