

Special Meeting, Wednesday, August 2, 2023, 7:00 p.m., Government Center, Verona, VA.

PRESENT: Michael Shull, Chairman
 Jeffrey Slaven, Vice-Chair
 Gerald Garber
 Butch Wells
 Carolyn Bragg
 Pam Carter
 Timothy K. Fitzgerald, County Administrator
 Jennifer M. Whetzel, Deputy County Administrator
 James Benkahla, County Attorney
 Angie Michael, Executive Assistant

ABSENT: Scott Seaton

VIRGINIA: At an adjourned special meeting of the Augusta County Board of Supervisors held on Wednesday, August 2, 2023, at 7:00 p.m., at the Government Center, Verona, Virginia, and in the 248th year of the Commonwealth....

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Chairman Shull welcomed those present at the meeting.

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The Board of Supervisors led the Pledge of Allegiance.

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Ms. Carter, Pastures District, delivered the invocation.

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BOARD OF SUPERVISORS RESOLUTION

The Board considered the following resolution:

**RESOLUTION OF THE AUGUSTA COUNTY BOARD OF SUPERVISORS
 TO ASSERT ITS RIGHTS TO THE POSSESSION, CUSTODY, AND CONTROL
 TO PUBLIC RECORDS FROM BOARD MEMBER DR. SCOTT SEATON**

WHEREAS, the Augusta County Board of Supervisors finds it necessary to meet in closed meeting from time to time as a public body; accordingly, each Board Member is admitted because he or she is a member of the public body's governing board.

WHEREAS, the purpose of closed meetings by the Board of Supervisors is to transact public business; and, therefore, recordings and notes of closed meetings are records that this Board asserts belong to the public body.

WHEREAS, the Virginia Freedom of Information Act, Virginia Code §§ 2.2-3700, *et seq.* ("VFOIA"), defines "public records" as "all writings and recordings that consist of letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostatting, photography, magnetic impulse, optical or magneto-optical form, mechanical or electronic recording, or other form of data compilation, however stored, and regardless of

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BOARD OF SUPERVISORS RESOLUTION (CONT'D)

physical form or characteristics, prepared or owned by, or in the possession of a public body or its officers, employees, or agents in the transaction of public business.” See Virginia Code § 2.2-3701.

WHEREAS, the Board of Supervisors asserts that surreptitious recordings of closed meetings of the Board of Supervisors by a Board Member may be public records and as such belong in the possession, custody, and control of the County and not an individual board member, although such recordings may be lawfully exempt from disclosure to others not in attendance at such closed meetings.

WHEREAS, the Board of Supervisors of Augusta County has determined that certain public records pertaining to closed session, including but not limited to recordings of closed meetings, are in the possession, custody, and control of Board Member Dr. Scott Seaton.

WHEREAS, Dr. Seaton has been asked by individual board members in an open meeting for copies of recordings of closed meetings to be shared with other members of the Board but has thus far failed, or refused, to share such public records with other board members.

WHEREAS, the VFOIA applies to records regardless of whether they are created and/or stored on a device owned by the public body or a personal device or a device owned or controlled by another entity.

NOW THEREFORE, IN LIGHT OF THE FOREGOING, BE IT RESOLVED BY THE BOARD OF SUPERVISORS OF AUGUSTA COUNTY, VIRGINIA that:

1. The Board, on behalf of the County, is hereby asserting its right to possession, custody, and control of any and all public records (as that term is defined in the VFOIA) pertaining to closed meetings of the Board of Supervisors. These records include but are not limited to any and all public records created during a closed meeting, public records created outside of any closed meeting but pertaining to the subject of a closed meeting, any and all communications pertaining to the subject of a closed meeting, and any and all communications mentioning information distributed and/or discussed during a closed meeting, and recordings —regardless of any VFOIA exemption that might apply.
2. The Board is hereby further requesting, without waiving any lawful exemption(s), that Dr. Scott Seaton turn over to the County any and all public records as that term is defined in the Virginia Freedom of Information Act and cases and opinions interpreting the VFOIA, which are in his possession, custody, or control pertaining to closed session as described above.
3. Such records being requested include but are not limited to recordings and/or communications such as texts, emails, messages, voicemail(s), letters, memorandum, and any other medium meeting the definition of “public record” under the VFOIA.
4. Such records being requested include any and all records that fall within the definition of “public record” regardless of the ownership of the device or server upon which the record was created and/or stored.
5. Such records being requested include any and all public records from January 1, 2020, to present.
6. If Dr. Seaton refuses this request or fails to provide the public records within 7 business days of this resolution, the Board hereby authorizes the Chair to submit a request to Dr. Seaton on behalf of the Board for the aforementioned records pursuant to the VFOIA.

This Resolution shall take effect immediately upon its adoption.

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BOARD OF SUPERVISORS RESOLUTION (CONT'D)

Ms. Carter verified that paragraph three, which defines VFOIA, includes any information that was transmitted during a closed meeting.

James Benkahla, County Attorney, stated that it does as long as there is a record of it.

Ms. Carter asked for clarification on what a public record consisted of.

Mr. Benkahla stated that any document the County has is a public record by definition. Certain public records are exempt under the Freedom of Information Act or other lawful exemptions.

Mr. Slaven moved, seconded by Mr. Wells, that the Board adopt the resolution as presented.

Vote was as follows: Yeas: Shull, Slaven, Garber, Wells, Bragg, and Carter
 Nays: None
 Absent: Seaton

Motion carried.

Mr. Wells directed Staff to send a copy of the signed resolution by certified mail to Dr. Seaton.

Ms. Carter asked if Dr. Seaton was afforded the opportunity to call into the meeting.

Mr. Fitzgerald stated that Dr. Seaton did not request to call in.

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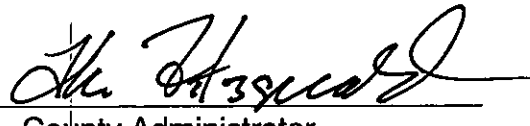
ADJOURNMENT

Ms. Bragg moved, seconded by Ms. Carter, that the Board adjourn the meeting.

Vote was as follows: Yeas: Shull, Slaven, Garber, Wells, Bragg, and Carter
 Nays: None
 Absent: Seaton

Motion carried.


 Chairman


 County Administrator