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M E M O R A N D U M

TO: ERFC Trustees

FROM: Julia Penny Clark
Jenifer Cromwell

DATE: July 10, 2019

RE: Virginia Public Records Act

The Virginia Public Records Act (“Act”) must be supplied to each newly appointed or elected member of the Board of Trustees, under a requirement similar to that in the Virginia Freedom of Information Act. Each of you is required to read it and become familiar with it.

The principal provisions of the Public Records Act are designed to preserve public records and give the Library of Virginia authority to determine which records must be preserved and which may be destroyed pursuant to approved schedules for destruction. The Public Records Act allows any public record to be retained in an electronic medium. The Public Records Act applies to all boards of political subdivisions, which very likely includes ERFC.

The term “public record” is defined very broadly, to include information recorded in any format (including hard copy or electronic) that documents “a transaction or activity by or with” any public employee “if it is produced, collected, received or retained in pursuance of law or in connection with the transaction of public business.” The term does not include extra copies of documents preserved only for convenience or reference.

Each agency (probably including ERFC) is required to establish and maintain a program for the economical and efficient management of its records. Each political subdivision (most likely Fairfax County) must designate at least one records officer to serve as liaison to the Library of Virginia, for purposes of overseeing a records management program and coordinating legal disposition of obsolete records.

No records may be destroyed except in accordance with a records disposition schedule that has been approved by the State Library Board.

ERFC relies on the FCPS Records Management policy, which includes a records retention schedule for ERFC. Recently enacted legislation requires the Public School Records Consortium and the Records Oversight Committee to confer with school boards and division superintendents and submit to the Chairmen of the House Committee on Education and the Senate Committee on Education and Health no later than November 1, 2019, recommendations on ways in which school boards and school board employees can better promote efficiency and cost-effectiveness in the implementation of the Public Records Act. Thus, it is possible that the FCPC Records Management policy may be updated in the coming year. We will work with ERFC staff to monitor any changes to ERFC's records management procedures.

You should be aware of the following:

1. The Trustees' copies of agenda materials generally should fall within the exception for "extra copies preserved only for convenience or reference." Wherever the ERFC office has the original of any records, those records should be deemed the official copies and the Trustees' copies should be the extras.
2. E-mail requires some special attention. E-mail between Trustees and the ERFC office, or among Trustees, relating to ERFC business is a "public record." The ERFC office has established a protocol for archiving e-mail that relates to official business. If you correspond by e-mail with other Trustees about ERFC business and have not sent copies to anyone at ERFC, you should either archive the e-mail individually or forward a copy to the ERFC office before deleting it. If any such e-mail is confidential and you do not wish to share it with the ERFC office, you may forward it to one of us and we will archive it in a special confidential folder.

Enclosure