

From: Follmer, Marc
Sent time: Sunday, December 02, 2007 6:19:07 PM
To: Craig Merritt <cmerritt@cblaw.com>
Subject: RE: Military base realignment // FOIA Issues
Attachments: FOIA Commission Background.doc

This is the background document we were planning to give to the Commission members tomorrow. Let me know if you have any comments to the Conclusion.

Marc

From: Craig Merritt [mailto:cmerritt@cblaw.com]
Sent: Saturday, December 01, 2007 12:49 PM
To: Follmer, Marc; Hammond, Lynette
Cc: GingerVPA@aol.com; Stephanie VanBuren
Subject: RE: Military base realignment // FOIA Issues

Marc:

I'll try to talk with our client as early as I can on Monday and give you a call. I believe at minimum you can represent and we can confirm that we are in a constructive conversation that looks promising.

Craig

From: Follmer, Marc [mailto:Marc.Follmer@governor.virginia.gov]
Sent: Friday, November 30, 2007 4:32 PM
To: Craig Merritt; Hammond, Lynette
Cc: GingerVPA@aol.com; Stephanie VanBuren
Subject: RE: Military base realignment // FOIA Issues

Craig, I would love to be able to speak with you before the FOIA Commission meets on Monday afternoon. I'd like to make sure our remarks do not contain anything that VPA would take issue with. Please give me a call at 225-3826 and I can outline what my comments will be.

Regards,

Marc

Marc Follmer

Deputy Assistant to the Governor

From: Craig Merritt [mailto:cmerritt@cblaw.com]
Sent: Friday, November 30, 2007 2:26 PM
To: Hammond, Lynette
Cc: GingerVPA@aol.com; Stephanie VanBuren; Follmer, Marc
Subject: RE: Military base realignment // FOIA Issues

Lynn:

Don't read anything into the absence of a meeting exclusion. We sent the earlier language to see if we were conceptually in the same place. I can't reach Ginger today and we still need some final comments from VPA folks. If everything falls into place on the substance we should be able to work out a closed meeting rule that conforms with the records exclusion.

I was encouraged by your voice mail, and hope we can agree on something.

I'll try to get with you early next week.

Craig Merritt

From: Hammond, Lynette [mailto:Lynette.Hammond@governor.virginia.gov]
Sent: Friday, November 30, 2007 10:27 AM
To: Craig Merritt
Cc: GingerVPA@aol.com; Stephanie VanBuren; Follmer, Marc
Subject: RE: Military base realignment // FOIA Issues

Hi Craig

I left you a voice mail message, but you may be otherwise occupied. Dave Dickson and Marc Follmer have reviewed the language and are fine with it, as far as it goes. We wondered about the absence of closed meeting language -- whether that was because the VPA opposes it, or if that was just an oversight?

I'm out of the office today, so if you could respond by e-mail, that would be peachy.

Thanks

From: Craig Merritt [mailto:cmerritt@cblaw.com]
Sent: Thu 11/29/2007 4:36 PM
To: Hammond, Lynette
Cc: GingerVPA@aol.com; Stephanie VanBuren

Subject: Military base realignment // FOIA Issues

<<PCDOCSDATA-#844807-v1-military_exclusion_from_FOIA_VPA_draft.pdf>>

Lynn:

Attached is a discussion draft from the Virginia Press Association. VPA reserves the right to further hone this after it receives input from all its members. However, the concept is to address precisely those issues that were articulated in our earlier conversation in direct language that is consistent with other FOIA exclusions.

We look forward to continuing our discussion.

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FOIA Commission Background.doc

Military Base Realignment Statement of Need for FOIA Legislation

Background: A FOIA exemption under Va. Code §2.2-3705.2 (8) previously existed for the Virginia Commission on Military Bases which had been created by Governor Warner pursuant to Executive Order No. 49 (2003). The exemption expired in July 2006 because the Commission expired after the statutory two-year time period.

The Virginia National Defense Industrial Authority replaced the Commission pursuant to Va. Code Section 2.2-2328. The Virginia Military Advisory Council was created pursuant to Va. Code §2.2-2666.1 as an advisory council to maintain relations with the federal military.

Rationale: The 2005 Base Realignment and Closure process demonstrated that other states will attempt to convince the Department of Defense to move Virginia's military bases and missions to their states. Virginia was successful in fending off some of the challenges but not in every instance. Furthermore, Virginia may well want to pro-actively seek additional Department of Defense investments and not broadcast our strategies.

Current Situation: The Virginia Military Advisory Council and the Virginia National Defense Industrial Authority both conduct meetings and produce documents concerning strategies for maintaining federal military bases and missions in Virginia. The strategies discussed at these meetings include: (i) how to prevent Virginia military bases and missions from becoming subject to the Base Realignment and Closure process; (ii) whether Virginia could lose any bases or missions due to another state's request to the Department of Defense to relocate the military base to that state; and (iii) whether there are federal military missions in other states that Virginia can get the DoD to relocate to Virginia.

Concerns: These discussions and documents are currently subject to the Freedom of Information Act (FOIA). This proposal will resurrect the previous exemption from FOIA under Va. Code §2.2-3705.2 for discussions and documents that concern preserving Virginia's military bases or acquiring military missions currently situated in other states. The proposal will also expand the previous FOIA exemption to include discussions where Virginia seeks to win other military missions now located in other states – essentially an economic development strategy.

The lack of a FOIA exemption will allow written records and meeting discussions from VNDIA and VMAC to be open and available for competitor states to take advantage of. Other states would easily be able to determine Virginia's vulnerabilities and strategic thinking for DoD growth. States would only need to hire a Virginia attorney to make a FOIA request and VMAC and VNDIA would be required to disclose information, potentially harmful to Virginia's economy.

Conclusion: We are currently working with the Virginia Press Association to determine language that will precisely address these issues and limit the FOIA exemption to the minimum necessary to protect this information which is vital to Virginia's economy.