
A stern rebuke: AO-15-03

In a June 18 opinion to Virginia Beach attorney Kevin Martingayle, the FOI Advisory Council used strong language to reproach the city of Virginia Beach for its handling of a city employee's FOIA request seeking results of a work life survey.

In an opinion earlier this year, the council said that the "Member Survey on Quality of Work Life 2002" survey sent to all Beach employees were subject to disclosure, but that the written comments related to identifiable employees could be redacted.

In AO-15-03, Martingayle asked about the way the city chose to fulfill the original FOIA request, which was made by a city police officer. After providing the officer with the requested documents, the city manager sent a letter to all city employees alerting them to the request and lamenting that the city "did not think that a member of our organization would try to compromise the confidentiality that we promised."

The council first confirmed that FOIA requests should not be handled differently depending on who asked for them, city employee or member of the public.

The council said nothing in FOIA specifically forbid the city from sending out a letter alerting others to the fact of a FOIA request. But the council faulted the letter first because it referred to a promise of confidentiality that the city was unauthorized to make (the survey results were subject to FOIA), and then because it blamed the requester for the public body's failure to deliver on that promise.

Though the letter did not violate the letter of the law, it clearly went against the spirit of the act.

"Any attempt by a government entity to intimidate or discourage requesters from exercising this right creates a hostile and adversarial environment, pitting government against the very people that it serves, which clearly goes against the legislative intent of the law," the council wrote.