

Warrenton Commission on Open and Transparent Government
Discovery and Records Review Plan

PREAMBLE:

Pursuant to the authority granted to the Town Council under Va. Code §§ 15.2-1400 et seq. and 15.2-1409, it is the policy of the Town of Warrenton that the Commission on Open and Transparent Government (the “Commission”) including its members and Town Attorney, is hereby authorized to access, review, and receive copies of all Town records relevant to its investigation, whether or not such records are exempt from disclosure under the Virginia Freedom of Information Act (FOIA). This internal access authority is independent of FOIA and is granted as a matter of Town policy to enable the Commission to fulfill its legislatively-defined investigative purpose.

The purpose of this Discovery and Records Review Plan is to articulate the ability of the The Commission to obtain records for its legislatively defined purposes, which includes investigation into three designated land-use applications (“Projects”) as well as set out any applicable limitations and a process for deciding said issue. It follows both state law and the principles of the U.S. Constitution and Virginia Constitution, which each envision an open and transparent government.

The Commission has two potential sources of records:

1. Town of Warrenton (“Town”) records.
2. Records from Third Parties.

In terms of Town records, the Commission – as authorized by state law and chartered by the Town Council–enjoys immediate access to any records available to the public under the Virginia Freedom of Information Act (“VFOIA”). For those records which are exempt from VFOIA, such as personnel records, attorney-client privilege communications, or subject to

third-party agreement,¹ the Commission, as an entity established by the Town, may request access to records exempt from public disclosure under FOIA, subject to review and approval by the Town Attorney to ensure compliance with all applicable exemptions, privacy protections, and legal privileges. Access to such records shall be limited to only those Commission members and agents with a demonstrated need to know, and all disclosures shall be documented and justified in writing by the Town Attorney. That process will balance the privacy interest of the individual with the right of the Commission to obtain information relevant to its intended purposes.

In terms of Third-Party records, the Commission shall enjoy those rights which are stated under Rule 4:1 of the Rules of the Virginia Supreme Court regarding civil cases, namely the Commission may request records relevant to its purposes from third parties, and may seek the issuance of subpoenas or subpoenas duces tecum through the Town Attorney and with approval of the Circuit Court, in accordance with applicable law. The Commission does not possess independent civil discovery powers and must comply with all legal requirements for obtaining third-party records.

Introduction:

Upon the resignation of Mr. Whitson W. Robinson as Special Council on January 9, 2026 and previously Mr. Chap Petersen as Town Attorney, the Town Council at its regularly scheduled meeting on February 11, 2026 directed the Commission to review the original Resolution 25-001-08 (“Resolution”) formally establishing the Commission, Resolution 24-03-03 appointing Mr. Robinson as Special Counsel, the Commission's Mission Statement, Discovery Plan and Records Review Plan as adopted by the Commission.

Pursuant to the Council’s direction, the Commission held a public meeting on March 5, 2026, at which it reviewed the revisions to these documents such that the Commission assigned to itself the task of investigating three prior land-use applications with the assistance of the Town

¹ Third-part agreements are nondisclosure agreements and confidentiality agreements made between the Town and state and law enforcement agencies.

Attorney to develop a record of relevant correspondence, applications, meetings, news reports and any other materials relevant to the selected applications.

The principal distinctions between the original documents and their revisions are:

- 1) The Town Attorney will be responsible for assisting the Commission in discharging its primary delegated function to conduct discovery on and review of selected development applications, including the issuance of *subpoenae duces tecum*.²
- 2) Research will be conducted by designated members of the Commission according to the consolidated Discovery Plan and Records Review Plan.

This document presents a consolidated discovery and record review plan consistent with the revised resolution and mission statements defining the scope and process by which the Commission will (i) collect public files, documents, and other records and (ii) interview persons related to the applications.

I: Scope of Commission

The Resolution cites Section 15.2-1409 of the Code of Virginia “authorizes the governing body of a locality to (i) seek the attendance of witnesses and production of records to provide evidence under oath and (ii) apply to its Circuit Court for a subpoena or subpoena duces tecum so as to order that production if it is not produced voluntarily.” Any application for a subpoena or subpoena duces tecum pursuant to Section 15.2-1409 of the Code of Virginia shall be made in accordance with all statutory requirements, including providing reasonable notice to affected parties and an opportunity to object or seek protective relief from the Circuit Court.

Accordingly, the Commission’s investigation, with the assistance of the Town Attorney, includes discovery, screening, and review of all written and electronic communications, files, documents, other items relevant to the Projects, and may include interviews with and requests

² *Subpoenae Duces Tecum* is a type of subpoena that requires the witness to produce documents, books, records or other evidence pertaining to a court order or legal proceeding.

from persons involved in the Projects, its legislative review or administrative processing. To ensure that research into each Project is complete, the discovery timeline for each Project will extend to periods prior to the introduction date of the Project and after each project was formally approved by the Town Council.

Such items and persons may include:

1. **Town Records (Internal):** Internal hard-copy and electronic records maintained by the Town on its servers or stored onsite or offsite in Town-controlled facilities, **which are relevant to the Projects**. Such records include, but are not limited to:
 - (a) Electronic messages, phone text messages, fax messages and any other electronic records or communications concerning the Projects, the applications and the legislative record, including e-mail backups and archives on Town server(s).
 - (b) Hard-copy files and documents concerning the Projects, including the applications and the legislative record;
 - (c) Phone text messages, electronic mails, electronic files, and telephone call records on Town government phones pertinent to the Projects; and
 - (d) Town personnel folders and files on Town server(s) may only be accessed upon a written determination by the Town Attorney that such access is strictly necessary to fulfill the Commission's mandate and is consistent with all applicable privacy laws and regulations. The scope of access shall be limited to only those records directly relevant to the Projects under investigation.

2. **Town Records:** Hard-copy and electronic documents, correspondence, communications, e-mails, text messages, phone call records and logs, and other records of Town employees, agents or elected officials **which are relevant to the Projects and are located either by the Town on its servers or on third-party archive systems established by the Town**
3. **Third Party Records:** E-mail messages, phone text messages, electronic files, and telephone call records held by persons with an interest in the Projects, including developers, property owners, attorneys, witnesses, and other third parties with knowledge, which are relevant to the Projects and the underlying goals of the Commission and not subject to an applicable legal privilege.
4. **Interviews:** In-person, telephone and video interviews with persons deemed to be relevant to the Projects and the underlying goals of the Commission.
5. **Privileged Documents:** Records subject to attorney-client privilege or attorney work product protection shall not be disclosed to the Commission or its agents unless the Town Council, after consultation with the Town Attorney, expressly waives such privilege in writing. Any such waiver shall be narrowly construed and documented in the Commission's records.

II: Process

The Commission, with the assistance of the Town Attorney, may use one or more of the following methods to obtain the pertinent records for the subject properties defined above:

1. Requests to individuals and organizations as described in Section 1 above (“Third Parties”). Where necessary, requests may take the form of subpoenas or *subpoenas duces tecum* filed by the Town Attorney and approved by the local circuit court.
2. **Town server and hard copy storage:** The Commission will be provided with access to the Town computer servers and hard copy storage systems at a

sufficient security access level necessary to independently and confidentially access, search for, collect, review, and examine all files and documents on Town servers for the purpose of determining the files and documents that fall within the scope described in (I) above, subject to the following:

- a) Access to the Town's servers shall be limited to members of the Commission, the Town attorney, and staff as designated by the Town Manager;
- b) In order to locate the highest possible number of relevant records defined by the Commission's scope in (I) above, access described in (a) above shall be a combination of both AI and natural language processing (NLP) searches of broad retrieved collections of Town records, and targeted Boolean keyword searches, to produce a final selection of retrieved records that are relevant to the scope of the Commission;
- c) Commissioners will employ best practices to ensure the security and confidentiality of all information accessed on Town servers throughout this discovery process;
- d) As stated above, the Commission is immediately entitled to any document which is relevant to its investigation and subject to disclosure pursuant to FOIA. For those documents which are subject to FOIA limitations, the Commission, as an agent of the Town, is presumptively entitled to review its own records as long as they are relevant to the underlying investigation. That entitlement shall be balanced with any privacy concerns or potential harm from unconsented disclosure. On balance, it is presumed that the Town has the right to review its own records, recognizing that the public disclosure of said records can still be limited by the express terms of FOIA, and as further determined by the Town Attorney.

3. In the event of any dispute concerning the relevance of any sought document vis-à-vis the scope of discovery or other legal concerns, the Town Attorney shall determine whether the information shall be provided, based if necessary upon his confidential review of each specific document or file;
4. If the Commission as determined by majority vote disputes the Town Attorney's finding in (4.) above, then the ultimate decision on whether or not a record will be included in the discovery process will be determined by a vote of the Town Council, subject to compliance with state and federal laws.

III: Disclosure

This section covers the processing of information, final disposition, and disclosure of information obtained as a result of the investigation defined in this document:

1. The Town Attorney and/or members of the Commission will provide ongoing updates on the discovery process to the Commission's Chair, who in turn will report the discovery of any materially significant information immediately on to the entire Commission.
2. Subject to the limitations of FOIA as described herein, any materially significant information obtained during the discovery process that is not subject to legal privilege, statutory confidentiality, or privacy protections, and that has a public interest impact, may be released to the public upon review by both sitting Council members on the Commission and legal review by the Town Attorney. No information subject to privilege or statutory confidentiality shall be disclosed except as authorized by law;
3. Any information obtained during the discovery process that the Town Attorney deems may require referral to the Commonwealth Attorney shall be held in strict confidence, shared only with parties with a "need to know," for final disposition by the Town Attorney;
4. Otherwise, information obtained as a result of the discovery scope and process as defined in (I) and (II) above shall remain confidential during the discovery process until

it is presented to the Commission at either its next scheduled quarterly meeting, or during a special meeting held at an earlier date;

5. All other information gathered in the discovery process will first be reviewed by Councilman William Semple, Councilman Eric Gagnon, and the Town Attorney for a final determination of relevancy pursuant to the scope of (I) above and will be publicly released pursuant to the terms of this section. and a final VFOIA review as described in (VI) below. Files, records, and other documents and information not relevant to the scope of this Discovery Plan will not be disclosed to the public, and such information will be securely redacted or deleted;
6. Information reviewed, gathered and processed by Councilman Semple, Councilman Gagnon, and the Town Attorney, will be forwarded to the Commission for review, disclosed to the public, and included in the final report to be published by the Commission.

IV. Records Review Plan

The Records Review Plan details the procedures to be followed by Commissioners for access, review, classification, and public disclosure of town or third-party records as defined above (hereinafter “Review Plan” or “Plan”). These procedures include specifying the information required to issue subpoenas to third parties as described in (II)..

The intent of the Review Plan is to provide the Commission as a whole, members of the Commission (“Members”) and the Town Attorney with the widest possible access to all records responsive to their requests, with the understanding that such access, subject to the parameters as defined above and as follows, is a prerequisite to ensuring a thorough discovery process and maintaining public confidence in the integrity of the investigation.

This Plan is also intended to protect the Town’s employees, vendors, and the public by safeguarding proprietary or confidential information against unintended release that could compromise their rights to privacy, breach the Town’s data systems or violate state law.

Accordingly, the Review Plan provides specific guidelines regarding the monitoring and in-camera review of any record accessed by the Commission, Members, and the Town Attorney prior to their use by the Commission or release to the public.

V: Town E-Mail Access, Review, Monitoring, and Disclosure

Commission Members shall have broad initial access to all e-mail records of current and former Town employees, elected officials, or other individuals stored on the Town's e-mail archive (i.e., the Intradyn third-party archive system), with the exception of those emails subject to specific exclusions as detailed further below.

E-Mail Archive System (Intradyn) Access for Selection of Town Records

The preferred means of access will be that Commission Members in concert with the designated Custodian of Records, the Town Clerk, shall directly access the Intradyn System, to select and retrieve e-mails for initial review subject to the exclusions detailed below. The initial scope of the selection and retrieval process shall consist of any and all e-mails of current and former Town employees, elected officials, or other individuals stored on the Intradyn system, within date ranges specified by Commission members, and subject to a further confidential, in-camera search process, described in (VI) below, to narrow the initial selection down to records which are relevant to the Commission's scope as defined in (I) above.

If technically possible on the Intradyn system, during this initial records retrieval process all searches will be screened against exclusion files of e-mail addresses for Town police, county sheriff, and other law enforcement organizations to screen all e-mails send from these e-mail addresses to individuals whose e-mails are being retrieved. If this is not technically possible using Intradyn, this screening will take place as the initial step in (VI) below, using automated AI features, prior to any other search being performed.

Alternatively, the Town Clerk may conduct searches and retrieval of e-mail records in response to requests of Commission Members.

The compiled archives (ZIP files) resulting from such searches will be transferred to the Town's One Drive system for initial review (see below). Neither the Town Clerk nor any other individual with access to the One Drive System may open or access any archives produced by these searches prior to their transfer to the One Drive System.

VI: Initial Review of E-Mail Records (Determination of Relevancy)

The Commission Members responsible for initial review shall be the Vice-Mayor and Committee Chair, William Semple, and the Commission's Secretary, Eric Gagnon ("Designated Members"), who together will conduct an initial search and in-camera review of the retrieved e-mail archives produced either by themselves or by other members of the Commission, selecting only those e-mails deemed relevant to the land-use applications within the scope of the Discovery Plan.

This search process shall include an in-camera review of individual e-mail messages, batch collections of e-mail messages, and automated text searches of archives. To ensure the highest possible accuracy in retrieval of relevant records, a combination of both AI, natural language processing (NLP), and targeted keyword searches will be used to select a final collection of records which are relevant to the scope of the Commission as defined in (I) above. E-mails that fall outside of the scope of the Discovery Plan shall be discarded.

Any e-mails that are not directly relevant to the scope of the Discovery Plan, or where relevance to a land use application is in doubt will be reviewed by the Town Attorney, who without objection will determine the relevancy or applicability of each e-mail to the scope of the Commission's inquiry.

At all times such review of e-mail records will be conducted in a secure environment following IT industry best practices to ensure confidentiality. The disclosure of all e-mails retrieved by the

Commission will be subject to the Virginia Freedom of Information Act (VFOIA) and/or other restrictions (e.g., non-disclosure agreements or contractual agreements, e.g., the Fusion Center or the Criminal Justice Information System). To that extent, certain e-mail addresses and domains will be selected for non-inclusion during the search process, to minimize the chances of retrieving any e-mail subject to agreement or by law.

Councilman Semple and Councilman Gagnon shall be authorized to conduct a final review of the final selection of relevant records to remove any records which are exempt from release subject to VFOIA, or any other restrictions described in the preceding paragraph, prior to public dissemination of this final selection of relevant records.

VII: Town Phone Records

The Commission shall be provided with access to requested phone records, including call logs, text messages, voicemail, or any other telephone information possessed by the Town, available from third-party services, or outside telecommunications providers.

Commissioners conducting a review of these phone records shall provide the records which are relevant to the scope of the Commission's Discovery Plan to the Town Attorney, and designated Members.

The designated Members will make the final determination of the relevance of phone records to the scope of land use applications covered by the Discovery Plan, and whether such records shall be included in the Commission's final report or other work product developed by the Commission.

VIII: Personnel Records and Other Potentially Sensitive Town Records

If the Commissioners require access to Town personnel records in either hard-copy or electronic format, such access will be monitored by the Town HR manager and a designated Commission

member, and information obtained from these files must be relevant to the scope of the Commission's Discovery Plan. Additionally, access to and dissemination of information from Town personnel files by the Commission will be subject to prior review and approval by the Town Attorney.

Access to and dissemination of information from other Town files deemed sensitive by either the Town Attorney or the Commissioners will be subject to prior review and approval by the Town Attorney on a case-by-case basis.

V: Additional Town Records

If, in the course of their discovery process, the Commissioners require access to additional Town records, such access shall be granted, subject to prior approval by the Town Attorney.

VI. Retention and/or Disposition of Records After Review

The Commission as a whole shall verify that any and all files downloaded from the Open Drive in their possession shall be retained and/or disposed of according to the Virginia Library Rules pertaining to investigations, upon completion of the investigation and the publication of the Commission's report.

ATTACHMENT A

I, _____, hereby acknowledge that I will receive confidential information provided to me in connection with the Town of Warrenton, VA on Open and Transparent Government (“Transparency Commission”) in its official investigation into the land use applications selected for review by the Commission I certify that I have read the Discovery Plan propagated by the Transparency Commission, and I agree to use the documents, files, records, or other information obtained through my role in aiding the Transparency Commission and the TownAttorney, only for the purposes of the Transparency Commission’s scope, and not for any other purpose. I further agree not to disclose any documents, files, records, or other information I obtain in connection with the Transparency Commission’s investigation to any other person. expressly agree to be bound by this Acknowledgement and by the Discovery Plan, and to be subject to the personal jurisdiction of Fauquier County Circuit Court where that any dispute may arise in relation this Acknowledgement or with the Discovery Plan. I further agree to comply with all applicable federal, state, and local laws, including but not limited to the Virginia Freedom of Information Act, privacy laws, and legal privilege protections, in connection with my work for the Transparency Commission.

Date

Name (print)

Signature

Business Address:

