

Sent via email

March 14, 2024

Prince Edward County Board of Supervisors
County Administration Office
111 N. South Street, Third Floor
Farmville, Virginia 23901
434-392-8837
board@co.prince-edward.va.us

Re: Violations of Virginia Freedom of Information Act

Dear Prince Edward County Board of Supervisors:

We, the undersigned legal organizations, write to alert you that the closed sessions conducted by the Board of Supervisors during your October 10, 2023, November 9, 2023, January 9, 2024, February 13, 2024, and March 12, 2024 meetings violated the Virginia Freedom of Information Act (“VFOIA”). Moreover, the Board of Supervisors’ votes to enter into contracts with the U.S. Department of Homeland Security (“DHS”) and Abyon, LLC for the Farmville Detention Center are unlawful due to a lack of transparency with the public. We demand that you do not take any action in accordance with those votes and that you respond to this letter within five working days (by March 21) confirming that you intend to vote again on the provision of these contracts with open and transparent public hearings in compliance with VFOIA laws. You must also ensure that the public has access to all relevant material, including a copy of the contracts in question, before voting again.

A. Prince Edward County Board of Supervisors’ Meetings and Vote on Immigration Detention Contracts

During Prince Edward County’s Board of Supervisors meetings on October 10, 2023, November 9, 2023, January 9, 2024, and February 13, 2024, the County entered into closed session during each meeting for a legal consultation “related to an unsolicited proposal for an intergovernmental contract, pursuant to the exemption provided for in Section 2.2-3711(A)(8) of the *Code of Virginia*.”¹ There was no other explanation provided during the October, November, and January

¹ See County of Prince Edward, Virginia, *Board of Supervisors Meeting: Addendum Packet* (October 10, 2023), pg. 201, available at <https://www.co.prince-edward.va.us/home/showpublisheddocument/6463/638325510660800000>; County of Prince Edward, Virginia, *Board of Supervisors: Meeting Agenda* (November 9, 2023), pg. 137, available at <https://www.co.prince-edward.va.us/home/showpublisheddocument/6505/638348763676900000>; County of Prince Edward, Virginia, *Board of Supervisors Meeting: Addendum Packet* (January 9, 2024), pg. 231, available at <https://www.co.prince-edward.va.us/home/showpublisheddocument/6661/638404138499700000>; County of Prince

meetings. During the February meeting, after the Board of Supervisors returned from the closed session and without any further discussion, they unanimously voted “for the County legal counsel and administration to continue negotiations with the Department of Homeland Security and ICE regarding a service agreement to provide detention facilities and services within the County, and prepare and advertise a Request for Proposal for the operation of detention facility services similar to those provided by ICE Farmville to be undertaken in connection with the ICE Service Agreement.”²

On March 12, Prince Edward County again held its monthly Board of Supervisors Meeting. The agenda published on the County website at least one day before the meeting listed 21 agenda items for discussion spanning a total of 166 pages.³ At most a few hours before the meeting, however, the County added an “Addendum Packet” to the meeting agenda, consisting of five additional items, including a “Closed Session” discussion as the final item for discussion.⁴ The only information provided to the public regarding the closed session was the following:

“a) For consultation with legal counsel regarding the provision of legal advice by such counsel related to an unsolicited proposal for an intergovernmental contract, pursuant to the exemption provided for in Section 2.2-3711(A)(8) of the *Code of Virginia*; and
b) For discussion of the award of a public contract for detention facility services and discussion of the terms and scope of such contract, where discussion in an open session would adversely affect the bargaining position of the public body, pursuant to the exemption provided for in Section 2.2-3711(A)(29) of the *Code of Virginia*.”⁵

Dozens of local university students, advocates, and community members directly impacted by the harmful immigration detention system came to the meeting to make their voices heard against any County decision to enter into a contract to continue the use of the ICA-Farmville Detention Center. Staff at the County meeting did not allow everyone to be in the Board meeting room and sent everyone who was not signed up to speak to an overflow room. The overflow room did not have adequate audio capabilities. Many constituents were thus denied the opportunity to attend the meeting.

Towards the end of the meeting, one of the County Board of Supervisors made a motion to conduct a closed session “pursuant to . . . section 2.2-3711(A)(8) consultation with legal counsel

Edward, Virginia, *Board of Supervisors Meeting: Addendum Packet* (February 13, 2024), pg. 233, available at <https://www.co.prince-edward.va.us/home/showpublisheddocument/6711/638434372928630000>.

² See County of Prince Edward, Virginia, *Board of Supervisors: Meeting Minutes* (February 13, 2024), available at <https://www.co.prince-edward.va.us/home/showpublisheddocument/6797/638459209104770000>.

³ See County of Prince Edward, Virginia, *Board of Supervisors: Meeting Agenda* (March 12, 2024), available at <https://www.co.prince-edward.va.us/home/showpublisheddocument/6765>.

⁴ See County of Prince Edward, Virginia, *Board of Supervisors Meeting: Addendum Packet* (March 12, 2024), available at <https://www.co.prince-edward.va.us/home/showpublisheddocument/6793>.

⁵ *Id.* at 209.

and section 2.2-3711(A)(29) award of a public contract.”⁶ Nothing else was stated on the record regarding the purpose of entering into a closed session. That motion was approved. The County Board of Supervisors then went into a closed session for over thirty minutes.⁷ *See* Code of Virginia § 2.2-3712. After the Board of Supervisors returned to the open session, without any further discussion, the Board proceeded to vote on approving two agreements – an intergovernmental service agreement with DHS and a subcontracting service agreement with Abyon LLC.

No notice was provided to the public about the County’s intent to vote on these contracts during the meeting. Neither of the two contracts – not even their substantive terms – were ever disclosed to the public.

B. Prince Edward County’s Violations of Virginia Open Meetings Laws

One of the purposes of VFOIA is to “ensure[] the people of the Commonwealth ... free entry to meetings of public bodies wherein the business of the people is being conducted.” Code of Virginia § 2.2–3700(B); *see also Tull v. Brown*, 255 Va. 177, 182 (1998); *City of Danville v. Laird*, 223 Va. 271, 276(1982). To achieve that purpose, the General Assembly has directed that the provisions of VFOIA “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” and that “[a]ny 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.” Code of Virginia § 2.2–3700(B). This instruction “puts the interpretative thumb on the scale in favor of” open government. *Fitzgerald v. Loudoun Cnty. Sheriff’s Off.*, 289 Va. 499, 505 (2015).

Prince Edward County violated VFOIA in multiple ways when entering into an intergovernmental service agreement regarding the Farmville Detention Center and subcontract with Abyon LLC.

First, the County did not properly invoke the exemptions under VFOIA. The County invoked Section 2.2-3711(A)(8) of the Code of Virginia during at least five meetings to discuss an “intergovernmental contract” and once during the March meeting to discuss “an award of a public contract.” However, VFOIA is clear that the vote in an open meeting approving a motion for a closed meeting must “identif[y] the subject matter” and that “[a] general reference to the provisions of this chapter, the authorized exemptions from open meeting requirements, or the subject matter of the closed meeting shall not be sufficient to satisfy the requirements for holding

⁶ *See* Prince Edward, March 12, 2024 - Board of Supervisors Meeting, YouTube, available at https://www.youtube.com/live/jB9Ya3zWUaQ?si=yI_5lBO_10g7EcqR&t=7316.

⁷ *Id.*

a closed meeting.” Code of Virginia § 2.2-3712. At no point did the Prince Edward County Board of Supervisors state the subject matter of this intergovernmental contract or explain what the contracts were for. In a similar case, the Virginia Supreme Court held that a general reference to “actual or probable litigation” is not sufficient to justify holding a closed session where “[t]he Motions did not include any additional information to reveal the actual subject matter of the closed sessions.” *Cole v. Smyth Cnty. Bd. of Supervisors*, 298 Va. 625, 639 (2020).

Second, the County discussed items during a closed session that were not exempt. The County invoked Section 2.2-3711(A)(8) at least five times over the course of six months to discuss an intergovernmental contract with legal counsel. However, this provision does not “permit the closure of a meeting merely because an attorney representing the public body is in attendance or is consulted on a matter.” Code of Virginia § 2.2-3711(A)(8). And the Virginia Supreme Court has stated that a similar provision, Section 2.2-3711(A)(7), “is not a categorical exemption for any discussion between a public body and staff or legal counsel.” *Cole*, 298 Va. at 642.

During its March 12 meeting, the County invoked Section 2.2-3711(A)(29) for discussion of an award of a public contract for detention facility services. The purpose of this exemption “is to protect a public body’s bargaining position or negotiating strategy vis-à-vis a vendor during the procurement process.” *White Dog Pub., Inc. v. Culpeper Cnty. Bd. of Sup'rs*, 272 Va. 377, 386 (2006). Therefore, under this exemption, “the terms or scope of a public contract are proper subjects for discussion in a closed meeting of a public body only in the context of awarding or forming a public contract, or modifying such contract, and then only when such discussion in an open meeting would adversely affect the public body's bargaining position or negotiating strategy regarding the contract.” *Id.* at 386–87. However, the fact that the County Board of Supervisors voted on this contract minutes after returning from the closed session is strong evidence that the Board “was not discussing changes in the terms or scope of the [] contract vis-à-vis the vendor” and “the purpose of the Board's closed meeting was not for forming or modifying a procurement contract.” *Id.* at 387.

Although some items discussed during the closed session may well have been covered by these exemptions, it strains credulity to believe that every single item that the Board of Supervisors discussed regarding the intergovernmental service agreement and the subcontract awarded to Abyon LLC must have been done under closed session.

Third, the County Board of Supervisors voted on these contracts essentially behind closed doors without providing the public with adequate notice that the Board would vote on these contracts during the March 12 meeting. Out of the over 200 pages in the agenda and addendum for the March 12 meeting, the only mention of the intergovernmental service agreement and subcontract for the Farmville Detention Center was in reference to the “Closed Session.” Neither the agenda nor the addendum to the agenda mentioned that a vote on those contracts would take place that

evening. Virginia law requires that “in no event may any public body take action on matters discussed in any closed meeting, except at an open meeting for which notice was given as required by § 2.2-3707.” Code of Virginia § 2.2-3712(H). Even though the Board of Supervisors technically voted on these contracts after returning to the open session, there was no notice provided to the public that the Board would vote on these contracts during the March 12 meeting.

Fourth, the County Board of Supervisors did not provide the public with all materials related to these contracts in advance of the March 12 vote on these contracts. The agenda and addendum included other draft contracts that the County was deliberating entering into, yet conspicuously left out any contracts concerning the intergovernmental agreement or subcontract with Abyon LLC. *See* Code of Virginia § 2.2-3707(G) (“At least one copy of the proposed agenda and all agenda packets and, unless exempt, all materials furnished to members of a public body for a meeting shall be made available for public inspection at the same time such documents are furnished to the members of the public body.”).

Fifth and finally, at the same time as these secretive discussions and votes were taking place, Prince Edward County denied access to records detailing these contracts. On February 26, 2024, the National Immigrant Justice Center sent a Virginia Freedom of Information Act request to Prince Edward County requesting more information about any documents concerning an intergovernmental service agreement or contract between Prince Edward County and DHS or U.S. Immigration and Customs Enforcement (“ICE”) for the detention center and concerning any subcontract or agreement between Prince Edward County and any private companies regarding immigration detention. Instead of responding to the request within five business days as generally required by Virginia law, the County invoked seven additional business days to respond because of a barebones and false statement that “this is a significantly voluminous request and requires a search of records over many months.” Counsel for the National Immigrant Justice Center responded to the County informing them that the request is not “significantly voluminous” as it only involves a few key word searches and is time limited to the last six months. The County never responded to that email. To date, the County has failed to produce the documents that the National Immigrant Justice Center requested.

For these reasons, we demand that the Prince Edward County Board of Supervisors not take any action in accordance with those unlawful votes and that you respond to this letter within five working days confirming that you intend to vote again on the provision of these contracts with open and transparent public hearings in compliance with VFOIA laws. You must also ensure that the public has access to all relevant material, including a copy of the contracts in question, before voting again.

If you have any questions, please reach out to Amber Qureshi at amber@nipnl.org.

Sincerely,
National Immigration Project
Detention Watch Network
Legal Aid Justice Center
National Immigrant Justice Center

Cc:

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