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June 28, 2016

**Via Electronic Mail (foiacouncil@dls.virginia.gov)
and First Class Mail**

Maria J. K. Everett, Executive Director
Virginia Freedom of Information Advisory Council
General Assembly Building, 2nd Floor
201 North 9th Street
Richmond, VA 23219

Re: Request for FOIA opinion relating to a closed meeting of a public
university Board of Visitors

Dear Ms. Everett:

I am writing for the purpose of requesting a formal advisory opinion from the Virginia Freedom of Information Advisory Council. My understanding of the facts are set forth below.

The Board of Visitors ("BOV") of a Virginia public university recently held an executive session that was closed to the public. A copy of the language that was approved to go into the closed meeting and come out of the closed meeting is attached hereto as Exhibit A.

The closed meeting was attended by most but not all of the members of the BOV, as well as most members of the university's most senior administration. At least one individual participated in the closed meeting by phone.

Eight days in advance of the closed BOV meeting, BOV members received documents that outlined a newly-established grant-making process, guiding spending principles, and a list of grant requests pertaining to a newly-established fund that consisted of very significant reserves and earnings discovered to exist within the university. The correspondence indicated that the fund and plans for spending it were intended to be topics to be discussed in an executive session of the BOV and, in fact, were a major part of the discussion during the closed meeting.



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Although the motion to go into a closed session referenced personnel matters and legal advice, there was very little substantive discussion of either topic related to the funds during the closed meeting.

The only personnel referenced during that portion of the closed meeting were two former employees cited for having done a good job of accumulating and managing such a large sum of funds over time (though neither individual has been employed by this university for several years). Faculty and administrator appointments to two proposed vetting committees had been made prior to the closed meeting, were noted in the advance materials, and did not require a board vote. There was no discussion that related to pending, threatened or possible litigation regarding the fund.

Instead, the closed discussion focused on principles for spending the money that now comprises the fund. By way of example, members were asked to deny granting funds to proposals that would support university operations and to elevate those that would enhance its reputation. Concerns relating to premature revelation and publicity, given the fund's substantial size, were conveyed, and it was requested that members refrain from discussing the fund with legislators and the media.

Regarding the certification that was read and approved after the conclusion of the closed meeting, "aye" votes were solicited and seemed to be voiced by a majority in attendance. No "nay" or negative votes were requested, nor was any roll call taken or recorded. At least one BOV member subsequently notified the secretary of the BOV that the minutes should reflect that this particular Board member did not vote on the closed meeting certification due to questions and concerns regarding whether the discussion in the closed meeting exceeded and strayed outside of what was legally permitted.

Based on these facts, I am requesting answers to the following questions:

1. Assuming that the language on Exhibit A is exactly what was read to authorize going into the closed meeting and coming out of the closed meeting, is the language legally compliant and sufficient? If not, what remedial action, if any, should the BOV members take individually and/or collectively?
2. Assuming that the primary purpose of discussing the fund during the closed meeting was neither to discuss any personnel matters nor to request/receive legal advice, were the open meeting requirements of the Freedom of Information Act violated when an inaccurate motion to go into a closed session was utilized by the BOV and when discussions in the closed meeting strayed far beyond personnel and



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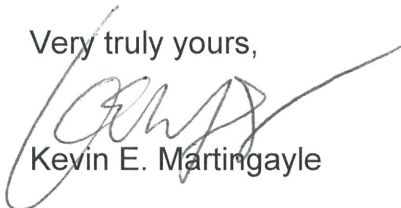
legal advice topics? If so, what remedial action, if any, should the BOV members take individually and/or collectively?

3. When a closed meeting certification is voted upon, what is the required procedure for determining and recording the vote of the members? To the extent that there were any mistakes, what remedial action, if any, should the BOV members take individually and/or collectively?
4. As a general matter, what action, if any, are individual BOV members expected, allowed and/or legally obligated to take when they have questions or concerns relating to FOIA open meeting violations by a BOV? With whom may they consult and seek guidance? Are there any mandatory reporting requirements, and if so, to whom should violations be reported?

This is a rather time-sensitive matter, so to the extent that you are capable of providing me with a prompt response, I would greatly appreciate it. Should you have any questions or concerns whatsoever, I ask that you please contact me right away.

Thanking you in advance for your anticipated cooperation, with kind regards, I am,

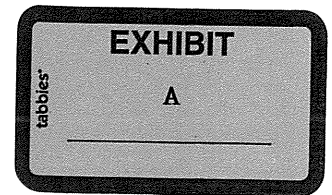
Very truly yours,



Kevin E. Martingayle

KM/kls
Attachment

Closed Session Motion



To Go Into Closed Session

I move that the Board of Visitors go into closed session to discuss the appointment, reappointment, performance, assignment, and compensation of specific University faculty; and to consult with legal counsel regarding a litigation report and specific legal and regulatory matters requiring the provision of legal advice where discussion in an open meeting would adversely affect the negotiating posture of the University. The relevant exemptions are Sections 2.2-3711(A)(1) and (7) of the Code of Virginia.

After Leaving Closed Session (read by the same member of the committee):

I move that we vote on and record our certification that, to the best of each member's knowledge, only public business matters lawfully exempted from open meeting requirements and which were identified in the motion authorizing the closed session, were heard, discussed or considered in closed session.