

Warrenton Commission on Open and Transparent Government

Investigation Protocol and Records Access Plan

(IPRAP)

Adopted: [date of adoption]

Authority: Va. Code §§ 15.2-1400 et seq.; 15.2-1409; 15.2-1411; Town Charter §§ 3-7, 6-1–6-3

Mandate: Resolution 25-001-08; Town Council direction of February 11, 2026

Prepared by: Philip Carter Strother, Town Attorney

PREAMBLE

The Warrenton Commission on Open and Transparent Government (the “Commission”) was established by the Town Council to investigate three designated land-use applications and to report its findings and recommendations to the full Council. This Investigation Protocol and Records Access Plan (IPRAP) governs how that work is carried out.

The Commission’s mission — to develop a thorough, accurate, and credible factual record of what occurred in the three designated land-use proceedings — is best served by a process that is legally sound, properly authorized, and structured to produce findings that will withstand scrutiny. This Plan is designed with that goal in mind.

The investigative authority exercised under this Plan derives from the Town Council as the governing body of the Town. Under Va. Code § 15.2-1409, the governing body may seek witness attendance and the production of records and may apply to the Circuit Court for compulsory process. The Commission is an advisory body of the Town Council, established under Va. Code § 15.2-1411. Its role under this Plan is to define investigative scope, oversee the process, receive and evaluate findings, and present recommendations to the full Council. Compulsory process authority rests with the Council, exercised through the Town Attorney.

This inquiry is an investigation conducted under legal counsel’s direction to develop a factual record regarding the Projects and to provide legal advice to the Commission and the Council regarding any legal issues, obligations, or concerns that the factual record may reveal. It is not an adjudication, does not confer hearing or due process rights on any subject, and is not governed by rules of evidence. Work product generated by legal counsel in connection with this inquiry, including materials bearing on anticipated legal proceedings that may follow from its findings, is protected accordingly. If facts developed in this inquiry warrant referral to the Commonwealth’s Attorney, that referral is made through the Town Attorney, and any subsequent proceeding carries its own independent process rights.

Records access under this Plan occurs through lawful Town custodians and is subject to review by the Town Attorney—acting through retained Independent Counsel, where applicable—whose role is further described *infra*, for privilege, statutory confidentiality, privacy protections, information-security restrictions, and other applicable legal limitations. This structure ensures that the Commission’s access to relevant records is orderly, legally defensible, and insulated from challenge.

A note on FOIA exemptions: FOIA exemptions protect records from public disclosure. They do not protect records from the Town’s own internal fact-finding process. Records that may be withheld from a citizen FOIA request may nonetheless be reviewed by a properly authorized investigation acting under Council direction. The Town Attorney and/or Independent Counsel as directed assesses which records fall into this category and advises the Commission accordingly.

INTRODUCTION

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

Pursuant to the Council’s direction, the Commission held a public meeting on March 5, 2026, at which it reviewed revisions to these documents. The Commission’s task is to investigate three prior land-use applications with the assistance of the Town Attorney and an appointed Independent Counsel, retained by majority vote of the Town Council, to develop a record of correspondence, applications, meetings, and other materials relevant to the selected applications.

The principal changes in this revised Plan are:

1. The investigation is grounded in Town Council authority under Va. Code § 15.2-1409. The Commission serves as the Council’s advisory instrument: defining scope, overseeing the process, receiving findings, and reporting recommendations. Compulsory process authority rests with the Council and is exercised through the Town Attorney.
2. With the oversight of the Town Attorney, the Independent Counsel screens all records, such as Town e-mail messages, retrieved from Town systems before any Commission review. Commission members, once properly credentialed (see Page ____) receive the Independent Counsel’s cleared document batches in accordance with the phased production schedule in Section VI. No Commission member accesses unscreened Town systems, archives, or records protected by statute, privilege, or federal agreement.
3. The Independent Counsel conducts Phase One document review and interviews under Town Attorney oversight, and reports to the Commission. Phase Two compulsory process follows from the factual foundation Phase One establishes.

I. Scope of the Investigation

The Commission's mandate covers three land-use applications (the "Projects"):

1. Amazon Data Services Special Use Permit 22-03, approved February 15, 2023
2. Warrenton Village Center
3. Arrington Voluntary Settlement Agreement

For each Project, the investigation will develop a record of relevant correspondence, applications, meetings, and other materials. The discovery timeline for each Project extends to periods prior to the formal introduction of the Project and through its final Town Council action.

The investigation does not extend to the personal conduct of elected officials unrelated to the Projects, or to issues outside the Commission's founding mandate.

Sources of records include:

1. Town records — internal hard-copy and electronic records in Town custody, such as, but not limited to, e-mail messages subject to the screening procedures in Section III.
2. Third-party records — records held by developers, attorneys, and other parties with knowledge of the Projects, sought voluntarily or through lawful compulsory process under Section IV.
3. Interviews — conducted as described in Section V.

II. Roles and Responsibilities

A. The Town Council

The Town Council is the governing body whose authority grounds this inquiry. All investigative authority exercised under this Plan derives from and is accountable to the full Council. The Council receives the Commission's recommendations and the Town Attorney's reports, authorizes compulsory process, votes to retain outside counsel, and determines what action to take on the Commission's final report.

B. The Commission

The Commission defines the scope of the investigation, oversees its conduct, receives and evaluates findings developed through this Plan, and prepares recommendations for the full Council. It is the body that speaks to the Council on the basis of what the investigation produces.

Commission members do not conduct document searches, conduct interviews, make initial determinations about which records are legally accessible or relevant, or direct Town staff. Those functions belong to the Town Attorney and, where retained, to the Independent Counsel. This structure serves the Commission's goals: findings developed through a neutral process, presented by a Commission that defined the scope and oversaw the inquiry carry more institutional weight and credibility than findings produced through a more contested process.

C. The Town Attorney

The Town Attorney has management, charge, and control of all legal affairs of the Town, including those of any committee of the Council. Under this Plan, the Town Attorney:

1. Manages the Independent Counsel's review of all records retrieved from Town systems for privilege, statutory confidentiality, law enforcement restrictions, federal data protection requirements, and other applicable legal limitations, before those records are provided to the Commission.
2. Assesses documents withheld from prior FOIA production to determine whether the basis for withholding remains legally supportable in light of subsequent legal developments, and advises the Commission on what additional records may appropriately be made available.
3. Assesses whether the crime-fraud exception may apply to any withheld communications and pursues that question through the appropriate legal mechanism if the threshold is met.
4. Coordinates with the Fauquier County Commonwealth's Attorney before any current employee is interviewed, to ensure Garrity requirements are properly addressed.
5. Manages all compulsory process under Va. Code § 15.2-1409 upon Council authorization, and serves as the interface between the Commission and any circuit court proceedings.
6. Makes all legal determinations on privilege, statutory confidentiality, and applicable legal restrictions. Those determinations are final. Scope disputes — whether a document falls within the investigation's mandate — may be referred to the full Town Council for guidance; legal protection determinations are not subject to Council vote.

D. Independent Outside Counsel

The Town Council may, by majority vote, retain an Independent Counsel to conduct fact-finding under Va. Code § 15.2-1409. If retained, the Independent Counsel must have no prior relationship with any party to this matter. The Independent Counsel conducts document review and witness interviews under the Town Attorney's legal supervision, and reports to the Commission. The Independent Counsel is retained to develop the factual record and to provide legal advice to the Commission regarding any legal issues or concerns the record may surface. In performing that function the Independent Counsel acts as legal counsel. Analytical work product generated in that capacity is prepared in anticipation of proceedings that may follow from the investigation's findings and is protected as attorney work product and under the attorney-client privilege. The Independent Counsel is retained by a simple majority vote of the Town Council.

The Commission's recommended approach is a phased, limited engagement — one that moves from one stage to the next based on what each phase produces, rather than operating under a fixed broad mandate. Phase One is document review, device records, and a first round of voluntary interviews, concluding with a report to the Commission. Phase Two, if Phase One warrants it, is targeted compulsory process under § 15.2-1409. The value of this sequence is that

Phase One builds the factual foundation that makes Phase Two specific and defensible: a subpoena shaped by an established evidentiary record is considerably more difficult for a recipient to resist than one filed at the outset of an investigation.

III. Town Records: Access and Screening

A. Records Already Available

Several thousand documents were produced through FOIA litigation and are available for review. The three Project case files have been held in a secure Commission office since spring 2025. Review of these materials begins immediately and requires no further legal process.

B. The Intradyn Email Archive

The Town's Intradyn email archive stores all email communications transmitted through the warrentonva.gov domain since 2016. One or more of these communications may contain information subject to independent federal and state legal protection, including: Virginia Fusion Intelligence Center records (Va. Code § 52-48, which provides that unauthorized dissemination is a Class 1 misdemeanor); federal criminal intelligence system records governed by 28 C.F.R. Part 23, whose dissemination is restricted to law enforcement personnel with a documented need and right to know; active criminal investigation records (Va. Code § 2.2-3706); attorney-client privileged communications; and personnel records. As such, the Intradyn Email Archive is not a uniform body of government correspondence and may not be treated as such.

For these reasons, Commission members may not directly access the Intradyn archive. The search and retrieval process as follows has been designed to protect confidentiality as may be required:

1. The Commission submits a written search request to the Town Attorney specifying custodians by name and date range(s), and subject-matter parameters relevant to the Projects.
2. As a safeguard against accessing records subject to independent federal and state legal protection, the Town Clerk shall apply appropriate technical filters to exclude files containing the e-mail addresses of Town staff and law enforcement personnel designated to receive such protected information.
3. The Town Clerk or authorized IT personnel runs the specified searches and provides the collected results for transfer to the Independent Counsel.
4. The Independent Counsel will search and retrieve records from these e-mail collections relevant to the Projects. If the Independent Counsel determines that records subject to Steps 4 to 5 have not been properly filtered pursuant to Step 2 above, as a condition to further searching the Independent Counsel shall query the records in its possession to exclude protected records.

5. The Independent Counsel shall conduct a thorough and professionally appropriate search and review of the retrieved records within the scope of the Commission's request. The method of search and review is a matter of professional judgment for the Independent Counsel and shall be addressed in the engagement letter.
6. The Independent Counsel reviews the merged records and again removes those protected by statute, federal agreement, privilege or other applicable legal restriction, subject to further oversight and approval by the Town Attorney.
7. Cleared documents are provided to the Commission in batches coinciding with the Independent Counsel's reports under Section VI: Batch 1 with the Day 60 substantive report (documents cited or relied upon in that report), and the full indexed set with the Day 90 final report. The Commission does not receive documents on a rolling basis during the investigation.
8. No Commission member accesses retrieved records before the Independent Counsel's screening is complete.
9. Completion of CJIS Security Awareness Training and the VFOIA Local Officials Course is required of any Commission member who accesses the Intradyn archive or unscreened records. These credentials are not required for Commission members reviewing Independent Counsel-cleared and Town Attorney-verified document batches delivered under Section VI. This training does not authorize access to records independently protected by statute or federal agreement and does not substitute for the screening process above.

C. Use of Third-Party Vendor Systems

Cleared email records shall be processed through a qualified e-discovery platform, using capabilities sufficient to support comprehensive and accurate records review to facilitate efficient, accurate searching and review. Before any Town Intradyn data is transferred to a third-party platform, the Town Attorney shall provide a written determination as to whether the data is subject to CJIS Security Policy requirements, VFC participation agreement restrictions, or any other federal or state agreement. No transfer occurs until that determination is provided.

A qualified e-discovery platform is a third-party commercial system that protects all information it receives and/or stores on behalf of its client, such as Westlaw's Co-Counsel.

D. Withheld Documents

Documents withheld from prior FOIA production will be reviewed by the Town Attorney to assess whether the basis for withholding remains legally supportable. That review will take into account subsequent legal developments bearing on the scope of applicable exemptions, as well as whether any withheld communications may fall within the crime-fraud exception to attorney-client privilege. The Town Attorney will advise the Commission on the results of this

review and on what additional records, if any, may appropriately be made available to the investigation.

E. Personnel Records

Access to Town personnel records requires a prior written determination by the Town Attorney, in consultation with the Human Resources Manager, that narrowly tailored access is strictly necessary and lawful. Summaries or redacted extracts shall be used wherever practicable in lieu of full personnel files.

F. Phone Records

The Commission may request phone records, including call logs, text messages, and voicemail, through the Independent Counsel and/or the Town's lawful custodians and subject to legal review by the Town Attorney. Commission members do not directly obtain or review unscreened phone data.

G. Former Town Employee Device Records

Communications on Town-issued devices and Town email accounts used by former Town employees during their employment are Town records accessible without a court order. Before the contents of any such devices and accounts are reviewed, the Town Attorney will assess the scope of any non-disclosure agreements signed by Town employees in connection with the Projects and provide a written determination of what, if anything, those agreements may legitimately restrict with respect to the Town's own internal fact-finding process. That determination is a threshold step that protects the review process from a predictable challenge. Following that determination, the Town Attorney or Independent Counsel screens the device records for protected content and provides a cleared set to the Commission or to any retained outside counsel.

IV. Third-Party Records and Compulsory Process

The Commission has no independent authority to compel third parties to produce records or appear for examination. Voluntary cooperation should be sought first. Where compulsory process is warranted, the following procedure applies:

1. The Commission recommends in writing to the Town Council that compulsory process be authorized, identifying the specific party, the records sought, the relevance to the investigation, and the legal basis.
2. The Town Council votes to authorize the Town Attorney to pursue compulsory process under Va. Code § 15.2-1409.
3. The Town Attorney, or retained outside counsel under the Town Attorney's supervision, files a circuit court petition. No subpoena issues except through the Town Attorney and with court approval.

4. Before filing any petition affecting current Town employees, the Town Attorney consults with the Fauquier County Commonwealth's Attorney to ensure the process does not inadvertently taint potential witnesses through improper Garrity sequencing.

Compulsory process follows from Phase One rather than running alongside it. Phase One document review, device records, and voluntary interviews build the factual foundation that makes compulsory process targeted and specific. The specific parties to whom compulsory process may be directed will be identified as Phase One proceeds and will be recommended by the Town Attorney to the Council based on what the Phase One record establishes.

V. Interviews

A. Who Conducts Interviews

All interviews are conducted by the Independent Counsel retained for that purpose. Commission members do not conduct interviews. Conducting interviews skillfully and in a structured, legally proper manner — by someone with relevant experience and no prior stake in the outcome — is a significant part of what the investigation needs. An interview conducted by neutral counsel, with proper advisements, produces testimony that can withstand challenge in any subsequent proceeding. The credibility of the findings depends in part on the neutrality of the process by which they were gathered.

B. Voluntariness

Phase One interviews are voluntary. Before any interview begins, the interviewee is informed in writing that the interview is voluntary, that they may have personal counsel present, and that the interviewer represents the Town as an institution rather than any individual council member or Commission member. No adverse inference is drawn from a decision to decline an interview in Phase One.

The word “voluntary” requires care in this context. For current Town employees, the institutional environment affects what voluntary cooperation means in practice. This is precisely why Garrity coordination with the Commonwealth's Attorney is a prerequisite before any current employee is interviewed, and why interviews of current employees are conducted by neutral counsel. Voluntariness must be genuine, not merely formal, for the statements produced to be usable in any subsequent proceeding.

C. Current Employees

Before any current Town employee is interviewed, the Town Attorney and/or Independent Counsel consults with the Fauquier County Commonwealth's Attorney to determine the appropriate sequencing. If the Commonwealth's Attorney has opened or is considering a criminal inquiry into the same conduct, the Independent Counsel's interview process defers to the CA's guidance to avoid producing immunized statements that cannot be used in a subsequent prosecution.

If a current employee is compelled to answer questions under threat of employment consequence, Garrity warnings must be given before any questioning begins. Compelled interviews of current employees are a Phase Two mechanism, undertaken only after voluntary Phase One interviews are complete and after CA coordination is in place.

D. Former Employees and Third Parties

Former employees have no Garrity protection: the Town has no employment leverage over them. They may cooperate voluntarily — in which case their statements are fully usable — or they may decline. If they decline, compulsory process through the § 15.2-1409 mechanism becomes the appropriate response. Outside counsel is the appropriate interviewer for any former employee who may be a subject of the investigation.

Where former Town officials or employees served in legal or advisory capacities during the periods under review, the Town Attorney and/or Independent Counsel will assess applicable privilege questions carefully before any interview approach is made, including whether the crime-fraud exception may apply to any relevant communications. The Town's privilege in communications with its former legal counsel belongs to the Town and will be evaluated accordingly. Outside counsel is the appropriate interviewer in such circumstances, following completion of that privilege analysis.

VI. Disclosure and Reporting

A. Internal Updates

The Independent Counsel provides ongoing updates on the investigation's progress to the Town Attorney and Commission Chair, who reports to the full Commission. The Independent Counsel provides written status reports to the Commission at Day 30 (investigative progress, budget, legal issues — no findings) and Day 60 (categories reviewed, interviews, projected completion, and Batch 1 cleared documents cited or relied upon in that report). No investigative findings or documents are released publicly until the Commission's final report.

B. Referral to Commonwealth's Attorney

Any information that may warrant referral to the Commonwealth's Attorney is held in strict confidence, shared only with parties with a need to know, and referred through the Town Attorney. The Commission does not make referrals directly.

C. Public Release

Information may be considered for public release only after review by the Town Attorney to confirm that no protected, privileged, or confidential material is included. No information subject to privilege, statutory confidentiality, privacy protection, security restriction, or contractual nondisclosure obligation is disclosed except as authorized by law and approved in writing by the Town Attorney. Commission members shall not make public statements on investigative substance, witness identities, or documents under review until Independent Counsel final report. Violation may be referred to Council.

All public communications regarding investigative findings are strictly factual. The Commission's reports and public statements describe what the evidence shows, where it leads, and what gaps remain. They do not characterize conduct as wrongful, assign legal conclusions, or present findings in a manner designed to lead an audience to conclusions the evidence does not independently establish. The Commission is not a court and does not adjudicate wrongdoing. This discipline protects the integrity of the investigation and limits the Town's exposure to claims arising from the manner in which findings are communicated publicly.

D. The Final Report

The Commission delivers a final report to the full Town Council upon completion of the investigation. Persons adversely characterized in the report receive the relevant portions in advance and have fifteen business days to submit written factual corrections, which are appended to the final report.

VII. Records Retention and Disposition

All records obtained during the investigation are retained and disposed of in accordance with the Virginia Public Records Act and applicable Library of Virginia retention schedules. No Commission member independently deletes, destroys, removes, or discloses records collected pursuant to this Plan except in accordance with written instructions from the Town Attorney and the lawful records custodian. Access logs are maintained for all retrieval, transfer, and review of electronic records.

VIII. Conflict Disclosure

Transparent disclosure of potential conflicts of interest protects Commission members and strengthens the credibility of the investigation's findings. Before participating in any review of records or receiving investigative findings related to a specific Project or individual, each Commission member discloses to the Town Attorney in writing:

1. Any litigation relationship, past or present, with any party whose conduct is under review.
2. Any prior public statement expressing a conclusion about the expected findings of this investigation.
3. Any prior legal proceeding, as a party or in association with a party, against the Town or against any individual whose conduct is under review.

The Town Attorney reviews these disclosures and advises whether participation in particular aspects of the review is appropriate. This provision protects Commission members as much as it protects the process: a Commission member who has disclosed a potential conflict and received Town Attorney guidance has a documented basis for their participation.

IX. Recommended Council Authorization Resolution

The Town Attorney recommends that the Town Council adopt a resolution that accomplishes the following:

1. Adopts this Investigation Protocol and Records Access Plan (IPRAP) as the governing document for the Commission's investigation, superseding all prior discovery plan documents.
2. Authorizes the Town Attorney to conduct targeted searches of the Intradyn archive through the Town Clerk, limited to date ranges and subject matter consistent with this Plan.
3. Authorizes the Town Attorney to retain Independent Counsel to conduct Phase One document review and interviews, reporting to the Commission upon completion of Phase One.
4. Approves an appropriation to retain the Independent Counsel for the Phase One document review and interview process.
5. Authorizes the Town Attorney and/or the Independent Counsel to initiate compulsory process under Va. Code § 15.2-1409, directed at such parties as the Phase One record identifies as holding material records not otherwise accessible, upon the Town Attorney's advice that the Phase One foundation is sufficient to support a targeted circuit court petition.
6. Authorizes the Town Attorney and/or the Independent Counsel to establish contact with the Fauquier County Commonwealth's Attorney for the purpose of coordinating the investigative process with any parallel criminal inquiry.
7. Extends the Commission's mandate for twelve months from the date of this resolution, with a final report due at the end of that period.
8. Directs the Town Attorney to provide a status report to the full Council in closed session no later than sixty (60) days from the date of this resolution, with a final report no later than ninety (90) days from the date of retention of Independent Counsel.

ATTACHMENT A — Confidentiality Acknowledgment

I, _____, acknowledge that in connection with my participation in the work of the Town of Warrenton Commission on Open and Transparent Government, I may receive records, information, and materials that are confidential, privileged, or otherwise protected from public disclosure.

I agree to the following:

1. I will use records and information obtained through my role in this investigation only for the purposes of the Commission's mandate as defined in this Plan.

2. I will not disclose records or information to any person outside the Commission, the Town Attorney, or retained outside counsel, prior to the Independent Council's final report, except as authorized by the Town Attorney in writing or as required by law.
3. I will not make public statements about investigative substance, witness identities, or documents under review prior to the Independent Counsel's final report. Violation may be referred to the Town Council.
4. I will not independently access any Town information system, email archive, or records storage without written authorization from the Town Attorney.
5. I have completed CJIS Security Awareness Training and the VFOIA Local Officials Course, and I understand that completion of these courses does not independently authorize me to access records protected by statute, privilege, or federal agreement.
6. I have disclosed to the Town Attorney in writing any litigation relationship, prior public statement, or other circumstances that may bear on my participation in particular aspects of the review.
7. I consent to the jurisdiction of the Fauquier County Circuit Court for any dispute arising from this Acknowledgment to the extent permitted by law.
8. I will comply with all applicable federal, state, and local law in connection with my work for the Commission.

Signed: _____ Date: _____

Name (print): _____

Capacity: _____

This Investigation Protocol and Records Access Plan (IPRAP) was prepared by the Town Attorney for adoption by the Commission and the Town Council. It supersedes all prior discovery plan documents.