

MPO COMMITTEE REPORT



By

Mayor Joe S. Frank

Chairman

June 18, 2008

MPO COMMITTEE MEMBERS

Stan D. Clark, Isle of Wight County

Joe S. Frank, Newport News, Chairman

Randall A. Gilliland, Hampton

Clifton E. Hayes, Jr., Chesapeake

Dennis W. Heuer, Virginia Department of Transportation

James O. McReynolds, York County

Mark D. Rickards, Williamsburg Area Transport

Ivan P. Rucker, Federal Highway Administration (FHWA)*

Douglas L. Smith, Portsmouth

James K. Spore, Virginia Beach

Michael S. Townes, Transportation District Commission of Hampton Roads

** FHWA staff has indicated federal representatives will have non-voting status on the MPO board and MPO committees.*

BACKGROUND

The MPO Committee met on Monday, June 16, 2008, to discuss the following topics:

1. **Responding to Corrective Action 4** – The MPO Committee reviewed documents from VDOT Chief of Policy, Planning and the Environment, and the MPO Attorneys regarding public bodies and public meeting requirements.
2. **Responding to Corrective Actions 1 and 2** – The MPO approved the MPO Committee's recommendations regarding Corrective Actions 1 and 2 at the May 21, 2008 meeting. The MPO Committee reviewed the draft response letter to the federal team that is due by July 1, 2008.
3. **Consultant Study on MPO Best Practices** – The MPO Committee discussed when to begin the search for the firm to conduct the study.

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1. RESPONDING TO CORRECTIVE ACTION 4

Corrective Action 4: "The federal team requests that the MPO (including VDOT and the transit operators) come into full compliance with federal regulations and state law (FOIA) as it pertains to open meeting and notification requirements for public meetings. The compliance deadline for this request is January 1, 2009*. After January 1, 2009, the FHWA and FTA will not be able to act on any approvals or amendments to the UPWP, Plan, and TIP until the MPO's public meetings come into full compliance with federal regulations and state law (FOIA). Please submit a letter of assurance to the federal team identifying a consensus among the MPO, VDOT, HRT, and WAT that federal regulations and state law (FOIA) regarding open meeting and notification requirements have been met for the MPO and its committees/subcommittees.

* *The original deadline was May 1, 2008. FHWA extended the deadline to January 1, 2009 at the May 21, 2008 MPO meeting.*

A. VDOT Freedom of Information Act (FOIA) Policy and Legal Review

Attached is a copy of Mr. Richard Walton's (VDOT Chief of Policy, Planning and the Environment) email message regarding the VDOT FOIA policy and legal review. The message states that Secretary Homer has consistently expressed the need for transparency in the discussion of transportation issues.

Attachment 1A

B. MPO Attorneys' FOIA Policy and Legal Review

Attached is a copy of Mr. Les Lilley's and Mr. Rod Ingram's FOIA policy and legal review. Mr. Les Lilley, Virginia Beach City Attorney, was present to brief the MPO Committee on the suggested restructuring and to assist with legal questions during the ensuing Committee deliberations.

Attachment 1B

MPO Committee Recommendation

After an extensive discussion, the MPO Committee recommends the following as an interim solution, subject to change once the Best Practices study has been completed.

- **Formation of a New Transportation Advisory Committee (TAC)**

As per the information provided by Mr. Les Lilley, the Transportation Advisory Committee (TAC) should be newly and formally designated by the MPO to be its advisory body and should be formally designated as a public body. TAC membership should be compromised of the chief administrative officers (CAOs) of the localities, executive directors of the public transit agencies, and other such transportation officials as appropriate to ensure a complete review of all issues.

This recommendation is subject to the acquiescence of the CAOs, following a briefing by the MPO Committee Chair at its July 2, 2008 meeting.

- **Technical Transportation Committee (TTC)**

As per the information provided by Mr. Les Lilley, MPO staff should continue dialog with local agency staff as a working group and historically referred to as the Transportation Technical Committee or TTC through regular meetings. Together, they should review and prepare issues to be considered by the MPO staff. The staff collectively is not a public body and can meet regularly or on an ad hoc basis as issues required. Their recommendations, if any, would be to the MPO staff, which in turn would make recommendations to the MPO board.

Mayor Frank stated he would like to meet with the TTC to review this interim solution prior to the MPO making a final decision on this recommendation.

2. RESPONDING TO CORRECTIVE ACTIONS 1 AND 2

The MPO Committee reviewed a draft response letter to the federal team regarding Corrective Actions 1 and 2 and asked Mr. Rucker if he thought the draft letter sufficiently addressed the Corrective Actions. Mr. Rucker answered affirmatively.

MPO Committee Recommendation

Approve the attached draft letter to address Corrective Actions 1 and 2 by the July 1, 2008 deadline.

Attachment 2

3. CONSULTANT STUDY ON MPO BEST PRACTICES

The MPO Committee discussed the Best Practices study and thought that the study should get underway as soon as possible.

MPO Committee Recommendation

Authorize the Executive Director to draft a Request for Qualifications (RFQ) to solicit firms for the study. The draft RFQ will be reviewed by the MPO Committee prior to the July MPO meeting, with expected MPO approval on July 16, 2008.

NOTE: It was generally, but not formally, agreed that a Citizens Advisory Committee could be established, the membership and exact role of which would be determined as the work of the MPO Committee moves forward; it was further generally agreed that the MPO staff would search for bylaws samples of other MPOs, and that a working draft of HRMPO bylaws be initially prepared by the Virginia Beach legal staff. Finally, MPO staff was asked to prepare an action plan with timelines for the MPO Committee's future work, including the need for a revised and updated MOU with VDOT.

From: "Walton, Richard L., Jr." <Richard.Walton@VDOT.Virginia.gov>
To: "Farmer, Dwight L." <dfarmer@hrpdcva.gov>, "Les Lilley" <llilley@vbgov.com>, "Rod Ingram" <ringram@vbgov.com>
Date: 6/11/2008 10:58:34 PM
Subject: RE: FOIA and Bylaws legal review

Dwight and all-

I wanted to follow up last week's phone call with the two policy concerns I expressed with the way in which the HRMPO TTC has operated in the past, which was part of the focus of the FHWA/FTA concerns and corrective action in the Planning Certification Review.

As I stated, Secretary Homer has consistently expressed the need for transparency in the discussion of transportation issues. This is particularly true when the discussion is focused on the use of public funds. As we discussed in the call, our mission should be to look prospectively and to develop a public participation plan which provides reasonable opportunity for public involvement throughout the development of any plan and TIP.

The other policy concern I expressed was that all 14 MPOs in the Commonwealth have a TTC or equivalent and out of those 14 MPOs, 13 of the TTCs advertise their meetings and the meetings are open to the public. I believe that statistic speaks volumes to the reason for FHWA/FTA concerns as expressed in their Planning Certification Review.

While we discussed the FOIA related issues raised by FHWA, and how the TTC has operated in the past, I believe the plan we agreed upon to focus on the future and not dwell on the past will result in a direction that everyone can accept.

Rick

Richard L. Walton, Jr.
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Information for Dwight Farmer from Les Lilley, June 12, 2008

FOIA General Principles

The General Assembly enacted the Virginia Freedom of Information Act to ensure citizen and media access to (1) meetings of public bodies; and (2) public records.¹ The term “public body” includes boards, commissions, districts, and agencies of state, regional, or local government.² The term “public body” also includes any committee, subcommittee, or other entity of the public body created to advise the public body.³

Meetings

Whenever three or more members of a public body⁴ meet to discuss the business of the public body, notice of the meeting must be provided to the public, and the public must be allowed to attend the meeting.⁵ If, however, a subcommittee or other advisory agency of the public body has three or less members, then any gathering of a quorum of the subcommittee constitutes a meeting for which public notice must be provided.⁶ The notice must be posted at least three business days before the meeting in the office of the public body’s clerk and in a second prominent location at which notices are regularly posted.⁷ Telephonic or electronic meetings are prohibited, so members may not participate in a meeting via conference call.⁸

Documents

At least one copy of all agenda packets and, unless exempt, all materials furnished to members of the public body for a meeting shall be made available for public inspection at the same time the documents are given to members of the public body.⁹

“Public records” is defined broadly by the Act as any document or recording in the possession of a public body or its officers or employees in the transaction of public body.¹⁰ It includes draft documents. A request for documents need not be in writing, and the requester is not required to characterize her request as a “FOIA request.”¹¹ The public body is required to provide a written response to a document request within five business days of receipt and must provide all requested documents, unless an exemption exists.¹² If documents are withheld, the public body must describe the quantity and

¹ Va. Code § 2.2-3700(B).

² Va. Code § 2.2-3701 (defining “public body”).

³ *Id.*

⁴ Va. Code § 2.2-3701 (defining “meeting”).

⁵ Va. Code § 2.2-3707 (C).

⁶ Va. Code § 2.2-3701 (defining “meeting”).

⁷ *Id.* In the case of an emergency meeting, public notice must be provided at the same time notice is given to members of the public body. Va. Code § 2.2-3707(D).

⁸ Va. Code § 2.2-3707(B).

⁹ Va. Code § 2.2-3707(F).

¹⁰ Va. Code § 2.2-3701 (defining “public records”).

¹¹ Va. Code § 2.2-3704(B).

¹² *Id.*

subject matter of the withheld documents and must cite the specific Virginia Code provision(s) that authorize withholding.¹³

Possible Organization Structure/Suggestions for Revision to Meet FOIA, Federal and State Guidelines

The MPO

1. MPO should be a separate public body – no reporting requirements to the PDC.
2. MPO should consider aligning its membership to be comprised of elected officials from each member locality and such state and federal officials as may be required by statute or regulation.
3. All meetings should be open to the public and receive public comment.

The Transportation Advisory Committee (TAC)

1. The TAC should be formally designated by the MPO to be its advisory body, and should be formally designated as a public body.
2. TAC membership should be comprised of the chief administrative officers (managers/administrators) of the locality, and such other transportation officials as appropriate to assure a complete review of all issues.
3. TAC agendas should be set in coordination with MPO initiatives and actions so that all issues have an administrative review at the TAC level, and a policy review at the MPO.

Ad Hoc Committees

Subcommittees of the MPO or TAC appointed on an as-needed basis are public bodies.

The Staff

1. The PDC director and PDC staff (the PDC staff) should function as the core staff to both the MPO and TAC.
2. The PDC staff should convene regular meetings of local agency staff (formerly designated as the TTC) and together should review and prepare issues to be considered by the TAC and the MPO.

¹³ *Id.*

3. The staff collectively is not a public body and can meet on a regular schedule or on an ad hoc basis as issues require.

Comment: This possible structure resembles the Planning Commission process known to all localities in Virginia. An application/agenda item is set on the Planning Commission's agenda, advertised, and presented with a staff analysis. The Planning Commission hears from the public, debates the issue, and makes its recommendations to the governing body. The governing body places the item on its agenda, advertises the agenda items, receives public comment, and then makes its recommendation.

The FOIA requirements are the same as for planning items with the exception that the advertising requirements are shorter. See above "FOIA General Principles."

The by-laws of the MPO should set forth the details of the process.

June 18, 2008

Mr. Roberto Fonseca-Martinez
Division Administrator, Virginia Division
Federal Highway Administration
400 North 8th Street, Room 750
Richmond, Virginia 23240

Ms. Letitia A. Thompson
Regional Administrator, Region 3
Federal Transit Administration
1760 Market Street, Suite 500
Philadelphia, Pennsylvania 19103

Re: Transportation Planning Process Certification Review Report
Corrective Actions
(THY: Certification Review)

Dear Mr. Fonseca-Martinez and Ms. Thompson:

Referring to your letter dated February 28, 2008, which transmitted the final report on the Planning Certification Review of the Hampton Roads Transportation Management Area (TMA) that occurred on November 14-15, 2007, this letter represents the response of the Hampton Roads Metropolitan Planning Organization to corrective actions 1 and 2 as listed in your letter. These two corrective actions required a response by July 1, 2008.

- Corrective action 1 requested that the “MPO provide clarification on why the HRPDC “ratifies” or approves the actions of the MPO, and where in the agreement between the MPO and State is this authority provided.”

The agreement between the MPO and State does not require this action. The HRPDC sees no need to continue this practice and will therefore no longer ratify or approve the actions of the MPO.

- Corrective action 2 requested that the MPO “provide clarification on why the CAO Advisory Committee to the MPO meets in private (versus a public setting) with HRPDC staff to deliberate and provide recommendations to the MPO on publicly funded transportation infrastructure projects for inclusion in the MPO Long Range Plan, whether this is a formally established MPO advisory committee, and whether these meetings were/are held in compliance with the state FOIA

statute.”

The city managers and county administrators, referred to as a group as the Chief Administrative Officers (CAOs), have generally met on a voluntary basis at their discretion. The CAOs and MPO board members have recognized the concerns of the federal team regarding the CAOs making formal recommendations to the MPO. Because of these concerns, henceforth, the CAOs will not normally operate as an advisory committee to the MPO. If, at any time, the MPO requests that the CAOs review an issue and provide advice to the MPO, the CAOs shall constitute themselves as a “public body” and be subject to the public meetings requirements of Virginia’s FOIA and applicable federal regulations for that specific request.

This letter is to certify that on June 18, 2008 the HRMPO, including representatives from VDOT and the public transit agencies, has reached a consensus on the above issues and we hope that we have satisfactorily addressed the two corrective actions that are the subject of this letter. Please advise of any additional information you may need in regard to the foregoing.

Sincerely,

Paul D. Fraim
Chairman, Hampton Roads MPO

MK

Copy: Mr. Dennis Heuer
Mr. Michael Townes
Mr. Mark Rickards
Mr. Ivan Rucker
Mr. Tony Cho