



COMMONWEALTH of VIRGINIA

Office of the Governor

Lyn McDermid

Secretary of Administration

Executive Data Board

Meeting Minutes

July 18th, 2023

East Reading Room – Patrick Henry Building

1111 East Broad Street

Richmond, Virginia 23219

1:00 p.m. – 3:00 p.m.

Board Member Attendees:

Commissioner Danny Avula, *Commissioner of Virginia Department of Social Services*

Commissioner Karen Shelton, *Commissioner of Virginia Department of Health*

Katie Linkenauger (*Designee for Director Cheryl Roberts, Director of Virginia Department of Medical Assistance Services*)

Cort Kirkley (*Designee for Commissioner Nelson Smith, Commissioner of Virginia Department of Behavioral Health and Developmental Services*)

Major Eric Gowin (*Designee for Colonel Gary Settle, Virginia State Police Superintendent*)

Dave Portner (*Designee for Commissioner Carrie Roth, Commissioner of Virginia Employment Commission*)

Dave Myers (*Designee for Superintendent Lisa Coons, Virginia Superintendent of Public Instruction*)

Andrew Smith (*Designee for Director Matthew Wells, Director of Virginia Department of Conservation and Recreation*)

Welcome and Opening Remarks

Roll Call

Review Purpose and Goals for Board

Executive Data Board Order of Business



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Review Maturity Assessment Results
ODGA Updates / Agency Deliverables for Next Meeting
Break
Freedom of Information Act (FOIA) Overview
Member/Public Comment
Closing Remarks
Adjourn

Motions:

Motion 1: Table the election of Chair and Vice Chair.

Presenter: Ken Pfeil

Discussion: There was a motion to table the election for Chair and Vice Chair so officially board members can vote.

Motion Accepted: Motion moved by Katie Linkenauger and seconded by Dave Portner. Motion carried by unanimous vote.

Motion 2: Approve charter.

Presenter: Ken Pfeil

Discussion: Approval of charter was discussed.

Motion Accepted: Motion moved by Danny Avula and seconded by Dave Myers. Motion carried by unanimous vote.

Motion 3: Accept nominees for Data Governance Council.

Presenter: Ken Pfeil

Discussion: Attendees nominated a member from their agency for the Data Governance Council. Nominees listed below.

- 1) VDH – Anup Srikumar
- 2) VSP – Keon Turner
- 3) DMAS – Rich Rosendahl
- 4) DBHDS – Erin Loar
- 5) DOE – Dave Meyers
- 6) VEC – Karen Smith
- 7) DSS – Aline Jesus Rafi
- 8) DCR – TBD



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Motion Accepted: Motion moved by Major Eric Gowin and seconded by Danny Avula. Motion carried by unanimous vote.

Agenda

Agenda Item 1: Welcome and Opening Remarks 1:00 PM – 1:05 PM

Presenter: Chief Data Officer, Ken Pfeil

Discussion: Ken Pfeil welcomed the Executive Data Board.

Decision: N/A

Agenda Item 2: Roll Call 1:05 PM – 1:06 PM

Presenter: Chief Data Officer, Ken Pfeil

Discussion: Ken Pfeil called roll.

Decision: The attendee list is presented at the top. Quorum has been met.

Agenda Item 3: Review Purpose and Goals for Board 1:06 PM – 1:23 PM

Presenter: Chief Data Officer, Ken Pfeil

Discussion: Ken Pfeil greeted the board and began the discussion explaining the standards that are set for the Commonwealth's greater good. The purpose of the Executive Data Board is to drive the Commonwealth's data-driven policy goals and objectives at their respective agencies in partnership with the Office of Data Governance and Analytics.

Key Points covered:

- Goals and KPI's
- Data Governance Council

Decision: N/A



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Agenda Item 4: Executive Data Board Order of Business 1:23 PM – 1:36 PM

Presenter: Chief Data Officer, Ken Pfeil

Discussion: A description was given for the roles and responsibilities of Chairperson and Vice Chairperson, virtual meeting participation, proxy voting, the Executive Data Board charter, and Data Governance Council Member nominations. There was a recommendation to postpone voting on virtual participation and proxy voting during this meeting.

Decision: Three motions were approved. Please refer to motion 1, motion 2, and motion 3.

Agenda Item 5: Review Maturity Assessment Results 1:36 PM – 1:50 PM

Presenter: Chief Data Officer, Ken Pfeil

Discussion: Ken Pfeil informed the board that a response was received from 47 out of 63 agencies that were sent a Data Management Maturity Assessment. This is a self-survey for agencies to rate their data maturity levels. About half of the agencies rate their program as stable with an average score of 2.48 out of 4. There is room for improvement as some agencies acknowledge not having proper tools in place, lack of data quality, and inaccessible data. The Office of Data Governance and Analytics can review findings and assist agencies with less mature programs. The next assessment is expected to be sent in August.

Key Points covered:

- Data Management Maturity Levels
- Agency Maturity Survey Results
- Key Observations
- Next Steps
- Drive to Maturity

Decision: N/A

Agenda Item 6: ODGA Updates / Agency Deliverables for Next Meeting 1:50 PM – 2:05 PM

Presenter: Chief Data Officer, Ken Pfeil

Discussion: A Health Status Report was created to highlight the Objective Key Results of work streams to identify the threats and formulate strategies to mitigate the effect. This information will be reviewed by



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the Secretary of Administration and the Governor next week. This report will spotlight some of the major projects and initiatives of the Office of Data Governance and Analytics.

Key Points Covered:

- Operation Bold Blue Line – Governor’s initiative to combat high crime in 13 specific localities.
- Partnership for Petersburg – Governor’s initiative to help transform Petersburg to a better place to live, work, and raise a family.
- Department of Veterans Services (DVS) – determination of all veterans living in Virginia and maintaining a veteran’s repository.
- Department of Motor Vehicles (DMV) – Creation of a series of dashboards for the Chief Transformation Office related to DMV efficiency worker dashboard data.

Decision: N/A

BREAK: 2:05 PM – 2:15 PM

Agenda Item 7: Freedom of Information Act (FOIA) Overview 2:15 PM – 2:54 PM

Presenter: Senior Assistant Attorney General / Section Chief, Office of Attorney General, Leslie Allen

Discussion: Leslie Allen explained the purpose of FOIA and provided guidance for FOIA and public meeting requirements. Any writing or recording in possession of a public body is within the FOIA guidelines. A violation to responding can be a violation to the chapter which can cause bad publicity and also lead to fines.

Key Points Covered:

- Two Major Pillars of FOIA
- Responding to FOIA Request and the Importance of Compliance
- Public Meeting and Electronic Meeting Guidelines
- Email and Chat Guidelines
- Voting Requirements
- Best Practices

Decision: N/A

Agenda Item 8: Member/Public Comment 2:52 PM – 2:53 PM

Presenter: Chief Data Officer, Ken Pfeil



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Discussion: Ken Pfeil opened the floor to public comments. Comments listed were throughout the meeting.

Key Points:

- Comment from Dave Myers – Requested an example of what is being done to support agencies on the governance side.
 - Marcus Thornton, Deputy Chief Data Officer – Besides reports, the ODGA does a lot of entity matching. The agency is a Microsoft shop, so data movement, curation, and storage are done in Azure. Data capabilities have been expanded in the last couple years so now agencies come to the ODGA to host environments. Other agencies may not have the bandwidth or skill, so the ODGA help fill some of the gaps to help.
- Comment from Katie Linkenauer – Inquire if quorum must be met.
 - Leslie Allen responded, YES.
- Comment from Danny Avula – The policy states that Ken Pfeil is the Chairperson but also states that a Chairperson needs to be elected.
 - Ken Pfeil, Chief Data Officer – Will be the Chairperson for this meeting until there is a vote for the official Chairperson.

Decision: Action Item to follow-up on virtual meetings for designees.

Agenda Item 9: Closing Remarks 2:53 PM – 2:54 PM

Presenter: Chief Data Officer, Ken Pfeil

Discussion: The next meeting date is TBD.

Decision: N/A

Agenda Item 10: Adjourn 2:54 PM

Presenter: Chief Data Officer, Ken Pfeil

Discussion: The Executive Data Board adjourned at 2:56 PM.

Decision: N/A



OFFICE OF DATA
GOVERNANCE
AND ANALYTICS

Executive Data Board
July, 2023

1:00 p.m. Welcome and Opening Remarks

- ▶ Chief Data Officer, Office of Data Governance and Analytics (Ken Pfeil)

1:05 p.m. Roll Call

1:10 p.m. Review Purpose and Goals for Board and Council

1:20 p.m. EDB Order of Business

- ▶ Election of Chairperson and Vice Chairperson
- ▶ Approve meeting format – virtual participants
- ▶ Determine Proxy voting
- ▶ Approve EDB Charter
- ▶ Approve Data Governance Council Members

1:30 p.m. Review Maturity Assessment Results

1:45 p.m. ODGA Updates

2:05 p.m. Break

2:10 p.m. Agency Deliverables for next meeting

2:20 p.m. Freedom of Information Act (FOIA) Overview

- ▶ Senior Assistant Attorney General /Section Chief, Office of Attorney General (Leslie Allen)

2:50 p.m. Member/Public Comment

2:55 p.m. Closing Remarks

3:00 p.m. Adjourn



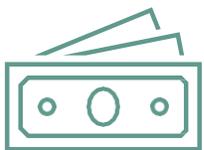
ODGA **partners with commonwealth agencies** to assist them with merging datasets for actionable intelligence in a safe and secure way.



Better access to reporting solutions provided by the Office of Data Governance and Analytics.



Better collaboration among agencies within the Commonwealth.



Providing financial relief to agencies who may need to outsource to vendors in order perform the backend tasks associated with data curation.

Purpose:

Drive the Commonwealth's data-driven policy goals and objectives at their respective agencies in partnership with the Office of Data Governance and Analytics

1. Translate the Commonwealth's data-driven policy goals and objectives into performance targets at their respective agencies.
2. Allocate appropriate resources at their respective agencies to support data governance, sharing, and analytics initiatives.
3. Provide any reports to the Office of Data Governance and Analytics regarding their respective agencies' data analytics work and implementation of recommendations.

Related legislation: <https://lis.virginia.gov/cgi-bin/legp604.exe?212+ful+CHAP0314>

odga Executive Data Board Goals/KPI's

GOAL	KPI
<i>Set and approve KPI's for data governance initiatives.</i>	<ul style="list-style-type: none">• <i>% of Data Governance Goals with KPI's</i>
<i>Develop a reasonable data governance and analytics budget for Agency.</i>	<ul style="list-style-type: none">• <i>Data budget as % of Agency total budget</i>
<i>Promote data sharing and data governance initiatives within and between Agencies.</i>	<ul style="list-style-type: none">• <i># datasets shared</i>• <i>% improvement in maturity assessment</i>
<i>Fund data governance and data literacy education across the Commonwealth of Virginia.</i>	<ul style="list-style-type: none">• <i>\$'s allocated per employee for Data Governance or Data Literacy Training</i>
<i>Review Data project portfolio across agencies for prioritization, funding, and optimization.</i>	<ul style="list-style-type: none">• <i>Project status with cost variance, % complete, and project risks</i>• <i>Project outcomes (e.g. efficiency, insight, risk)</i>

The Data Governance Council shall consist of employees of the agencies represented on the Board, selected by the Board members from their respective agencies.

1. Liaise between state agency operations and the CDO.
2. Advise the CDO on data technology, policy, and governance structure.
3. Administer data governance policies, standards, and best practices, as set by the Board.
4. Oversee data sharing and analytics projects.
5. Review open data assets prior to publication.
6. Provide to the Board any reports on the Council's recommendations and work as required by the Board.
7. Develop necessary privacy and ethical standards and policies for Commonwealth Data Trust resources.
8. Monitor the sharing of Commonwealth Data Trust member-contributed data resources.
9. Review and approve new Commonwealth Data Trust-managed data resources.
10. Conduct any other business the CDO deems necessary for Commonwealth Data Trust governance.

Related legislation: <https://lis.virginia.gov/cgi-bin/legp604.exe?212+ful+CHAP0314>

1. Select Chairperson and Vice Chairperson
2. Determine virtual meeting participation
3. Approve proxy voting
4. Approve Executive Data Board Charter
5. Nominate and Approve Data Governance Council Members

Data Governance Council Nominees Submitted

Rich Rosendahl, DMAS, Chief Analytics Officer

Aline Jesus Rafi, DSS, Acting Director, Research Associate Senior & IRB Administrator

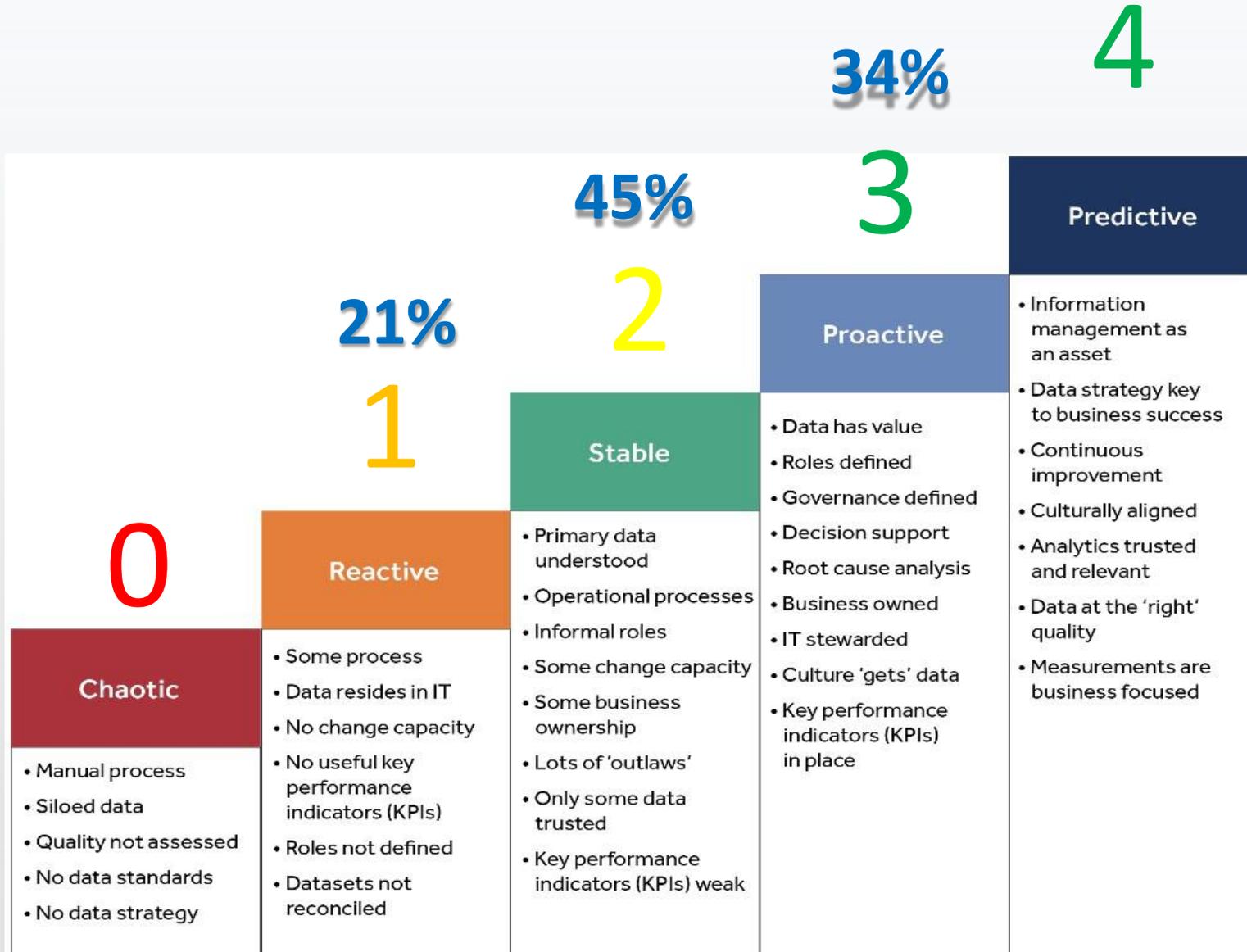
Mitzi Fletcher, DSS

Data Management Maturity Assessment

Results and Objectives



Data Management Maturity Levels



Notes

- Survey data as of 4th Qtr, 2022
- Scale: 0 (worst) to 4 (best practice)
- 30 questions covering 4 key areas:
 - People and Culture (8 Questions)
 - Data Activities (9 Questions)
 - Business Process (9 Questions)
 - Technology (4 Questions)

Agency Maturity Survey Results

Response Rate

74.6%

Up from **0%** in 2021 (No baseline)

47 Agency Respondents



63 Agencies Solicited

Survey Median Score

2.48

- Business Processes scored lowest
- People and Culture scored highest

Of Respondents Say:

21.2%



- Rate their program as "reactive" and in need of work.

Of Respondents Say:

44.6%



- They are "stable" regarding their data program

Of Respondents Say:

34.2%



- Rate themselves proactive

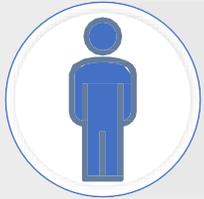
Agency Maturity Survey Results (cont.)

Highlights



75%

Agency Response Rate



3.87

Highest Overall Score



1.01

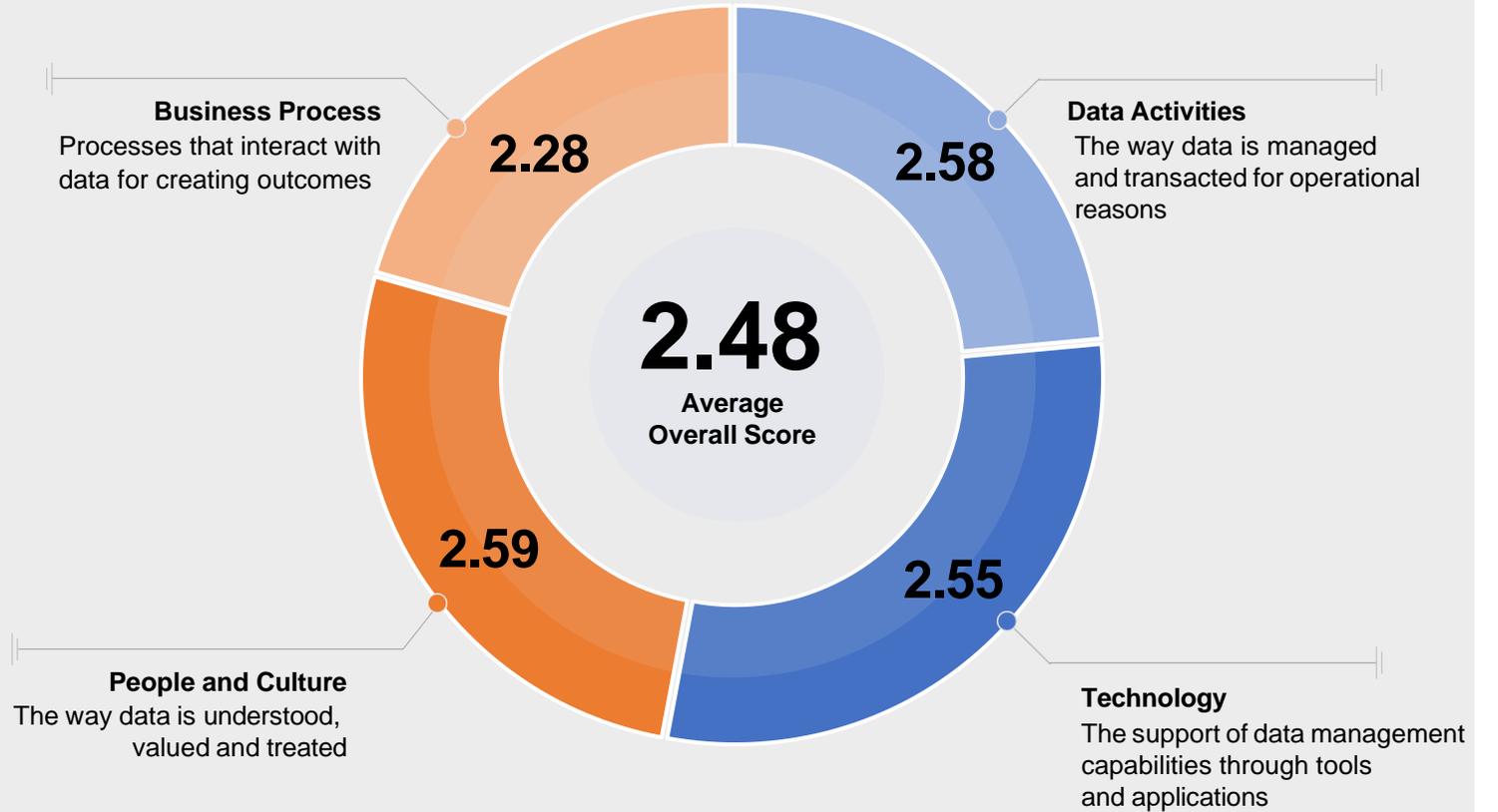
Lowest Overall Score



Organization



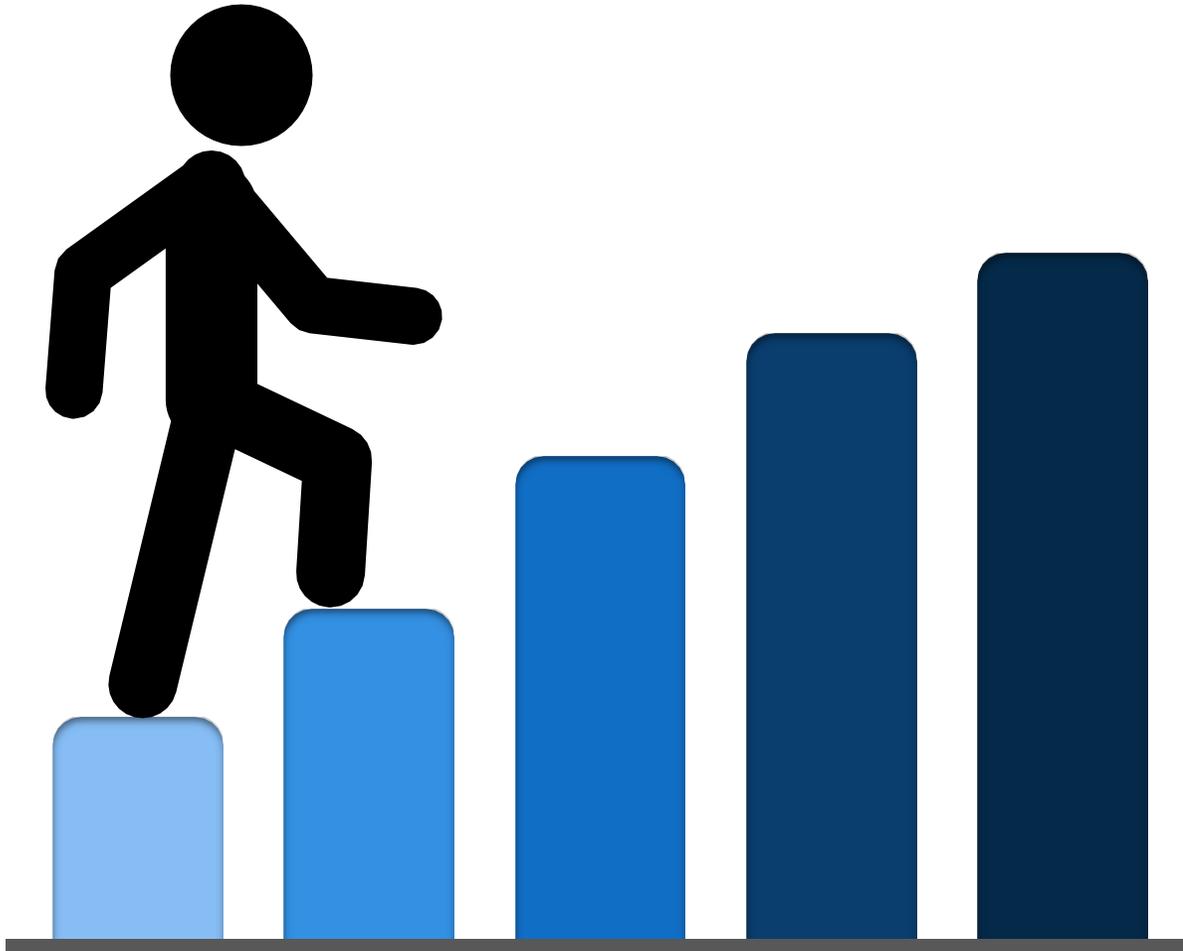
Technology



odga | Key Observations



- Q16 Approach/Plan for improving data quality** | 28% of Agencies rated "1". "Fix and forget it" approach.
- Q12 Metadata Management** | Overall score = 1.85. Seven agencies rated themselves "0".
- Q24 Lack of metrics on data quality** | 32% Agencies rated "1" or lower
- Q6 Use of logs to record data management risks/issues** | 32% Agencies rated "1" or lower
- Q30 Data Modeling** | 60% of agencies (28) have trouble with data modeling. 24% regard their data as being "primarily in silos"
- Q4 Roles exist for data activities** | 85% of agencies (40) have formal roles for data established, with data stewards and owners
- Q5 Management Support** | Senior Management Sponsorship for data initiatives at agencies. Average score "3", only one agency rated themselves "1"



- **Select Agencies to engage.** *More mature programs tend to have data that can already attribute to outcomes. Less mature will benefit from implementing efficiencies in process or technology.*
- **Evaluate Data Plans.** *Business Analysis. Determine alignment of Commonwealth data objectives with agencies' plans and preliminary outcomes*
- **Determine outcomes.** *Evaluate business objectives, existing outcomes and processes for determination as a larger part of top 5 key outcomes..*
- **Determine Datasets.** *Identify datasets and sources needed to facilitate objectives. Incorporate into Commonwealth DataTrust.*

- ▶ **Data Governance Council**
 - ▶ Advise the CDO on data technology, policy, and governance structure.
 - ▶ Administer data governance policies, standards, and best practices, as set by the Board.
 - ▶ Oversee data sharing and analytics projects.
- ▶ **Data Stewards Group**
 - ▶ Drive best practices on key Data Governance Components
 - ▶ Data Asset Inventory
 - ▶ Metadata
 - ▶ Data Lineage
- ▶ **ODGA Training and Support**
 - ▶ Dataversity
 - ▶ Custom developed Training – Data Owner, Data Custodian, Data Quality

The background features a complex, abstract pattern of overlapping, wavy lines in shades of blue and yellow. Interspersed among these lines are various sized circles in the same color palette, creating a sense of movement and depth. The overall aesthetic is modern and dynamic.

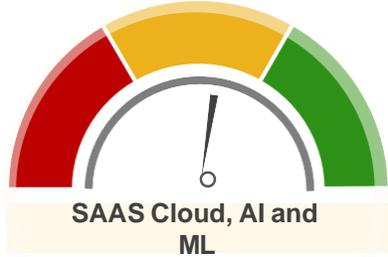
ODGA Update

ODGA Objectives and Key Results - Health Status Report



The following slide highlights the OKR's of work streams to identify the threats and formulate strategies to mitigate its effect. It includes elements such as summary, health status etc.

Health Status



OKR Status

Objectives

DMAS/DBHDS

SAAS and ML/AI Platform

Data Protection and Governance

Partnership for Petersburg

DMAS/DBHDS	On track	8/8 reports created. Automated reporting is 90% complete.
SAAS and ML/AI Platform	On track	SAAS Cloud Platform infrastructure 50%, security services 30% and governance 10%, Vertica AI platform 45% complete. Data scientist started on 3/6/23
Data Protection and Governance	On track	Standards and Metrics for structured data 80% complete, strategizing unstructured data (5%). DPG training is being started, one training course for users, another for data stewards and owners.
Partnership for Petersburg	Some Issues	Partnership for Petersburg just starting. CTO is determining outcomes and metrics on 47 initiatives. Gathering requirements. 1%

All Objectives Summary

- Most on track. Requirements not done yet in CTO office
- Within budget
- No major issues

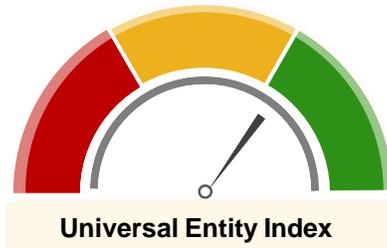
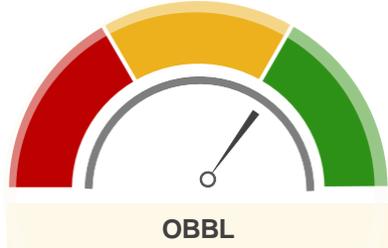


ODGA Objectives and Key Results - Health Status Report



The following slide highlights the OKR's of work streams to identify the threats and formulate strategies to mitigate its effect. It includes elements such as summary, health status etc.

Health Status



OKR Status

Objective

DataTrust	On track	26 EB agencies out of 65, current datasets are 1217. 10% increase per month is target, last month was a 24% increase.
OBBL	On track	All 12 localities MOU signed, initial dashboard created, 85% complete with violent crime data. Adding law enforcement data from DCJS and developing front-end website soon. Working with localities for Weekly VSP IBR input
Universal Entity Index	On track	10.6M Virginians identified. Deduplication and identifying people that have moved out of state to reconcile against 8.6M actual. 85% complete
Veteran Services	On track	Identify all Veterans that live in Virginia. Many paper records exist to import via OCR, also parsing TransUnion reports. 70% complete.
CTO Support	On track	CTO DMV Transformation Dashboard 90%, wait times need to be supplied. Transition to CTO office

All Objectives Summary

- On Track
- Within Budget
- No major issues



The background features a complex, abstract pattern of wavy, overlapping lines in shades of blue and yellow. Interspersed among these lines are various sized circles in the same color palette, creating a sense of movement and connectivity. The overall aesthetic is modern and dynamic.

Agency Updates

Project Name	Due Date	Status (Not Started, In Progress, Finished)	Comments



The background features a complex, abstract pattern of overlapping, wavy lines in shades of blue and yellow. These lines are interspersed with various-sized solid circles in the same color palette, creating a dynamic and energetic visual effect. The overall composition is balanced and modern.

Q&A



THANK YOU!

Email: odga@governor.virginia.gov

Web: odga.virginia.gov

Social:

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Freedom of Information Act and Public Meetings

Leslie Allen

Senior Assistant Attorney
General

Virginia Executive Data
Board

July 18, 2023

FOIA and Public Meetings

- Three Topics for Discussion
 - What is purpose of the Freedom of Information Act (FOIA)?
 - Public Meetings subject to FOIA Requirements
 - When do Email and Chat Communications qualify as an “Meeting” subject to FOIA?

Freedom of Information Act (FOIA)

Purpose –

By enacting FOIA, the General Assembly ensures the people of the Commonwealth ready access to public records in the custody of a public body or its officers and employees, and free entry to meetings of public bodies wherein the business of the people is being conducted. **The affairs of government are not intended to be conducted in an atmosphere of secrecy since at all times the public is to be the beneficiary of any action taken at any level of government.** Va. Code § 2.2-3700.

FOIA

How FOIA is to be viewed –

The provisions of FOIA shall be liberally construed to promote an increased awareness by all persons of governmental activities and afford every opportunity to citizens to witness the operations of government. Any exemption from public access to records or meetings shall be narrowly construed and no record shall be withheld or meeting closed to the public unless specifically made exempt pursuant to this chapter or other specific provision of law.

FOIA

The two major pillars of FOIA:

1. Public Records
2. Meetings

FOIA

What are “public records”?

"Public records" means all writings and recordings, however they are stored, and regardless of 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. Va. Code § 2.2-3701.

Minutes, including draft minutes, and all other records of open meetings, including audio or audio/visual records shall be deemed public records and subject to the provisions of this chapter. Va. Code § 2.2-3707(H).

The custodian of such records shall take all necessary precautions for their preservation and safekeeping. Va. Code § 2.2-3704.

Public Records- Responding to a FOIA request

The Virginia Executive Data Board qualifies as a “public body” under the § 2.2-3701 so it must respond to requests for information contained in public records covered under FOIA.

Va. Code § 2.2-3704 outlines how to respond to a FOIA request for public records.

Failure to respond to a request for records shall be deemed a denial of the request and shall constitute a violation of this chapter. Va. Code § 2.2-3704(E).

FOIA- Responding to a FOIA request

You do not need to fulfill the response yourself. Look to staff and your FOIA Officer.

All public bodies must designate a FOIA Officer who has the responsibility of being the point of contact for FOIA requests. Va. Code § 2.2-3704.2(A).

The contact information for your FOIA Officer should be on your Board website along with a description of the rights of a requestor under FOIA – Va. Code § 2.2-3704.1(A).

FOIA - Importance of Compliance

- Highly scrutinized by a variety of interest groups:
 - Press, State Officials, Citizens, Vendors
- It could cost you – literally. First time violations for failing to respond to a FOIA request for information can result in civil penalties against individuals of \$500 - \$2,000 plus requestor's attorney's fees and costs
- Negative publicity for the Virginia Executive Data Board

FOIA and Public Meetings

When are you having a public meeting, which means you must comply with the FOIA open meeting requirements?

Virginia Code § 2.2-3701 provides:

"Meeting" or "meetings" means the meetings including work sessions, when sitting physically, or through telephonic, video, or electronic communication pursuant to § 2.2-3708.2 or 2.2-3708.3, 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.

Definition of Public Meeting

In other words: A meeting occurs when three or more members of the Board assemble (physically or electronically) to discuss or transact public business.

This rule assumes the Board maintains three or more members.

Meeting Requirements

- Virginia Code § 2.2-3707(A) - All meetings of public bodies shall be open, except as provided in §§ 2.2-3707.01 and 2.2-3711.
- Virginia § 2.2-3707(B)- No meeting shall be conducted through telephonic, video, electronic or other electronic communication means where the members are not physically assembled to discuss or transact public business, except as provided in § 2.2-3708.2 or 2.2-3708.3 or as may be specifically provided in Title 54.1 for the summary suspension of professional licenses.
- Notice of a meeting must be posted at least 3 working days in advance of the meeting.
- Virginia Code § 2.2-3707 specifies the information that must be included in a valid meeting notice and where it must be posted.

TAKEAWAY- MEETINGS REQUIRE ADVANCE PLANNING

Electronic meetings* states of emergency

- § 2.2-3708.2. Electronic communication meetings; applicability; states of emergency
- Must provide public meeting notice and access and opportunity for public comment
- No physically present quorum required if:
 - (i) the catastrophic nature of the declared emergency makes it impracticable or unsafe to assemble a quorum in a single location and
 - (ii) the purpose of the meeting is to provide for the continuity of operations of the public body or the discharge of its lawful purposes, duties and responsibilities.

Electronic meetings* non-states of emergency

- Va. Code § 2.2-3708.3. Meetings held through electronic communication means; situations other than declared states of emergency
- Remote participation or All-Virtual Meetings are sometimes permitted but:
- A public body cannot:
 - Allow remote participation by a member of the public body via electronic means unless that member meets the requirements for remote participation under § 2.2-3708.3 (B).
- A public body cannot:
 - hold an all-virtual meeting for more than 25% of its meetings or a maximum of 2 meetings per year, whichever is greater; or
 - hold two all-virtual meetings back-to-back.

Electronic meetings* non-states of emergency (cont'd)

- § 2.2-3708.3. Meetings held through electronic communication means; situations other than declared states of emergency
 - NOTE: The regular meeting rules requiring in-person participation by members under § 2.2-3707 still apply, but some members may participate remotely if they meet the conditions for remote participation, as set forth under § 2.2-3708.3.

BUT, per § 2.2-3708.3 (D):

- The public body must first adopt a policy by recorded vote at a public meeting that sets forth:
 - the circumstances under which remote participation or all-virtual meetings will be allowed, and how remote participation is requested/approved; and
 - the number of times remote participation or all-virtual meetings may be used per year, not to exceed the limitations set forth in § 2.2-3708.3 (B) and (C).

Transaction of Business- Do not use EMAIL

§ 2.2-3710. Transaction of public business other than by votes at meetings prohibited.

- 2.2-3710 (A)- “Unless otherwise specifically provided by law, no vote of any kind of the membership, or any part thereof, of any public body shall be taken to authorize the transaction of any public business, *other than a vote taken at a meeting conducted in accordance with the provisions of this chapter.*”
- 2.2-3710 (A) (cont’d) – “No public body shall vote by secret or written ballot, and unless expressly provided by this chapter, no public body shall vote by telephone or other electronic communication means.”

TAKEAWAY- NO VOTES BY BOARD OR COMMISSION MEMBERS MAY BE TAKEN OVER EMAIL OR TELEPHONE OR THIS COULD BE A VIOLATION OF THE FOIA OPEN MEETING REQUIREMENTS.

BUT...

§ 2.2-3710. Transaction of public business other than by votes at meetings prohibited.

- § 2.2-3710 (B)- “Nothing contained herein shall be construed to prohibit (i) separately contacting the membership, or any part thereof, of any public body for the purpose of ascertaining a member's position with respect to the transaction of public business, whether such contact is done in person, by telephone or by electronic communication, provided the contact is done on a basis that does not constitute a meeting as defined in this chapter...”.
- TAKEAWAY- A board or commission member can send an email to ascertain other members' positions but should send the request to a staff member to send to a commission membership distribution list.
- No votes may be taken.
- Prevents an inadvertent “meeting.”

FOIA

- Hypo: You write an email to all the other members of your commission sharing the name of a new Netflix series. A fellow member responds all. Yet another member quickly responds all on the same topic.
- Meeting for FOIA purposes?
- How about opening an instant message chat online between three members?
- What if only two?
- What if the topic of discussion was screening the Netflix series at future board or commission meeting?

FOIA

- Answer: Likely a meeting under the last scenario when public business is discussed.
- An improper closed meeting occurs where the feature of simultaneity inherent in the term "assemblage" arises; the e-mails involve some sort of back-and-forth exchange of the three required members; the messages generate group conversations or responses with multiple recipients.
- See Hill v. Fairfax County Sch. Bd., 284 Va. 306, 727 S.E.2d 75 (2012).

Hypo cont.

- The inquiry is whether a series of electronic communications of whatever type constitutes a meeting of a public body for purposes of applying the FOIA.
- “The key difference between permitted use of electronic communication, such as e-mail, outside the notice and open meeting requirements of [the] FOIA, and those that constitute a 'meeting' under [the] FOIA, is the feature of simultaneity inherent in the term 'assemblage.’ “ See Hill v. Fairfax County Sch. Bd., 727 S.E.2d at 78 (citing Beck v. Shelton, 593 S.E.2d at 199).
- In Hill, emails were written by one member to one recipient. Court upheld finding of no meeting.

Beck v. Shelton, 2004 VA Supreme Ct Case

- In Beck, more than three members of City Council corresponded with each other concerning specific items of public business by use of e-mail. The shortest interval between sending a particular e-mail and receiving a response was more than four hours. The longest interval was well over two days. See Beck v. Shelton, 267 Va. 482, 593 S.E. 2d 195 (2004).
- While such simultaneity may be present when e-mail technology is used in a "chat room" or as "instant messaging," it is not present when e-mail is used as the functional equivalent of letter communication by ordinary mail, courier, or facsimile transmission. See Beck at 489.
- The VA Supreme Court found no meeting because no feature of simultaneity.
- TAKEAWAY- SIMULTANEOUS EMAIL OR CHAT COMMUNICATIONS REGARDING THE TRANSACTION OF PUBLIC BUSINESS COULD CONSTITUTE A MEETING SUBJECT TO THE OPEN MEETING REQUIREMENTS OF FOIA.

FOIA

- Are making decisions by vote over email allowed under FOIA?
- What prevents this?

FOIA

- Are making decisions by vote over email allowed under FOIA?
 - No. Making decisions or taking votes of the public body or commission over email is not allowed.
- What prevents this?
 - Virginia Code § 2.2-3710.
 - That code section prohibits the transaction of public business other than by votes at meetings that meet the required FOIA notice and open meeting rules.

FOIA

1) Cannot transact public business without an open meeting--
no voting, no deciding.

2) Cannot conduct an electronic meeting to discuss or vote on
public business

- Exception (unless you meet the rules for holding a public meeting via electronic means under VA Code § 2.2-3708.2 or 2.2-3708.3).
- The electronic communications cannot have feature of simultaneity by a quorum or three members and there can be no discussion of public business.

Best practices

- Remember that what you put in writing is a public record subject to FOIA.
- Think first. If unsure, reach out and ask questions.
- Use a separate account for your public business.
- Pick up the phone.
 - But remember- No voting or deciding, and you may only call one person.
- When drafting an email communication to other Board members, send it to staff first for distribution.

FOIA

Questions about FOIA?

Please contact the “Virginia Freedom of Information Advisory Council”

Toll free: 866-448-4100

Email: foiacouncil@dls.virginia.gov

OVERVIEW

The Virginia Executive Data Board (the Board) is established to drive the Commonwealth's data-driven policy goals and objectives at their respective agencies in partnership with the Office of Data Governance and Analytics (the Office).

The Executive Data Board shall consist of the directors or chief executives, or their designees, of executive branch agencies engaged in data sharing and analytics projects with the Commonwealth Data Trust. The CDO shall chair the Board.

Related legislation: <https://lis.virginia.gov/cgi-bin/legp604.exe?212+ful+CHAP0314>

POWERS AND DUTIES

The Board shall have the following powers and duties:

1. Translate the Commonwealth's data-driven policy goals and objectives into performance targets at their respective agencies.
2. Allocate appropriate resources at their respective agencies to support data governance, sharing, and analytics initiatives.
3. Provide any reports to the Office of Data Governance and Analytics regarding their respective agencies' data analytics work and implementation of recommendations.

MEMBERSHIP AND TERMS

The Board will have eight (8) members from Agencies in the Commonwealth Data Trust, with alternates available.

The Board shall elect a chairperson and vice-chairperson from among its membership.

MEETING FREQUENCY

The Board shall meet at least biannually or at the call of the Chair or the Chief Data Officer.

QUORUM

A majority of the members shall constitute a quorum. Voting and decisions can occur only when a quorum is present. The meeting will be informational only (no votes) in the event a quorum is not achieved during a given meeting. Any votes scheduled for the meeting without a quorum will be postponed to the next meeting a quorum is achieved.

COMPENSATION AND EXPENSES

All members shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ 2.2- 2813 and 2.2-2825. Funding for the costs of compensation and expenses of the members shall be provided by the Office of Data Governance and Analytics.

STAFF SUPPORT

The Office of Data Governance and Analytics shall provide staff support to the Council. All agencies of the Commonwealth shall aid the Council, upon request.

GOALS AND OBJECTIVES

1. Set and approve KPI's for data governance initiatives.
 - % of Data Governance Goals with KPI's
2. Develop a reasonable data governance and analytics budget for Agency.
 - Data budget as % of Agency total budget
3. Promote data sharing and data governance initiatives within and between Agencies.
 - # datasets shared
 - % improvement in maturity assessment
4. Fund data governance and data literacy education across the Commonwealth of Virginia.
 - \$'s allocated per employee for Data Governance or Data Literacy Training
5. Review Data project portfolio across agencies for prioritization, funding, and optimization.
 - Project status with cost variance, % complete, and project risks
 - Project outcomes (e.g. efficiency, insight, risk)

DELIVERABLES AND DEADLINES

- The benchmark for the yearly goals and objectives will be provided to the Data Governance Council.
- A report of all data and analytics projects is due to ODGA on a quarterly basis.

THE [INSERT BOARD] POLICY FOR ALL-VIRTUAL PUBLIC MEETINGS

1. **AUTHORITY AND SCOPE**

a. This policy is adopted pursuant to the authorization of Va. Code § 2.2-3708.3 and is to be strictly construed in conformance with the Virginia Freedom of Information Act (VFOIA), Va. Code §§ 2.2-3700—3715.

b. This policy shall not govern an electronic meeting conducted to address a state of emergency declared by the Governor or the Board of Supervisors. Any meeting conducted by electronic communication means under such circumstances shall be governed by the provisions of Va. Code § 2.2-3708.2.

2. **DEFINITIONS**

a. “**BOARD**” means the [INSERT Board, Authority, Commission] or any committee, subcommittee, or other entity of the [Board, Authority, Commission].

b. “**Member**” means any member of the [BOARD].

c. “**All-virtual public meeting**”, means a public meeting conducted by the [BOARD] using electronic communication means during which all members of the public body who participate do so remotely rather than being assembled in one physical location, and to which public access is provided through electronic communication means, as defined by Va. Code § 2.2-3701.

d. “**Meeting**” means a meeting as defined by Va. Code § 2.2-3701.

e. “**Notify**” or “**notifies**,” for purposes of this policy, means written notice, including, but not limited to, email or letter, but does not include text messages or messages exchanged on social media.

3. **WHEN AN ALL-VIRTUAL PUBLIC MEETING MAY BE AUTHORIZED**

An all-virtual public meeting may be held under the following circumstances:

a. It is impracticable or unsafe to assemble a quorum of the [BOARD] in a single location, but a state of emergency has not been declared by the Governor or Board of Supervisors; or

b. Other circumstances warrant the holding of an all-virtual public meeting, including, but not limited to, the convenience of an all-virtual meeting; and

c. The [BOARD] has not had more than two all-virtual public meetings, or more than 25 percent of its meetings rounded up to the next whole number, whichever is greater, during the calendar year; and

- d. The [BOARD]’s last meeting was not an all-virtual public meeting.

4. **PROCESS TO AUTHORIZE AN ALL-VIRTUAL PUBLIC MEETING**

- a. The [BOARD] may schedule its all-virtual public meetings at the same time and using the same procedures used by the [BOARD] to set its meetings calendar for the calendar year; or

- b. If the [BOARD] wishes to have an all-virtual public meeting on a date not scheduled in advance on its meetings calendar, and an all-virtual public meeting is authorized under Section 3 above, the [BOARD] Chair may schedule an all-virtual public meeting provided that any such meeting comports with VFOIA notice requirements.

5. **ALL-VIRTUAL PUBLIC MEETING REQUIREMENTS**

The following applies to any all-virtual public meeting of the [BOARD] that is scheduled in conformance with this Policy:

- a. The meeting notice indicates that the public meeting will be all-virtual and the [BOARD] will not change the method by which the [BOARD] chooses to meet without providing a new meeting notice that comports with VFOIA;

- b. Public access is provided by electronic communication means that allows the public to hear all participating members of the [BOARD];

- c. Audio-visual technology, if available, is used to allow the public to see the members of the [BOARD];

- d. A phone number, email address, or other live contact information is provided to the public to alert the [BOARD] if electronic transmission of the meeting fails for the public, and if such transmission fails, the [BOARD] takes a recess until public access is restored;

- e. A copy of the proposed agenda and all agenda packets (unless exempt) are made available to the public electronically at the same time such materials are provided to the [BOARD];

- f. The public is afforded the opportunity to comment through electronic means, including written comments, at meetings where public comment is customarily received; and

- g. There are no more than two members of the [BOARD] together in one physical location.

6. **RECORDING IN MINUTES:**

Minutes are taken as required by VFOIA and must include the fact that the meeting was held by electronic communication means and the type of electronic communication means used.

7. **CLOSED SESSION**

If the [BOARD] goes into closed session, transmission of the meeting will be suspended until the public body resumes to certify the closed meeting in open session.

8. **STRICT AND UNIFORM APPLICATION OF THIS POLICY**

This Policy shall be applied strictly and uniformly, without exception, to the entire membership, and without regard to the matters that will be considered or voted on at the meeting.

THE [INSERT BOARD] POLICY FOR THE REMOTE PARTICIPATION OF MEMBERS

1. **AUTHORITY AND SCOPE**

a. This policy is adopted pursuant to the authorization of Va. Code § 2.2-3708.3 and is to be strictly construed in conformance with the Virginia Freedom of Information Act (VFOIA), Va. Code §§ 2.2-3700—3715.

b. This policy shall not govern an electronic meeting conducted to address a state of emergency declared by the Governor or the Board of Supervisors. Any meeting conducted by electronic communication means under such circumstances shall be governed by the provisions of Va. Code § 2.2-3708.2. This policy also does not apply to an all-virtual public meeting.

2. **DEFINITIONS**

a. “**BOARD**” means the [INSERT Board, Authority, or Commission] or any committee, subcommittee, or other entity of the [Board, Authority, or Commission].

b. “**Member**” means any member of the [BOARD].

c. “**Remote participation**” means participation by an individual member of the [BOARD] by electronic communication means in a public meeting where a quorum of the [BOARD] is physically assembled, as defined by Va. Code § 2.2-3701.

d. “**Meeting**” means a meeting as defined by Va. Code § 2.2-3701.

e. “**Notify**” or “**notifies**,” for purposes of this policy, means written notice, such as email or letter. Notice does not include text messages or communications via social media.

3. **MANDATORY REQUIREMENTS**

Regardless of the reasons why the member is participating in a meeting from a remote location by electronic communication means, the following conditions must be met for the member to participate remotely:

a. A quorum of the [BOARD] must be physically assembled at the primary or central meeting location; and

b. Arrangements have been made for the voice of the remotely participating member to be heard by all persons at the primary or central meeting location. If at any point during the meeting the voice of the remotely participating member is no longer able to be heard by all persons at the meeting location, the remotely participating member shall no longer be permitted to participate remotely.

4. **PROCESS TO REQUEST REMOTE PARTICIPATION**

a. On or before the day of the meeting, and at any point before the meeting begins, the requesting member must notify the [BOARD] Chair (or the Vice-Chair if the requesting member is the Chair) that they are unable to physically attend a meeting due to (i) a temporary or permanent disability or other medical condition that prevents the member's physical attendance, (ii) a family member's medical condition that requires the member to provide care for such family member, thereby preventing the member's physical attendance, (iii) their principal residence location more than 60 miles from the meeting location, or (iv) a personal matter and identifies with specificity the nature of the personal matter.

b. The requesting member shall also notify the [BOARD] staff liaison of their request, but their failure to do so shall not affect their ability to remotely participate.

c. If the requesting member is unable to physically attend the meeting due to a personal matter, the requesting member must state with specificity the nature of the personal matter. Remote participation due to a personal matter is limited each calendar year to two meetings or 25 percent of the meetings held per calendar year rounded up to the next whole number, whichever is greater. There is no limit to the number of times that a member may participate remotely for the other authorized purposes listed in (i)—(iii) above.

d. The requesting member is not obligated to provide independent verification regarding the reason for their nonattendance, including the temporary or permanent disability or other medical condition or the family member's medical condition that prevents their physical attendance at the meeting.

e. The Chair (or the Vice-Chair if the requesting member is the Chair) shall promptly notify the requesting member whether their request is in conformance with this policy, and therefore approved or disapproved.

5. **PROCESS TO CONFIRM APPROVAL OR DISAPPROVAL OF PARTICIPATION FROM A REMOTE LOCATION**

When a quorum of the [BOARD] has assembled for the meeting, the [BOARD] shall vote to determine whether:

a. The Chair's decision to approve or disapprove the requesting member's request to participate from a remote location was in conformance with this policy; and

b. The voice of the remotely participating member can be heard by all persons at the primary or central meeting location.

6. **RECORDING IN MINUTES:**

a. If the member is allowed to participate remotely due to a temporary or permanent disability or other medical condition, a family member's medical condition that requires the member to provide care to the family member, or because their principal residence is located more than 60 miles from the meeting location the [BOARD] shall record in its minutes (1) the [BOARD]'s approval of the member's remote participation; and (2) a general description of the remote location from which the member participated.

b. If the member is allowed to participate remotely due to a personal matter, such matter shall be cited in the minutes with specificity, as well as how many times the member has attended remotely due to a personal matter, and a general description of the remote location from which the member participated.

c. If a member's request to participate remotely is disapproved, the disapproval, including the grounds upon which the requested participation violates this policy or VFOIA, shall be recorded in the minutes with specificity.

7. **CLOSED SESSION**

If the [BOARD] goes into closed session, the member participating remotely shall ensure that no third party is able to hear or otherwise observe the closed meeting.

8. **STRICT AND UNIFORM APPLICATION OF THIS POLICY**

This Policy shall be applied strictly and uniformly, without exception, to the entire membership, and without regard to the identity of the member requesting remote participation or the matters that will be considered or voted on at the meeting.

The Chair (or Vice-Chair) shall maintain the member's written request to participate remotely and the written response for a period of one year, or other such time required by records retention laws, regulations, and policies.