

DRAFT MINUTES

Friday, February 5, 2021

The meeting of the Board of Agriculture and Consumer Services (Board) Record Subcommittee (Subcommittee) convened at approximately 11:00 a.m. on Friday, February 5, 2021. The meeting was held by electronic communications means due to the state of emergency issued by Governor Northam as a result of the novel coronavirus (COVID-19). The meeting was held using Cisco Webex Events. President Barlow called the meeting to order.

ROLL CALL

The Board Secretary called the roll:

PRESENT

Shelley Barlow
Kay Johnson Smith
James S. Huffard, III
Richard Sellers

CONGRESSIONAL DISTRICT

3rd
8th
9th
11th

ABSENT

None

STAFF PRESENT

Kevin Schmidt, Secretary, Board of Agriculture and Consumer Services
Katherine Coates, Virginia Department of Agriculture and Consumer Services (VDACS)

DISCUSSION OF RELEASE OF PUBLIC RECORDS

Ms. Barlow asked that Subcommittee members share their thoughts based on their individual meetings with Interflex.

[A full recording of comments and discussion can be found here](#)

Password: ZyFYvpJ6

SUBCOMMITTEE MEMBER REPORTS

Shelly Butler Barlow

Ms. Barlow stated that her main take away from her one-on-one meeting with Interflex was that Interflex's goal is to make food purchasing cost efficient and more effective for schools. She felt good about supporting that goal.

Richard Sellers

Mr. Sellers expressed some concern with giving financial and sales data to companies. During his meeting, he was struck by the large number of states that cooperate with Interflex to get prices from USDA. He didn't see a reason the Board shouldn't allow the release of the information if other states are allowing such release. He noted Interflex is working with Fairfax County, but he is unsure if Interflex received data from the county or if Interflex is providing data to the county.

Kay Johnson Smith

Ms. Smith stated that, after her meeting with Interflex, she saw how the service it provides could be valuable to schools. There were some concerns during her meeting about the burden on VDACS staff to respond to the requests. They discussed potentially having the information provided quarterly. There was also concern of setting a precedent that would allow similar information to be released to anyone who asked the Board for it.

James Huffard

Mr. Huffard agreed with the previous comments. Interflex offers a valuable service that is advantageous to school districts. He had concerns about releasing the pricing information, as it might be proprietary.

QUESTIONS AND DISCUSSION

President Barlow opened up the meeting for questions.

Mr. Sellers inquired from staff if there have been similar requests and what is the typical process for these requests. Mr. Kevin Schmidt, Director of Policy, Planning, and Research, provided an overview of how VDACS responds to FOIA requests.

Mr. Sellers inquired about what the Subcommittee recommendation would look like. Mr. Schmidt replied there would be an item on the March Board agenda based on the Subcommittee's decision from today.

Mr. Sellers inquired if there had been any comments from the meat and food industry in regards to this records request. Mr. Charles Green, Deputy Commissioner, responded that he did not hear any concerns with data being discussed relevant to this request. There was some concern of other groups seeing the decision and using the Board to get information that was not previously provided by the agency. Namely, the concern was related to pesticide investigations.

Mr. Justin Bell, Assistant Attorney General, Office of the Attorney General and Counsel to the Board, gave the Board a brief overview of the Virginia Freedom of Information Act, the agency's role, and the Board's authority. He concluded his overview by noting that the Subcommittee does not set a precedent with its decision today. The Subcommittee or Board may make a different decision in a similar case in the future.

Ms. Barlow asked what would happen if the Board voted to release the information but decided later it is not working. She wondered whether the Board has the ability to deny a future request. Mr. Bell responded that this is a one-time request and if the requester comes back, the Board can make a different decision.

Ms. Barlow inquired about costs from a staff point of view. Mr. Schmidt responded that if there is no redaction required, a request like this would not have a charge.

Ms. Johnson Smith stated that the Interflex request sounds like an ongoing request. She wondered whether the Subcommittee will be making a decision to release the information continuously or will it have to go back through this if Interflex wants to request it again. Mr. Schmidt responded that it would ultimately be up to the Board based on the direction given from today's Subcommittee meeting.

Mr. Huffard stated that he thinks the Board can give the information once or twice a year. He noted that this information is likely openly available if someone was to call each school district. He shared some concern about releasing price information.

Ms. Barlow called on Lamont White, Processing Specialist, Office of Food Distribution, to comment on how responding to this request will impact his office.

Mr. White stated that, if they did it on a quarterly basis, it would be about 180 documents released each quarter. His main concern is that manufacturers have to buy the information from Interflex and smaller manufacturers cannot afford this service. While it is free to schools, Interflex did not give him the impression it would remain free for schools. And, while the Interflex information is free to schools, it is being sold to manufacturers. His concern is that Interflex is a for-profit organization making a profit from the information.

The Board discussed Mr. White's concerns and ways the final released documents could be redacted.

After discussion, Mr. Sellers moved that the Subcommittee, having reviewed information provided by Interflex in two separate phone calls and in holding a public Subcommittee meeting, recommend to the Board that the Board deny Interflex's request for this data. Mr. Huffard seconded the motion. The Subcommittee voted unanimously to approve the motion.

APPROVE: Barlow, K. Johnson Smith, Huffard, Sellers

OPPOSE: None

PUBLIC COMMENT

There was no public comment.

ADJOURNMENT

The meeting adjourned at 12:00 p.m.