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M E M O R A N D U M

TO: ERFC Board of Trustees

FROM: Jenifer Cromwell
Ernest Zhu

DATE: July 21, 2023

RE: Virginia Public Records Act

The Virginia Public Records Act (“Act”) must be supplied to each newly appointed or elected member of the Board of Trustees, under a requirement similar to that in the Virginia Freedom of Information Act. Each of you is required to read it and become familiar with it.

The principal provisions of the Public Records Act are designed to preserve public records and give the Library of Virginia authority to determine which records must be preserved and which may be destroyed pursuant to approved schedules for destruction. The Public Records Act allows any public record to be retained in an electronic medium. The Public Records Act applies to all boards of political subdivisions, which very likely includes ERFC.

The term “public record” is defined very broadly to include information recorded in any format (including hard copy or electronic) that documents “a transaction or activity by or with”

any public employee “if it is produced, collected, received or retained in pursuance of law or in connection with the transaction of public business.” The information in a record determines whether it must be retained, not the format or location of the record. Note that the term does not include extra copies of documents preserved only for convenience or reference. A Charlottesville Circuit Court recently held that text messages are public records.

Each agency (probably including ERFC) is required to establish and maintain a program for the economical and efficient management of its records. Each political subdivision (most likely Fairfax County) must designate at least one records officer to serve as liaison to the Library of Virginia, for purposes of overseeing a records management program and coordinating legal disposition of obsolete records.

No records may be destroyed except in accordance with a records disposition schedule that has been approved by the State Library Board.

ERFC relies on the FCPS Records Management policy, which includes a records retention schedule for ERFC. The FCPS Records Management Manual was last updated on December 5, 2022.

You should be aware of the following:

1. The Trustees’ copies of agenda materials generally should fall within the exception for “extra copies preserved only for convenience or reference.” Wherever the ERFC office has the original of any records, those records should be deemed the official copies and the Trustees’ copies should be the extras.
2. Email, including using FCPS email or a personal email account, requires some special attention. Email between Trustees and the ERFC office, or among Trustees, relating to ERFC business is a “public record.” The ERFC office has established a protocol for archiving email that relates to official business. If you correspond by email with other Trustees about ERFC business and have not sent copies to anyone at ERFC, you should either archive the email individually or forward a copy to the ERFC office before deleting it. If any such email is confidential and you do not wish to share it with the ERFC office, you may forward it to us, and we will archive it in a special confidential folder.

Enclosure: Virginia Public Records Act