

Warrenton Commission on Open and Transparent Government

Discovery Plan

PREAMBLE:

The purpose of this Discovery Plan is to articulate the ability of the Warrenton Commission (“the Commission”) on Open and Transparent Government to obtain records for its legislatively-defined purposes, 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 (“FOIA”). For those records which are exempt from FOIA, such as personnel records or attorney-client privilege communications, the Commission – as an arm of the Town -- enjoys a presumptive ability to review said records, with the recognition that there must be a process in place, overseen by the Town Attorney, by which (i) searches are subject to reasonable limitation, and (ii) privacy of certain records, as designated by FOIA, can be maintained unless and until the Commission releases its findings to the public. That process will balance the privacy interest of the individual with the right of the Commission to obtain information relevant to its intended purpose.

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 shall have the ability to seek records relevant to its purposes.

Introduction:

At its March 11th, 2025 regular meeting, the Town Council of Warrenton approved Resolution 25-03-03 ("Resolution") formally authorizing the Commission, appointing Whitson W. Robinson as Special Counsel and authorizing him to hire a third-party IT expert to conduct an investigation into the approval of selected land use applications.

The Resolution states that the "primary delegated function of the Commission is to conduct discovery on and review of selected development applications, and of particular interest is Special Use Permit 22-03 issued on February 14, 2023 issued to Amazon Web Services."

It further states that the Special Counsel "will be responsible for conducting legal discovery for the Commission, subject to authorization by the Commission and approval by the Town Attorney." Additionally, the Resolution directs the Commission to "form a discovery plan and gather information, including electronic and other necessary records...to support the goals of the Commission."

Pursuant to this resolution and Resolution 25-01-08, which previously authorized the establishment of the Commission, the Commission held a public meeting on March 27th, 2025, at which it unanimously approved a Mission Statement assigning the task of investigating three prior land-use applications to the Special Counsel and IT expert:

1. the Amazon data center project,
2. Warrenton Village, and
3. the Arrington VSA (collectively, described hereinafter as "the Projects").

According to this Mission Statement, "the Commission will conduct its review with the support of the Town Attorney and such outside experts and counsel as the Town Attorney may deem it necessary to develop a record of relevant correspondence, applications, meetings, news reports and any other materials relevant to the selected applications."

The purpose of this document is to present a discovery plan that will define 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, which “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.”

Accordingly as directed by the Resolution, the investigation conducted by the Special Counsel and his designated third-party IT expert 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 from persons involved in the Projects, its legislative review or administrative processing. 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), **only if it is determined** by the Special Counsel and Town Attorney that there is information material to both the Projects and the underlying purpose of the Commission;

2. **Town records (External):** 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 not maintained by the Town on its servers or in its storage.**
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.

II: Process

The Special Counsel may use one or more of the following methods to obtain the pertinent records for the subject properties defined above:

1. The Special Counsel may employ, if not already, a third-party IT expert or agent to aid in the collection and review of information related to the Subject Projects. Any third-party IT expert or agent will be furnished a copy of this Discovery Plan and shall be required to execute an acknowledgment attached hereto as Attachment A, agreeing to abide by the terms of this Discovery Plan prior to any further work being performed.
2. 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.
3. Town server and hard copy storage access: The Special Counsel and his third-party IT expert 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) Initial access to the Town's servers by the Special Counsel and his third-party IT expert will be monitored and supervised by Councilman Semple, Councilman Gagnon, the Town attorney, and staff as designated by the Town Manager who jointly will finalize the conditions and implementation steps for ongoing independent and confidential access, review and selection of all files and documents on the Town's server(s) by the Special Counsel and his third-party IT expert;
 - (b) The third-party expert will employ best practices to ensure the security and confidentiality of all information accessed on Town servers throughout this discovery process;
 - (c) 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.
- 4. 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 or not the information shall be provided, based if necessary upon his confidential review of each specific document or file;
 - 5. If either the Special Counsel or the Commission as determined by majority vote, dispute 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 Special Counsel will provide ongoing updates on the discovery process to the Commission and to the Town Attorney, and will report the discovery of any materially significant information immediately to both sitting Council members on the Commission and the Town Attorney;
2. Subject to the limitations of FOIA as described herein, any materially significant information obtained during the discovery process having a public interest impact will be released to the public immediately upon review by both sitting Council members on the Commission, and upon legal review by the Town attorney;
3. Any information obtained during the discovery process that the Special Counsel 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 Semple, Councilman 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. 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 the Special Counsel, and reviewed 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.

ATTACHMENT A

I, _____, hereby acknowledge that I will receive confidential information provided to me in connection with the Town of Warrenton, VA Transparency Commission in its official investigation into the Amazon data center project, Warrenton Village, and the Arrington VSA. 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 Special Counsel, 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. I 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.

Date

Name (print)

Signature

Business Address:

