



# COMMONWEALTH of VIRGINIA

## Department of Criminal Justice Services

Francine C. Ecker  
Director

July 14, 2017

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### Memorandum

**To:** Virginia's Sexual Assault Response Team Members

**From:** Francine C. Ecker, Director

A handwritten signature in black ink, appearing to be "F. Ecker", written over a circular stamp or mark.

**Subject:** Sexual Assault Response Teams and the Freedom of Information Act

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This memorandum is intended to assist local Sexual Assault Response Teams (SART) in complying with Virginia's Freedom of Information Act (FOIA) requirements, while still maintaining the integrity and purpose of their meetings. SART are strongly encouraged to meet regularly in order to fulfill the requirements of *Code of Virginia* § 15.2-1627.4 and to maintain a timely and appropriate response to victims of sexual assault.

#### SART Obligation to Comply with FOIA

As defined by *Code of Virginia* § 15.2-1627.4, a SART is a public body subject to the Freedom of Information Act. The Virginia FOIA Advisory Council has confirmed this conclusion.

According to the Virginia Freedom of Information Act, a *public body* is defined as:

"any legislative body, authority, board, bureau, commission, district or agency of the Commonwealth or of any political subdivision of the Commonwealth, including cities, towns and counties, municipal councils, governing bodies of counties, school boards and planning commissions; governing boards of public institutions of higher education; and other organizations, corporations or agencies in the Commonwealth supported wholly or principally by public funds..." (*Code of Virginia* § 2.2-3701).

Additionally, a *meeting* is defined as:

"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" (*Code of Virginia* § 2.2-3701).

#### Meeting FOIA Requirements

In order to meet FOIA requirements, a SART must do two things: provide public notice of meetings and maintain meeting minutes. The steps to do each are outlined below:

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### 1. Provide Notice of Meetings (*Code of Virginia § 2.2-3707*)

- The notice must include the date, time, and location of the meeting.
- The notice must be posted in a prominent public location at which notices are regularly posted. Notice by electronic publication is encouraged.
- The notice must be posted at least three working days prior to the meeting.

### 2. Meeting Minutes (*Code of Virginia § 2.2-3707*)

- Minutes must be recorded in written format.
- Minutes must include:
  - ✓ Date, time, and location of meeting
  - ✓ Members present
  - ✓ Members absent
  - ✓ A brief, general summary of matters discussed
  - ✓ Any action taken on matters discussed
  - ✓ Purpose for closed session (if applicable)
- Minutes are considered public records subject to FOIA.

## FOIA Exclusions and Closed Meetings

In 2016 and 2017, legislation was enacted to modify Virginia's Freedom of Information Act related to SART exclusions and closed meetings.

### 1. Exclusions from Disclosure (*Code of Virginia § 2.2-3705.7*)

A SART's records may be excluded from mandatory disclosure provisions. Specifically, these records include: "Information reflecting the substance of meetings in which individual sexual assault cases are discussed by any sexual assault team established pursuant to § 15.2-1627.4... The findings of any such team may be disclosed or published in statistical or other aggregated form that does not disclose the identity of specific individuals" (§ 2.2-3705.7, 32).

### 2. Closed Meetings/Sessions (*Code of Virginia § 2.2-3711*)

For certain limited purposes, a SART may hold a closed meeting or a closed session during a public meeting. These include:

- "Discussion or consideration of individual sexual assault cases by a sexual assault team established pursuant to § 15.2-1627.4" (§ 2.2-3711, A. 49).
- "The protection of the privacy of individuals in personal matters not related to public business" (§ 2.2-3711, A. 4).
- "Consultation with legal counsel and briefings by staff members or consultants pertaining to actual or probable litigation, where such consultation or briefing in open meeting would adversely affect the negotiating or litigating posture of the public body..." (§ 2.2-3711, A. 7).

## Continuing SART Efforts

As stated above, SART are strongly encouraged to meet regularly. Much of the work of a SART can be accomplished regardless of public presence during the meetings. The two primary purposes of a SART are team coordination and initiating/maintaining an appropriate response for sexual assault victims, both of which can be achieved in a public forum. Specific case review during SART meetings is discouraged.

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SART can effectively meet FOIA requirements while maintaining their ongoing meeting schedules and efforts to address sexual assault.

For additional information on the mechanics of complying with FOIA meeting requirements in your locality, you are encouraged to contact your local City or County Attorney, or the Virginia FOIA Advisory Council:

Virginia FOIA Advisory Council  
Maria J.K. Everett, Executive Director  
Alan Gernhardt, Senior Attorney  
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For more information on SART, please contact:  
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