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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 18, 2025

RE: Virginia Public Records Act

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The Virginia Public Records 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 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 June 30, 2023.

Additionally, the Library of Virginia offers helpful resources on electronic records management. The Library of Virginia’s Electronic Records Guide was last updated in November 2024, and is available [here](#). The Library of Virginia also issued helpful tips relating to teleworking and records management. The Library of Virginia noted that if records are created remotely while conducting public business, those records are still public records subject to the requirements of the Public Records Act. The Library of Virginia also suggested keeping work and personal accounts separate and exercising caution to keep files secure when teleworking, especially when sending files over non-secured networks.

**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.
3. Text messages and instant messages are treated similarly as emails and can be subject to the retention and disposition requirements of the Public Records Act. The Library of Virginia “strongly discourages” all government employees from conducting official business via text message on a personal device.
4. Any records created on websites and social media must be managed in compliance with the Public Records Act. Text and images embedded on the ERFC website that do not

exist elsewhere would generally be considered public records. Regarding ERFC's social media, examples of public records may include posts that contain unique information not stored elsewhere, comments by ERFC, and comments made by members of the public. However, if the online content is a copy of the information that ERFC maintains elsewhere, it can be treated as a copy and is not a public record. Merely changing the format of the content for online posting, such as adding background colors or a logo, does not create a new record.

Enclosure: Virginia Public Records Act