



League of Women Voters® of
Montgomery County, VA

Open Government Study
2013

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LWVMCVA Open Government Study

What is a study and why have this one?

In the Spring of 2013, the League of Women Voters of Montgomery County held a local Program Planning Workshop. Based upon input from members during that meetings and from on-line and print surveys, it was determined to present to members, at the annual membership meeting, two studies for member vote. Both of these studies were approved by the membership and moved forward. (See attachment 1, provided by President Judy Snoke containing the wording that was presented to and voted upon by the membership.) This study is “Open Government & FOIA in Montgomery County.” For a more thorough discussion on the role and function of a League Study, read the *Introduction to the Study Process* provided by the League of Women Voters United States (see attachment 3).

“Studies” form the foundation for League's “Program.” “Program” refers to those governmental issues that the League considers important enough to warrant taking action. “Studies” are also an important tool for educating both members and the public on particular issues that are of interest to League. In a 2011 document provided by the LWVUS, *Introduction To The Study Process* “Studies are part of League Program and, in League parlance, League Program includes all of the positions the League uses to affect public policy as well as the procedure for adopting these programs. Program is such an integral part of the League that, according to League Basics, the League publication formerly titled In League, “Program is the League’s reason for being.”(see attachment 4). It is from Program and this Study process that League Positions are determined.

While a position is not required in order for League to do educational work on an issue, it is required in order for the League to take action on the issue. The League does not have to have a local position for action, **if** a state or national League position covers the issue and there is member understanding and agreement of the issue and the position (see attachment 2). In other words, where a Position exists, a local League is free to act upon that position so long as the actions are consistent with the written position. It is always best to discuss plans for action with the League (state or national) that has such a position before implementing them in order to make sure that there is consistency.

What is Open Government?

In the Spring of 2013, the League of Women Voters of Montgomery County held a local Program

Planning Workshop. Based upon input from members during that meetings and from on-line and print surveys, it was determined to present to members, at the annual membership meeting, to studies for member vote. Both of these studies were approved by the membership and moved forward. (see attachment 1). This study is “Open Government & FOIA in Montgomery County.”

The League of Women Voters of United States uses a document, “Impact on Issues,” to present the positions of the national League. Open Government is addressed in the Representative Government section of this document which can be found at http://lwv.org/files/IoI2012_RepGovt.pdf. At the beginning of this document you find this statement: “Promote an open governmental system that is representative, accountable and responsive”. The section of this document pertaining to this study begins on page 22 of this document. It begins with a history of the League on Citizen Rights, specifically, Citizen's Right to Know / Citizen Participation. On page 24 of this document, you will find the national League's position:

Statement of Position on the Citizen’s Right to Know/Citizen Participation, as Announced by National Board, June 1984:

The League of Women Voters of the United States believes that democratic government depends upon informed and active participation at all levels of government. The League further believes that governmental bodies must protect the citizen’s right to know by giving adequate notice of proposed actions, holding open meetings and making public records accessible.

The League of Women Voters of Virginia does not address open government as a position. Instead, on page 22 of that document (see attachment 7, page 21), you will find League Principles discussed an an adaptation of the LWVUS position:

The League of Women Voters believes that democratic government depends upon the informed and active participation of its citizens and requires that governmental bodies protect the citizen's right to know by giving adequate notice of proposed actions, holding open meetings and making public records accessible.

An important note in that section is the following statement:

As for action to implement the Principles, the appropriate board authorizes action once it determines that member understanding and agreement do exist and that action is appropriate. As with other action, when there are ramifications beyond a League’s own government

jurisdiction, that League should consult other Leagues affected.

What is the current position of the LWVMCVA on Open Government?

The LWVMCVA Position concerning Open Government was adopted May 1999 and revised May 2007. However the top section of that position as found online (web page: <http://lwvmcva.org/positions.html>) notes that the position stated “makes more explicit LWVUS positions of 1972, '73, and '74 favoring open government.” It is unclear if there were any modifications to the LWVUS position from 1974 through 1984, that would have been included if they were available. That type of information would likely be found in the report of the 2007 Study. To date, we have been unable to obtain any copy of that study for use here. The specific positions of the LVMCVA are:

Position on Executive Sessions

Executive Sessions - adopted May 1999: Revised May 2007

[This position makes more explicit LWVUS positions of 1972, '73, and '74 favoring open government. The Position attempts to address the increasing problems of public distrust, cynicism and subsequent citizen disengagement from government matters. It focuses on those areas of government business in which closed sessions are used extensively in the County and Towns. The presumption is that elected officials can and should take additional steps to reduce distrust. It does not preclude the roles of the public and the media in this endeavor.]

The League of Women Voters of Montgomery County requests the County and Towns consider these recommendations for implementing the Virginia Freedom of Information Act:

- a) eliminate the presumption of secrecy in deliberations of public officials merely because an issue is "sensitive" politically, since the public's need to understand the process of decision making is paramount to the success of a democratic government.
- b) reduce the time spent in secret discussions about personnel matters, particularly when the discussion is about appointments of final candidates for public service positions.
- c) narrow the exemption from openness in order to obtain legal advice to strategy planning when there is actual pending litigation.
- d) emphasize the presumption of openness of all deliberations of public officials by requiring that agendas of public bodies list all items for open discussion. A public official wishing to close a

meeting would need to justify that action by explaining how the harms outweigh the benefits of openness for each item that will be discussed. Time limits for retaining a (required) tape and minutes of the closed meeting should be mentioned in the minutes of open meeting and should reflect the expectation that information will be made available to the public when the clear reason for secrecy no longer exists. In addition any action or votes that occur as the result of secret deliberations must be publicly and specifically explained.

- e) exclude the routine use of closed sessions to discuss real estate and property matters, particularly when competitive offers may help the public interest and when "usage" and "condition" of properties is the topic

Is the Current LWVMCVA Position on Open Government Adequate given the changing technologies?

As you can see, the LWVMCVA position focuses on a subset of one of the issues noted in the LWVUS position, that subset is “holding open meetings.” There is nothing that addresses other issues noted: “giving adequate notice of proposed actions, holding open meetings and making public records accessible.” It is within this fuller statement that the greatest impact of new technologies can be seen, but which are not addressed by the local League position on Open Government.

The use of closed meetings is one of several barriers to Open Government. Technology now allows for various forms of closed meetings to occur via email, private Facebook groups, text messages, telephone and video conferencing, and more. All of these provide opportunities for discussions which should be accessible to the public. Should someone wish to request such documents, they have to know that they exist, the topic that presents a theme through the emails, and all of the email addresses (public and private) which the elected officials may be using. FOIA does require that these documents be presented, but since there is no announcements of such “meetings”, it is difficult for citizens to know that they exist. Since much of the video conferencing software is available to the general public, one would have to know if elected officials had those systems and if they used them. If private software is used, the parties using them may or may not have the systems set up to save copies of the discussions.

In the process of “holding open meetings” there is the requirement for notification of those meetings being presented to the public. Bills have been presented to the Virginia Legislature for the past several years (including the 2014 Session) which would allow jurisdictions to make public meeting announcements via their websites rather than through local newspapers. This would create a situation

in which not everyone would have access to the information.

Unfortunately, all citizens do not have equal access to the internet, computers, or to the skills required to manipulate various government websites sufficiently to provide fair and equal access to people. This “digital divide” is further discussed in “Barriers to Realizing the Full Value of Open Government, from The Knight Commission On The Information Needs of Communities In A Democracy” (see attachment 9). The first paragraph of this document sums up the problem fairly well:

Modern e-government and open government tools and services can only be useful if they are properly designed to (1) effectively engage the public and (2) produce outcomes that are beneficial to the relevant government agency. A key component of many current design problems is guaranteeing that an online tool or service fully leverages the collective power of the public and that the tools or service are ultimately useful to both citizens and government agencies. Indeed, public administrators have long struggled with designing and building analog and digital services that meet the needs and skills of the general public and that truly foster democratic participation.

With the more frequent use of the internet, and websites specifically, the dissemination of public documents creates additional challenges in order to insure equal and fair access to those documents. The digital divide is certainly the greatest barrier to providing documents via the internet. There are, however, additional considerations to evaluate. Of particular concern, with our local jurisdictions, is the type of document that is stored online. There do not appear to be any definitive guidelines for choosing the type of document to be uploaded. Some files are loaded as documents (either .doc or .docx files) while others are loaded as .pdf files, and still others as various graphics files (including audio and video files).

Where .doc and .docx files are provided, it must be noted that not everyone has a computer that will allow them to open the .docx files. This is a file type specific to Microsoft. The computer being used must have a software program that will open these files. While most systems provide versions that will handle such documents, not everyone knows how to keep their software packages up to date. Older versions of software will not recognize the .docx files.

The .pdf files create special problems because depending upon how the primary file is set up and either scanned or converted to .pdf. If the .pdf files is scanned or created as if from a graphics file rather than from a .doc/.docx file, then the .pdf files cannot be searched and, for the visually impaired, will not

work with the “text to speech” software packages that actually read the document contents for the person.

Graphics, audio, and video files can also be software dependent, or when loaded on the internet for access, may require special software in order to view or listen to the records. The quality of these is also largely a function of the computer being used and the type of internet connection available.

What about television coverage? Are the channels provided by local governments available to all citizens? No. These television channels are available only to those who chose to have, have access to, or can afford cable television. Without cable television service, there is no way for these individuals to be able to watch live broadcasts of government meetings.

The Scope of the Study:

As passed at the May 2013 Annual Membership Meeting:

Have FOIA regulations kept up with or addressed changes in technology?

1. Changes in new technologies;
2. Changes in state laws;
3. Meeting and exceeding minimum standardsMeetings Held:

During the course of the time period of the study, 5 meetings were held by the committee at which there were from 2 to 4 people present. With only Darlene Allen and Carol Lindstrom being present for all of the meetings. Judy Snoke attended all but one, Bobbie Littlefield attended 2, and Alison Galway attended 2.

September 19th was the date of a public meeting that was held on FOIA and Open Government. Our speakers for the event were: Megan Rhyne, Executive Director of the Virginia Coalition for Open Government, Ruth Ritchey, Information Officer for Montgomery County, Becky Wilburn, Information Officer for Town of Christiansburg, and Lisa Sedlak, Communications Specialist for Town of Blacksburg. Ms. Sedlak was stand-in for Steve Ross, Deputy Town Manager who had to cancel at the last minute. The meeting was well attended by more than 30 League members, local government workers, and interested citizens

Ms. Rhyne started the program by providing a overview of the role that the Freedom of Information Act play in open government. She provided many examples from around Virginia of some of the

benefits and challenges that that have been faced over the years, and some ideas of what may be coming in the future as state codes change.

Our other three speakers provided a panel for discussion of what each of the local jurisdictions have done in recent year to provide greater openness and encourage citizen participation in their government. It was also an opportunity for each jurisdiction to showcase some of the new features to be implemented in the near future.

Discussion:

It was clear from these presentations that technological changes provide opportunities for open government that were not expected at the time of the original study. Email, particularly the use of email by elected officials to discuss business in a relative “stealth mode,” has created a new way in which discussion can be held on key issues to which the public would not be invited.

The letter vs the spirit of the law can quickly come to play with the use of websites. Although meeting the letter of the law by posting information, how that information is prepared and presented can make it difficult for citizens to have clear and useful access. A case in point is that some jurisdictions create documents for uploading as .pdf files, but have them as graphics. These graphic file can not be searched as a text version of a .pdf could. Also, for the visually impaired, the graphics version are not readable by computer programs designed to assist those individuals. Where state codes are requiring certain documents to be posted on a jurisdiction's website, there are no guidelines requiring that explanatory information be provided citizens so that they can fully understand the information provided. When technical terms (jargon) are used to present information, it provides an opportunity for misunderstanding of the document. In order for documents to be useful, they must be not only accessible, but understandable for citizens.

Audio and Video of basic meetings are providing citizens with more opportunities to observe their government in action. The Town of Blacksburg provides video recordings of Planning Commission, Town Council Work sessions, and Town Council Meetings on the Internet and through local television. In Christiansburg, only the Town Council Meetings are provided but they are provided via Internet and local television. Montgomery County has the Board of Supervisors Meetings and the School Board Meetings are available on the Internet and on local television. The benefit in each of these to having the session on the Internet is that there is a historical record of the meetings available for review. Let me

add one note here concerning the availability of those meetings on Internet and television. These modes should not be seen as taking the place of citizens attending the actual meetings whenever possible. A physical presence at those meetings, particularly of League members at those meetings, gives elected and appointed officials a clear idea of who is interested in what they are doing. At times when citizens are allowed to interact with these groups, that cannot be done from home. The League should be concerned that people will become silent observers rather than active participants when they view these meetings remotely rather than in person. A presence, a face, a voice, can have a significant impact on decisions made.

The Freedom of Information Act is a work in progress. It changes often, and most of those changes serve to weaken the ability of citizens to obtain information. There are some exemptions to FOIA that make sense and serve a useful purpose. Others appear to be unnecessarily restrictive. Each year the Virginia General Assembly address bills proposing changes in the Freedom of Information Act.

On the Virginia Coalition for Open Government website, there are annual “Legislative Roundups” provided that give lists of the bills that have been presented to the Virginia General Assembly each year starting in 2006. The 2014 General Assembly Session already has thirty-one (31) bills filed in the House of Delegates that could have an impact on how local governments manage citizen requests for information and what information is accessible. In the Senate there are currently 16 such bills (as of January 12, 2014). The Legislative Session is just starting so there will likely be many more such bills. During the 2013 Legislative Session, there were 50 such bills filed.

Where the League can best work to preserve and enhance open government in our local jurisdictions is to be aware of these bills and to take action to contact Legislators voicing an opinion based upon the impact of the bill on citizens within our area. It is the wording of the final bill that will make the difference as to whether or not local League can have any real impact on what local jurisdictions do. If the words “shall” or “will” are used in the content of the bill, there is no flexibility. When “can” “should” or “may” are used, there is an opportunity to encourage the local government to take the least restrictive path. One example of this is that for the last several years, bills have been presented that would allow local jurisdictions to post public notices on their website rather than in their local newspapers. While this may be an effective cost saving measure, is it in the best interest of citizens? Most of these bills have been worded such that the jurisdiction may choose to do so. Not everyone has access to a computer. Some of those with internet access may not have the skills to find information on

their government website. Thus, there are many citizens who still rely on their local newspapers to find out about public announcements. So long as the bill says “MAY”/”SHOULD,” then there is the opportunity for the League to encourage local governments to choose to do both website and newspaper notifications.

2014 Legislative Session: Bills Pertaining to Open Government:

HB95: Legal notices; advertisement by locality on websites radio, or television. (Allows localities with a population of 50,000 or greater to meet certain notice requirements by utilizing their websites, radio, or television instead of a newspaper of general circulation. *This would apply to Montgomery County at this time.*)

HB143: Courthouse; posting of notices; website. (Provides that documents required to be posted by a clerk on or at the front door of a courthouse or on a public bulletin board at a courthouse may instead be posted on the public government website of the locality served by the court.)

Since the 2014 Legislative Session is just getting started and new bills are being presented daily, there may be other bills pertaining to the focus of this study. The Virginia Coalition for Open Government provides a Legislative update that is helpful in watching these bills as they are presented (see web page: <http://www.opengovva.org/2014-general-assembly>).

Results of the Study:

Montgomery County, Town of Blacksburg, and Town of Christiansburg all clearly take open government and FOIA compliance quite seriously. This was made very clear when the representatives from each of the local governments were given an opportunity to discuss what they have done, and what they plan to do in the areas of distribution of information and of citizen engagement. All of them currently go beyond the minimum standards established via state code.

Given the rapid changes in technology however, there exist some potential areas of concern as related to access to the internet and to the rapid growth of vibrant online networks of each jurisdiction. These areas help to identify some of the areas where the League can be most effective in work to insure that open government is maintained and that citizen engagement potential is maximized.

By taking a broader perspective in monitoring open government, the League of Women Voters can be instrumental in maximizing transparency and citizen engagement. Having a broad statement concerning

open government would allow latitude for League to respond as technology changes and new issues are discovered.

Recommendations:

The League of Women Voters of Montgomery County should:

1. Continue the position on executive sessions, but include a section noting that governments should avoid the use of current and future technologies in order to hold meetings through the internet, telephone, and other such media. Local governments should not be holding special meetings of 3 or more individuals to discuss jurisdiction's business without the public being notified of that meeting regardless of whether the meeting is face-to-face , via telephone, or done through an online service.
2. Insure that local governments are cognizant of the digital divide and the importance of insuring that all citizens, regardless of geographic location or social-economic status, have fair access to all public documents and notices.
3. Where new state codes are incorporated, to encourage local jurisdictions to continue with their current standard of exceeding the minimum standards where ever possible. When the words used are not restrictive (i.e. “may”, “can”, or “should”) that local government should apply the least restrictive option in interpreting and implementing the code.
4. Local governments should refrain from the use of “technical terms/jargon” in documents unless an appropriate list of definitions is provided.
5. The League of Women Voters of Montgomery County should strive to develop an active “Observer Corps” that includes attending meetings and monitoring of websites to identify areas where improvement is deemed appropriate.

Attachments:

1. Studies passed by membership at 2013 Annual Meeting
2. MDL Tips: Leveraging Local League Studies (from LWVUS) (web page: <http://lww.org/content/mld-tips-leveraging-local-league-studies>)
3. Overview of Program (from LWVUS) (web page: <http://lww.org/content/overview-program>)

4. Introduction to the Study Process (from LWVUS) (web page: <http://lwv.org/content/introduction-study-process>)
5. (from LWVUS Impact on Issues) Section: Representative Government (web page: http://lwv.org/files/IoI2012_RepGovt.pdf)
6. League of Women Voters of Montgomery County, VA Positions.
7. League of Women Voters of Virginia, Positions in Full
8. Principles – LWVUS (web page: <http://lwv.org/content/principles>)
9. Barriers to Realizing the Full Value of Open Government, The Knight Commission on the Information Needs of Communities In A Democracy. (web page: <http://www.knightcomm.org/government-transparency/barriers-to-realizing-the-full-value-of-open-government/>)
10. By-Laws of League of Women Voters of Montgomery County, VA (website: <http://www.lwvmcva.org/by-laws.html>)
11. Virginia Open Meeting Law
12. Virginia Freedom of Information Act.