

OPEN GOVERNMENT GUIDE

Access to Public Records
and Meetings in

VIRGINIA

**REPORTERS
COMMITTEE**
FOR FREEDOM OF THE PRESS

Sixth Edition
2011

OPEN GOVERNMENT GUIDE

OPEN RECORDS AND MEETINGS LAWS IN

VIRGINIA

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VIRGINIA

**SIXTH EDITION
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Previously Titled
Tapping Officials' Secrets

Published by The Reporters Committee for Freedom of the Press
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Production of the sixth edition of this compendium was possible
due to the generous financial contributions of:
The Stanton Foundation

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ISBN: 1-58078-246-9

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Introductory Note

The OPEN GOVERNMENT GUIDE is a comprehensive guide to open government law and practice in each of the 50 states and the District of Columbia. Fifty-one outlines detail the rights of reporters and other citizens to see information and attend meetings of state and local governments.

The OPEN GOVERNMENT GUIDE — previously published as *Tapping Officials' Secrets* — is the sole reference on open government laws in many states.

Written to follow a standard outline to allow easy comparisons between state laws, the compendium has enabled open government advocates in one state to use arguments successful in other states to enhance access rights at home. Press associations and lobbyists have been able to invoke other sunshine laws as they seek reforms in their own.

Volunteer attorneys, expert in open government laws in each state and in Washington, D.C., generously donated their time to prepare the initial outlines for the first incarnation of this project in 1989. In most states these same attorneys or their close associates updated and rewrote the outlines for the 1993, 1997, 2001 and 2006 editions as well this current 2011 edition.

Attorneys who are new to the compendium in this edition are also experts in open government and access issues, and we are grateful to them for their willingness to share in this ongoing project to create the first and only detailed treatise on state open government law. The rich knowledge and experience all the participating attorneys bring to this project make it a success.

While most of the initial users of this compendium were journalists, we know that lawyers and citizens have discovered it and find it to be indispensable as well.

At its core, participatory democracy decries locked files and closed doors. Good citizens study their governors, challenge the decisions they make and petition or vote for change when change is needed. But no citizen can carry out these responsibilities when government is secret.

Assurances of open government exist in the common law, in the first state laws after colonization, in territorial laws in the west and even in state constitutions. All states

have passed laws requiring openness, often in direct response to the scandals spawned by government secrecy. The U.S. Congress strengthened the federal Freedom of Information Act after Watergate, and many states followed suit.

States with traditionally strong access laws include Vermont, which provides virtually unfettered access on many levels; Florida, which was one of the first states to enact a sunshine law; and Ohio, whose courts have issued several access-friendly rulings. Other jurisdictions, such as Pennsylvania and the District of Columbia, have made significant changes to their respective open government laws since the fifth edition was published designed to foster greater public access to information. Historically, Pennsylvania had a reputation as being relatively non-transparent while the District of Columbia was known to have a very restrictive open meetings law.

Some public officials in state and local governments work hard to achieve and enforce open government laws. The movement toward state freedom of information compliance officers reflects a growing activism for access to information in the states.

But such official disposition toward openness is exceptional. Hardly a day goes by when we don't hear that a state or local government is trying to restrict access to records that have traditionally been public — usually because it is feared release of the records will violate someone's "privacy" or threaten our nation's security.

It is in this climate of tension between broad democratic mandates for openness and official preference for secrecy that reporters and good citizens need to garner their resources to ensure the passage and success of open government laws.

The Reporters Committee genuinely hopes that the OPEN GOVERNMENT GUIDE will help a vigorous press and citizenry to shape and achieve demands for openness, and that it will serve as a primer for those who battle in government offices and in the courts for access to records and meetings. When challenges to secrecy are successful, the news is better and so is the government.

User's Guide

Whether you are using a guide from one state to find a specific answer to an access issue, or the complete compendium encompassing all states to survey approaches to a particular aspect of open government law around the country, knowing a few basics on how the OPEN GOVERNMENT GUIDE is set up will help you to get the most out of it.

Following the outline. Every state section is based on the same standard outline. The outline is divided into two parts: access to records and access to meetings.

Start by reviewing the table of contents for each state. It includes the first two tiers of that state's outline. Once you are familiar with the structure of the outline, finding specific information is simple. Typically, the outline begins by describing the general structure of the state law, then provides detailed topical listings explaining access policies for specific kinds of records or meetings.

Every state outline follows the standard outline, but there will be some variations. Some contributors added items within the outline, or omitted subpoints found in the complete outline which were not relevant to that state's law. Each change was made to fit the needs of a particular state's laws and practices.

In general, outline points that appear in boldface type are part of the standard outline, while additional topics will appear in italicized type.

Whether you are using one state outline or any number of outlines, we think you will find the outline form helpful in finding specific information quickly without having to read an entire statute or search through many court cases. But when you do need to consult statutes, you will find the complete text of the relevant portions at the end of each outline.

Additional copies of individual state booklets, or of the compendium covering the 50 states and the District of Columbia, can be ordered from The Reporters Committee for Freedom of the Press, 1101 Wilson Blvd., Suite 1100, Arlington, Virginia 22209, or by calling (703) 807-2100. The compendium is available in electronic format on CD.

The state outlines also are available on our World-Wide Web site, www.rcfp.org/ogg. The Internet version of the outlines allows you to search the database and compare the law in different states.

Updates: The Reporters Committee published new editions of THE OPEN GOVERNMENT GUIDE in 1989, 1993, 1997, 2001, 2006, and now in 2011. We expect future updates to follow on approximately the same schedule. If we become aware of mistakes or material omissions in this work, we will post notices on this project's page on our World-Wide Web site, at www.rcfp.org/ogg. This does not mean that the outlines will constantly be updated on the site — it simply means known errors will be corrected there.

For our many readers who are not lawyers: This book is designed to help journalists, lawyers, and citizens understand and use state open records and meetings law. Although the guides were written by lawyers, they are designed to be useful to and readable by nonlawyers as well. However, some of the elements of legal writing may be unfamiliar to lay readers. A quick overview of some of these customs should suffice to help you over any hurdles.

Lawyers are trained to give a "legal citation" for most statements of law. The name of a court case or number of a statute may therefore be tacked on to the end of a sentence. This may look like a sentence fragment, or may leave you wondering if some information about that case was omitted. Nothing was left out; inclusion of a legal citation provides a reference to the case or statute supporting the statement and provides a shorthand method of identifying that authority, should you need to locate it.

Legal citation form also indicates where the law can be found in official reporters or other legal digests. Typically, a cite to a court case will be followed by the volume and page numbers of a legal reporter. Most state cases will be found in the state reporter, a larger regional reporter, or both. A case cite reading 123 A.2d 456 means the case could be found in the Atlantic (regional) reporter, second series, volume 123, starting at page 456.

Note that the complete citation for a case is often given only once. We have tried to eliminate as many cryptic second-reference cites as possible, but you may encounter cites like "Jackson at 321." This means that the author is referring you to page 321 of a case cited earlier that includes the name Jackson. Authors may also use the words *supra* or *infra* to refer to a discussion of a case appearing earlier or later in the outline, respectively.

Except for these legal citation forms, most "legalese" has been avoided. We hope this will make this guide more accessible to everyone.

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FOREWORD

The Virginia General Assembly enacted the Freedom of Information Act (“the Act”) in 1968. Through this Act, the legislature sought to secure to the Commonwealth’s citizens access to public records and meetings not specifically exempted by law.

The Act has undergone numerous revisions. Some amendments have strengthened the Act by authorizing the award of civil penalties and attorneys’ fees for non-compliance, or by shifting the burden to prove the applicability of exclusions onto the public body. Other amendments, particularly the Act’s steadily growing list of discretionary exclusions have narrowed its effectiveness. Finally, some amendments, particularly those relating to electronic meetings and records, have responded to technological changes in the way that information is recorded, processed and delivered.

The General Assembly has mandated that the Act be “liberally construed to promote an increased awareness by all persons of governmental activities and afford every opportunity to citizens to witness the operations of government.” Moreover, the Act’s exemptions are to “be narrowly construed in order that no thing which should be public may be hidden from any person.”

These rules of construction are consistently acknowledged by the courts, but not always applied with full vigor. Virginia courts often appear reluctant to provide a remedy under the Act unless there is a substantial and willful violation of its provisions. However, where such evidence exists, the courts have shown their willingness to penalize those who attempt to deny to the public that which they have a right to know.

Opinions of the Attorney General of Virginia do not bind the Virginia courts, but are persuasive authority. They are occasionally, but not comprehensively, cited in this outline because they are frequently relied upon by public bodies subject to the Act. In addition, a growing body of opinions has been issued by the Virginia Freedom of Information Advisory Council, created by the General Assembly in 2000, to act as a source of both formal and informal advice for citizens, including public officials and press representatives. To date, the opinions of the Council, which are not binding on the courts, have shown a tendency toward the “middle of the road” rather than an aggressive process bias. They are available online, and are not cited in this outline. However, anyone researching an issue under the Act is well-served to search both Attorney General and Advisory Council opinions for relevant discussion of these statutes.

Open Records**I. STATUTE -- BASIC APPLICATION****A. Who can request records?****1. Status of requestor.**

a. *Citizens of the Commonwealth:* Any citizen of the Commonwealth may inspect records during the regular business hours of the custodian of records. A citizen is defined elsewhere in the Code of Virginia as one born in the Commonwealth who has not in good faith become a citizen of another state or one born in another state of this Union or an alien naturalized under the laws of the United States who may be or become a resident of the Commonwealth. *Previously found in* Va. Code Ann. § § 1-18 and 1-20 (Repealed). Nothing in the Freedom of Information Act (“the Act”) prohibits a citizen from making a request on behalf of a non-citizen, as the requester is not required to explain or otherwise justify the request. The custodian may require the requester to provide his name and legal address. Va. Code Ann. § 2.2-3704(A).

b. *Media:* The Act specifically grants rights to representatives of newspapers and magazines with circulation in the Commonwealth and to representatives of television and radio stations broadcasting in or into the Commonwealth. Va. Code Ann. § 2.2-3704(A).

2. Purpose of request.

a. *Purpose and Motivation:* The purpose or motivation behind a request is irrelevant to a citizen’s entitlement to requested information. *See Associated Tax Service v. Fitzpatrick*, 236 Va. 181, 372 S.E.2d 625 (1988).

b. *Reasonable Specificity Required:* The Act provides that the request shall designate the requested documents with reasonable specificity. Va. Code Ann. § 2.2-3704(B).

3. Use of records.

a. *No Restriction on Use:* The Act does not restrict the use of the information obtained.

b. *Commercial Purposes:* A request under the Act is not automatically invalid because it was made for a purpose other than to monitor government operations. It is permissible for a citizen to secure information under the Act for commercial purposes. *See Associated Tax Service v. Fitzpatrick*, 236 Va. 181, 372 S.E.2d 625 (1988).

B. Whose records are and are not subject to the act?

The Act applies to public bodies, defined to include all government entities such as elected bodies, agencies, authorities, boards, bureaus, commissions, councils, districts or other public bodies at any level of state, regional, county or municipal government. Constitutional officers are considered public bodies and, generally, have the same obligations to disclose public records as other custodians of public records. Va. Code Ann. § 2.2-3701. Corporations organized by the Virginia Retirement System are “public bodies” for the purposes of this chapter. Va. Code Ann. § 2.2-3701.

1. Executive branch.**a. Records of the executives themselves.**

Working papers and correspondence prepared by or for the following are exempted from disclosure: Office of the Governor, Lieutenant Governor and Attorney General; the mayor or other chief executive office of any political subdivision of the Commonwealth; and the president or chief executive officer of any public institution of higher education. *See* Va. Code Ann. § 2.2-3705.7(2); *see also Taylor v. Worrell Enterprises*, 242 Va. 219, 409 S.E.2d 136 (1991)(holding that an itemized list of long distance calls placed by the Governor’s office falls

within the working papers exemption). No record that is otherwise open to inspection shall be deemed exempt by virtue of the fact that it has been attached to or incorporated within any working paper or correspondence. Va. Code Ann. § 2.2-3705.7(2).

b. Records of certain but not all functions.

“Working papers” are defined functionally as records prepared by or for a public official for his personal or deliberative use. Va. Code Ann. § 2.2-3705.7(2).

2. Legislative bodies.

Working papers and correspondence prepared by or for members of the General Assembly or the Division of Legislative Services are exempted from disclosure. Va. Code Ann. § 2.2-3705.7(2).

3. Courts.

Petit juries and grand juries are specifically excluded from coverage under the Act. Va. Code Ann. § 2.2-3703(A)(2). Access to judicial records and proceedings is governed by other Virginia statutes and by case law. See, e.g., Va. Code Ann. § 17.1-208.

Reports and court documents concerning involuntary admissions that are required to be kept confidential pursuant to Va. Code Ann. § 37.2-818 are excluded. Va. Code Ann. § 2.2-3705.5(6).

4. Nongovernmental bodies.

a. Bodies receiving public funds or benefits.

The Act defines “public body” to include “organizations, corporations or agencies in the Commonwealth supported wholly or principally by public funds.” Va. Code Ann. § 2.2-3701. Whether an entity is supported “principally” by public funds is a question of fact. *Wigand v. Wilkes*, 65 Va. Cir. 437, 438 (Norfolk Cir. Ct. 2004). Non-governmental organizations, corporations and agencies that are not supported principally by public funds are not “public bodies” under the Act, and, thus are not subject to its disclosure requirements. 1995 Va. Op. Atty Gen. 4 (January 9, 1995)(The General Assembly did not intend for the Act to apply to a private corporation receiving public funds to pay for property, goods, or services it provides, when that corporation is not supported wholly or principally by public funds.).

b. Bodies whose members include governmental officials.

The presence of a government official on the governing body of an entity does not make the entity a public body. The body must meet the statutory definition, or be performing a delegated function of a public body as discussed below.

5. Multi-state or regional bodies.

Such bodies are not statutorily exempt from the Act. A circuit court has held that the Act applies to a county Industrial Development Authority. *Lee Jackson Motel Inc., et al v. Industrial Development Authority*, 4 Va. Cir. 125 (Frederick Cir. Ct. 1983).

6. Advisory boards and commissions, quasi-governmental entities.

The Act applies to any committee or subcommittee, or other entity however designated, of the public body created to perform delegated functions of the public body or to advise the public body. Va. Code Ann. § 2.2-3701. The presence of private sector or citizen members on such a body does not excuse the body from application of the Act.

7. Others.

Among other groups excluded from disclosure under the Act are (i) Parole Boards (Va. Code Ann. § 2.2-3703(A)(1)), (ii) The Virginia State Crime Commission (Va. Code Ann. § 2.2-3703(A)(4), and (iii) family assessment and planning teams established pursuant to § 2.2-5207 (§ 2.2-3703(A)(3)).

C. What records are and are not subject to the act?

Consultant reports. Nonexempt portions of a report of a consultant hired by or at the request of a local public body or the mayor or chief executive or administrative officer of such public body are subject to the Act if (i) the contents of such report have been distributed or disclosed to members of the local public body or (ii) the local public body has scheduled any action on a matter that is the subject of the consultant’s report. Va. Code Ann. § 2.2-3705.8(B).

Settlements by the Commonwealth. No settlement of a civil action against the Commonwealth involving money damages may be made subject to a confidentiality agreement prohibiting the disclosure of the settlement amount except where required by law or imposed by a court. Va. Code Ann. § 2.2-514.

Judicial Inquiry. Any evidence of alleged misconduct concerning a judge who is up for election or reelection that is transmitted to the House and Senate Committees for Courts of Justice or to any member of the General Assembly loses its confidential character. Va. Code Ann. § 17.1-918(B).

1. What kind of records are covered?

a. *General Definition of Records:* “Public records” subject to the Act are defined as “all writings and recordings that consist of letters, words or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photography, magnetic impulse, optical or magneto-optical form, mechanical or electronic recording or other form of data compilation, however stored, and regardless of physical form or characteristics, prepared or owned by, or in the possession of a public body or its officers, employees or agents in the transaction of public business.” Va. Code Ann. § 2.2-3701.

b. *Existing Records:* The Act applies only to records in existence and in custody of the public body at the time the request for official records is received. 1991 Va. Atty. Gen. 13 (June 21, 1991). The Act does not require that a public body create or prepare a particular record if it does not already exist. See Va. Code Ann. § 2.2-3704(D); see also *Hale v. Washington*, 241 Va. 76, 400 S.E.2d 175 (1991); *National Rural Utilities Cooperative Finance Corporation v. Greenlief*, 27 Va. Cir. 140 (1992). However, the public body may summarize or abstract the information under terms agreed upon by the requester and the public body. Va. Code Ann. § 2.2-3704(D).

c. *Types of Records:* Public records maintained by a public body on a computer or other electronic data processing system shall be made available to the public at a reasonable cost. Va. Code Ann. § 2.2-3704(G). Videotapes, magnetic tapes, photographs, sound recordings are records subject to disclosure. Va. Code Ann. § 2.2-3701. Booking photographs and mug shots are official records subject to disclosure under the Act. 1990 Va. Op. Atty. Gen. 9 (August 30, 1990). *But see Archer v. Mayes*, 213 Va. 633, 194 S.E.2d 707 (1973)(Jury list is not an “official record” within the meaning of the Act); cf. 1998 Va. Op. Atty. Gen. 5 (September 23, 1998)(Audio tapes, lyric sheets and other materials submitted to State Song Committee competition constitute “official records” within the meaning of this Act).

2. What physical form of records are covered?

All physical forms of records are covered.

3. Are certain records available for inspection but not copying?

There is no distinction with respect to what may be copied and what may be inspected. The Act provides that “all public records shall be open to inspection and copying.” Va. Code Ann. § 2.2-3704(A).

D. Fee provisions or practices.

1. Levels or limitations on fees.

Fees Limited to Cost: Charges for time expended in accessing, duplicating, supplying or searching records may not exceed actual cost

to the public body in supplying the records. Va. Code Ann. § 2.2-3704(F). This limit also applies to records maintained on a computer or other data processing system. Va. Code Ann. § 2.2-3704(G); *see also* 1989 Va. Op. Atty Gen. 12 (February 21, 1989) (Town may not charge newspaper reporter for the salary of town employee whose sole function for the time charged was to watch the reporter as he inspected the minutes of the town council.). Note the exception in the Act for the costs of creating certain topographical maps. Va. Code Ann. § 2.2-3704(F).

Estimates: An advance cost estimate must be provided if requested by the citizen. Va. Code Ann. § 2.2-3704(F).

2. Particular fee specifications or provisions.

Not specified.

3. Provisions for fee waivers.

There are no provisions to waive fees, but in practice fees frequently are not imposed for small requests.

4. Requirements or prohibitions regarding advance payment.

If the public body determines in advance that search and copying charges are likely to exceed \$200.00, the public body may require the citizen to pay, before processing the request, an amount not to exceed the amount of the advance determination. The deposit shall be credited toward the final cost of supplying the records. Va. Code Ann. § 2.2-3704(H). Before processing a request for records, a public body may require the requester to pay any amounts owed to the public body for previous requests for records that remain unpaid 30 days or more after billing. Va. Code Ann. § 2.2-3704(I).

5. Have agencies imposed prohibitive fees to discourage requesters?

This behavior is encountered on occasion, generally at the local government level.

E. Who enforces the act?

Any person, including the attorney for the Commonwealth acting in his official or individual capacity, denied the rights and privileges conferred by this chapter may proceed to enforce such rights and privileges by filing a petition for mandamus or injunction. Va. Code Ann. § 2.2-3713(A).

1. Attorney General's role.

The Attorney General has no role in enforcement.

2. Availability of an ombudsman.

The Virginia Freedom of Information Advisory Council has a staff that answers inquiries on a formal and informal basis, but does not perform any ombudsman function with regard to any public body.

3. Commission or agency enforcement.

None.

F. Are there sanctions for noncompliance?

In a proceeding commenced against members of public bodies under § 2.2-3713 for a violation of §§ 2.2-3704, 2.2-3705.1 through 2.2-3705.8, 2.2-3706, 2.2-3707, 2.2-3708, 2.2-3708.1, 2.2-3710, 2.2-3711 or § 2.2-3712, the court, if it finds that a violation was willfully and knowingly made, shall impose upon such member in his individual capacity, whether a writ of mandamus or injunctive relief is awarded or not, a civil penalty of not less than \$250 nor more than \$1,000, which amount shall be paid into the State Literary Fund. For a second or subsequent violation, such civil penalty shall be not less than \$1,000 nor more than \$2,500. Va. Code Ann. § 2.2-3714.

II. EXEMPTIONS AND OTHER LEGAL LIMITATIONS

A. Exemptions in the open records statute.

1. Character of exemptions.

a. General or specific?

Specific. There are one hundred (100) specific exemptions provided for in the Act. Va. Code Ann. §§ 2.2-3705.1 to -3705.7.

All exemptions are to “be narrowly construed” so as to not “discourage the free discussion by government officials or employees of public matters with the citizens of the Commonwealth.” Va. Code Ann. § 2.2-3700.

b. Mandatory or discretionary?

The excluded records may be disclosed by the custodian, in his discretion, except where such disclosure is otherwise prohibited by law. Va. Code Ann. §§ 2.2-3705.1 to -3705.7.

c. Patterned after federal Freedom of Information Act?

Although there are occasional similarities, the philosophy underlying the Virginia Act is to provide for very narrow exemptions.

2. Discussion of each exemption.

a. *Criminal Investigations:* Criminal investigative files, including memoranda, correspondence, evidence, case files or reports, witness statements, and complaints related to criminal investigations (§ 2.2-3706(F)(1)); adult arrestee photographs when necessary to avoid jeopardizing ongoing felony investigation (§ 2.2-3706(F)(2)); reports submitted in confidence to state, local and campus police departments and other authorized investigators (§ 2.2-3706(F)(3)), and all records of persons imprisoned in penal institutions, provided that such records relate to the imprisonment (§ 2.2-3706(F)(6)). Criminal incident information relating to felony offenses is not excluded from the Act unless disclosure is likely to jeopardize an ongoing criminal investigation, compromise the safety of an individual, cause a suspect to flee, or result in destruction of evidence. Va. Code Ann. § 2.2-3706(B).

All records of adult persons under (i) investigation or supervision by a local pretrial services agency in accordance with Article 5 (§ 19.2-152.2 et seq.) of Chapter 9 of Title 19.2; (ii) investigation, probation supervision or monitoring by a local community-based probation program in accordance with Article 9 (§ 9.1-173 et seq.) of Chapter 1 of Title 9.1; or (iii) investigation or supervision by state probation and parole services in accordance with Article 2 (§ 53.1-141 et seq.) of Chapter 4 of Title 53.1. Va. Code Ann. § 2.2-3706(F)(8).

b. *Alcohol and Gaming:* Confidential records of all investigations of applications for licenses and all licensees made or submitted to the Alcohol Beverage Control Board, the State Lottery Department, the Virginia Racing Commission, the Department of Agriculture and Consumer Services, or Private Security Services Unit of the Department of Criminal Justice Services. Va. Code Ann. § 2.2-3705.3(1).

Records of studies and investigations by the State Lottery Department of (i) lottery agents, (ii) lottery vendors, (iii) lottery crimes under §§ 58.1-4014 through 58.1-4018, (iv) defects in the law or regulations that cause abuses in the administration and operation of the lottery and any evasions of such provisions, or (v) the use of the lottery as a subterfuge for organized crime and illegal gambling where such official records have not been publicly released, published or copyrighted. All studies and investigations referred to under clauses (iii), (iv) and (v) shall be open to inspection and copying upon completion of the study or investigation. Va. Code Ann. § 2.2-3705.3(6).

c. *Personally Identifying Information:* State income, business, and estate tax returns and personal property tax returns, scholastic and confidential records protected by the tax statutes are excluded. Va. Code Ann. § 2.2-3705.7(1). Scholastic records concerning identifiable in-

dividuals are also excluded. Access to scholastic records shall not be denied to the subject person or, if underage, to his or her guardian. Va. Code Ann. § 2.2-3705.4(1). Personnel records containing information concerning identifiable individuals are excluded, except that access shall not be denied to the subject. Va. Code Ann. § 2.2-3705.1(1). Health records, except that those records may be personally reviewed by the individual who is the subject of the records. Va. Code Ann. § 2.2-3705.5(1).

d. *Executive and Legislative Working Papers*: Working papers, and correspondence prepared by or for members of the General Assembly or the Division of Legislative Services or the Office of the Governor or the Lieutenant Governor, the Attorney General, the mayor or other chief executive officer of any political subdivision of the Commonwealth, or the president or other chief executive officer of any public institution of higher education. Va. Code Ann. § 2.2-3075.7(2). See e.g. *Richmond Newspapers Inc. v. Casteen*, 42 Va. Cir. 505 (1997) (determining correspondence between the president of a university and an independent auditing entity is exempt from disclosure under the Act). This executive privilege does not extend to state government officials. *Griffin v. Virginia Department of Transportation*, 46 Va. Cir. 399 (1998).

e. *Written Opinions*: Written advice of legal counsel to state, regional or local public bodies or the officers or employees of those bodies and any other records protected by the attorney-client privilege. Va. Code Ann. § 2.2-3705.1(2).

f. *Litigation Records*: Legal memoranda and other work product compiled specifically for litigation or as a part of an active administrative investigation concerning a matter that is properly the subject of a closed meeting under § 2.2-3711. Va. Code Ann. § 2.2-3705.1(3).

g. *Educational Agency and Institutional Records*: Confidential letters and statements of recommendation placed in the records of educational agencies or institutions respecting (i) admission to an educational agency or institution, (ii) an application for employment, or (iii) receipt of an honor or honorary recognition. Va. Code Ann. § 2.2-2705.4(2).

h. *Library Records*: Library records which may be used to identify both (i) any library patron who has borrowed material from a library and (ii) the material such patron borrowed. Va. Code Ann. § 2.2-3705.7(3). See 1989 Va. Op. Atty. Gen. 19 (January 4, 1989)(Books borrowed from library and bibliographies or reference questions asked by university faculty are exempt from disclosure).

i. *Employment and Examination Records*: Any test or examination used, administered or prepared by any public body for purposes of evaluation of (i) any student or any student's performance (ii) any employee or employment seeker's qualifications or aptitude for employment, retention, or promotion, or (iii) qualifications for any license or certificate issued by any public body. The subject of such employment tests, however, shall be entitled to review and inspect all records relative to his performance on such employment tests. The test shall be made available when, in the reasonable opinion of such public body, it no longer has any potential for future use and will not jeopardize future tests or exams. Va. Code Ann. § 2.2-3705.1(4).

j. *Department of Health Professions Examination and Licensure Records*: Applications for admission to examinations or for licensure and scoring records maintained by the Department of Health Professions or any board in that department on individual licensees or applicants. Such documents will be made available to the subject thereof for copying during normal working hours. Va. Code Ann. § 2.2-3705.5(2).

k. *Department of Health Investigation Records*: Records of active investigations being conducted by the Department of Health Professions or by any health regulatory board in the Commonwealth. Va. Code Ann. § 2.2-3705.3(2).

l. *Records of Executive or Closed Meetings*: Records recorded in or compiled exclusively for executive or closed meetings lawfully held pursuant to § 2.2-3711. Va. Code Ann. § 2.2-3705.1(5).

m. *Records of the State Office on Aging and the Office of Social Services*: Reports, documentary evidence and other information as specified in §§ 2.2-3706 and 63.1-55.4. Va. Code Ann. § 2.2-3705.5(3). The first code reference concerns records of uncompleted investigations and certain identifying information held by the ombudsman of the State Office of Aging. The latter section refers to protective service complaints made to the Office of Social Services or Public Welfare.

n. *Virginia Port Authority*: Proprietary information gathered by or for the Virginia Port Authority as provided in § 62.1-132.4 or § 62.1-134.1. Va. Code Ann. § 2.2-3705.6(1).

o. *Virginia Department of Transportation*: Contract cost estimates prepared for the confidential use of the Department of Transportation in awarding contracts for construction or the purchase of goods or services, and records and automated systems prepared for the Department's Bid Analysis and Monitoring Program. Va. Code Ann. § 2.2-3705.7(4).

p. *Vendor Computer Programs*: Vendor proprietary information software which may be in the official records of a public body. Va. Code Ann. § 2.2-3705.1(6).

q. *Industrial Development Financial Statements*: Financial statements not publicly available filed with applications for industrial development financings in accordance with Chapter 49 (§ 15.2-4900 et seq.) of Title 15.2. Va. Code Ann. § 2.2-3705.6(2).

r. *Educational Research Records*: Data, records or information of a proprietary nature produced or collected by or for faculty or staff of public institutions of higher learning, other than the institutions' financial or administrative records, in the conduct of or as a result of study or research on medical, scientific, technical or scholarly issues, whether sponsored by the institution alone or in conjunction with a governmental body or private concern, where such data, records or information has not been publicly released, published, copyrighted or patented. Va. Code Ann. § 2.2-3705.4(4).

s. *Lists of Bondholders*: Lists of registered owners of bonds issued by a political subdivision of the Commonwealth, whether maintained by the political subdivision itself or by a single fiduciary designative by the political subdivision. Va. Code Ann. § 2.2-3705.7(5).

t. *Private Business Proprietary Records*: Proprietary records voluntarily provided by private businesses pursuant to a promise of confidentiality from a public body, and used by a public body for business, trade or tourism development or retention. Records related to businesses that are considering locating or expanding in Virginia, prepared by public bodies, where competition or bargaining is involved and disclosure would adversely affect the financial interests of the governmental unit. Va. Code Ann. § 2.2-3705.6(3).

u. *Toxic Substances Information Act*: Information which was filed as confidential under the Toxic Substances Information Act (§§ 32.1-239 et seq.), as such Act existed prior to July 1, 1992. Va. Code Ann. § 2.2-3705.6(4).

v. *Rape or Battered Spouses Records*: Confidential records, including victim identity, provided to or obtained by staff in a rape crisis center or a program for battered spouses. Va. Code Ann. § 2.2-3705.2(1).

w. *Computer Software Developed by Public Bodies*: Computer software developed by or for a state agency, state-supported institution of higher education or political subdivision of the Commonwealth. Va. Code Ann. § 2.2-3705.1(7).

x. *Department of Personnel and Training*: Investigator notes, correspondence and information furnished in confidence with respect to an active investigation of individual employment discrimination complaints made to the Department of Human Resources Management or to such personnel of any local public body, including local school boards, responsible for conducting such investigations in confidence. However, information from inactive reports may be disclosed as long as the identity of charging parties, persons supplying the information

or other individuals involved are not revealed. Va. Code Ann. § 2.2-3705.3(3).

y. *Fisheries Data*: Fisheries data which would permit identification of any person or vessel, except when required by court order. Va. Code Ann. § 2.2-3705.6(5).

z. *Department of Medical Assistance Services*: Records of active investigations being conducted by the Department of Medical Assistance Services. Va. Code Ann. § 2.2-3705.3(4).

aa. *Disclosure and Standard of Conduct Records of Members of the General Assembly*: Records and writings furnished by a member of the General Assembly to a meeting of a standing committee, special committee, or subcommittee of his house established solely for the purpose of reviewing members' annual disclosure statements and supporting materials or of formulating advisory opinions to members on standards of conduct, or both. Va. Code Ann. § 2.2-3705.7(6).

bb. *Customer Account Information*: Customer account information of a public utility affiliated with a political subdivision of the Commonwealth, including the customer's name and service address, but excluding the amount of utility service provided and the amount of money paid for such utility service. Va. Code Ann. § 2.2-3705.7(7).

cc. *Investigative Records Relating to the Virginia Human Rights Act*: Investigative notes and other correspondence and information furnished in confidence with respect to an active investigation or conciliation process involving an alleged violation of the Virginia Human Rights Act, or any local ordinance adopted in accordance with the law. However, information from inactive reports may be distributed in a form that does not reveal the identities of the parties involved or persons supplying information. Va. Code Ann. § 2.2-3705.3(5).

dd. *Records of the Department of Social Services*: Correspondence and other information furnished in confidence to the Department of Social Services in connection with an active investigation of an applicant or licensee. However, records of completed investigations may be disclosed as long as the identities of the complainants, persons supplying information, or other individuals involved are not revealed. Va. Code Ann. § 2.2-3705.5(4).

ee. *Records of the Virginia Housing Development Authority*: Personal information, as defined in § 2.2-8301, filed with the Virginia Housing Development Authority or any local redevelopment or housing authority concerning individuals who have applied for or received loans or other housing assistance or who have applied for occupancy of or have occupied housing financed, owned or otherwise assisted by the Virginia Housing Development Authority, or concerning persons participating in or on the waiting list for the programs. However, access to one's own information shall not be denied. Va. Code Ann. § 2.2-3705.7(8).

ff. *Hazardous Waste Site Records*: Records regarding the location of hazardous waste facilities, except as provided in § 10.1-1441, if disclosure of them would have a detrimental effect upon the negotiating position of a governing body or on the establishment of the terms, conditions and provisions of the sitting agreement. Va. Code Ann. § 2.2-3705.7(9).

gg. *Appraisals and Cost Estimates of Real Property*: Appraisals and cost estimates of real property subject to a proposed purchase, sale or lease, prior to the completion of such purchase, sale or lease. Va. Code Ann. § 2.2-3705.1(8).

hh. *Endangered Species and Protected Lands*: Records containing information on the site specific location of rare, threatened, endangered or otherwise imperiled plant and animal species, natural communities, caves, and significant historic and archaeological sites if, in the opinion of the public body which has the responsibility for such information, disclosure of the information would jeopardize the continued existence or the integrity of the resource. The exemption, however,

does not apply to requests from the owner of the land. Va. Code Ann. § 2.2-3705.7(10).

ii. *Proprietary State Lottery Records*: Official records, memoranda, working papers, graphics, video or audio tapes, production models, data and information of a proprietary nature produced by or for or collected by or for the State Lottery Department relating to specific lottery game design and other aspects, where such records have not been publicly released, copyrighted or patented. If released, published or copyrighted, all game-related information shall be subject to public disclosure upon the first day of sales for the specific lottery game to which it pertains. Va. Code Ann. § 2.2-3705.7(11).

jj. *State Lottery Investigative Records*: Records of studies and investigations by the State Lottery Department of (i) lottery agents, (ii) lottery vendors, (iii) lottery crimes under § 58.1-4014 through 58.1-4018, (iv) defects in the law or regulations which cause abuses in the administration and operation of the lottery and any evasions of such provisions, or (v) use of the lottery as a subterfuge for organized crime and illegal gambling where such official records have not been publicly released, published or copyrighted. All studies and investigations referred to under clauses (iii), (iv) and (v) shall be open to inspection upon completion. Va. Code Ann. § 2.2-3705.3(6).

kk. *Building Plans*: Those portions of engineering and construction drawings and plans submitted for the sole purpose of complying with the Building Code in obtaining a building permit which would identify specific trade secrets or other information which, if disclosed, would be harmful to the competitive position of the owner or lessee. This exemption does not apply once the building is complete or to information relating to safety or environmental soundness. Exclusions also extend to those portions of engineering and construction drawings and plans that reveal critical structural components, security equipment and systems, ventilation systems, fire protection equipment, mandatory building emergency equipment or systems, elevators, electrical systems, telecommunications equipment and systems, and other utility equipment and systems submitted for the purpose of complying with the Uniform Statewide Building Code (§ 36-97 et seq.) or the Statewide Fire Prevention Code (§ 27-94 et seq.), the disclosure of which would jeopardize the safety or security of any public or private commercial office, multifamily residential or retail building or its occupants in the event of terrorism or other threat to public safety, to the extent that the owner or lessee of such property, equipment or system in writing (i) invokes the protections of this paragraph; (ii) identifies the drawings, plans, or other materials to be protected; and (iii) states the reasons why protection is necessary. Nothing in this subdivision shall prevent the disclosure of information relating to any building in connection with an inquiry into the performance of that building after it has been subjected to fire, explosion, natural disaster or other catastrophic event. Va. Code Ann. § 2.2-3705.2(2).

ll. *Department of the Treasury*: Records concerning reserves established in specific claims administered by the Department of the Treasury through its Division of Risk Management as provided in Article 5 (§ 2.2-1832 et seq.) of Chapter 18 of this title, or by any county, city, or town; and investigative notes, correspondence and information furnished in confidence with respect to an investigation of a claim or a potential claim against a public body's insurance policy or self-insurance plan. However, nothing in this subdivision prohibits the disclosure of information taken from inactive reports upon expiration of the period of limitations for the filing of a civil suit. Va. Code Ann. § 2.3705.1(9).

mm. *Statewide Emergency Medical Care System Records*: Information and records collected for the designation and verification of trauma centers and other specialty care centers within the Statewide Emergency Medical Care System pursuant to Article 2.1 (§ 32.1-111.1 et seq.). Va. Code Ann. § 2.2-3705.5(5).

nn. *Records Relating to Involuntary Admission and Treatment*: Reports and court documents required to be kept confidential pursuant to § 37.1-818. Va. Code Ann. § 2.2-3705.5(6).

oo. *Auditor of Public Accounts and the Joint Legislative Audit and Review Commission*: Investigative notes, correspondence and information furnished in confidence, and records otherwise exempted by this chapter or any Virginia statute, provided to or produced by or for (i) the Auditor of Public Accounts; (ii) the Joint Legislative Audit and Review Commission; (iii) an appropriate authority as defined in § 2.2-3010 with respect to an allegation of wrongdoing or under the Fraud and Abuse Whistle Blower Protection Act (§ 2.2-3009 et. seq.); (iv) the Department of the State Internal Auditor with respect to an investigation initiated through the State Employee Fraud, Waste and Abuse Hotline; or (v) the committee or auditor with respect to an investigation or audit conducted pursuant to § 15.2-825; or (v) auditors, appointed by the local governing body of any county, city or town or a school board, who by charter, ordinance, or statute have responsibility for conducting an investigation of any officer, department or program of such body. Limited categories of information concerning closed investigations must be released in a form that does not reveal the identity of the complainants or persons supplying information to the investigators. Va. Code Ann. § 2.2-3705.3(7).

pp. *Documents Submitted to the Commissioner of Health*: Data formerly required to be submitted to the Commissioner of Health relating to the establishment of new or expansion of existing clinical health services, acquisition of major medical equipment, or certain projects requiring capital expenditures pursuant to former § 32.1-102.3:4. Va. Code Ann. § 2.2-3705.5(7).

qq. *Records Regarding Access to Data Processing and Telecommunications Systems*: Documentation or other information which describes the design, function, operation or access control features of any security system, whether manual or automated, which is used to control access to or use of any automated data processing or telecommunications system. Va. Code Ann. § 2.2-3705.2(3).

rr. *Department of Rail and Public Transportation*: Confidential financial statements, balance sheets, trade secrets, and revenue and cost projections provided to the Department of Rail and Public Transportation, provided such information is exempt under the federal Freedom of Information Act or the federal Interstate Commerce Act or other laws administered by the Surface Transportation Board or the Federal Railroad Administration with respect to data provided in confidence to the Surface Transportation Board and the Federal Railroad Administration. Va. Code Ann. § 2.2-3705.6(6).

ss. *Proprietary Records of the Virginia Retirement, local retirement systems, the Virginia College Savings Plan, or the Rector and Visitors of the University of Virginia*: Records relating to the acquisition, holding, or disposition of a security or other ownership interest in an entity, where such security or ownership interest is not traded on a governmentally regulated securities exchange, to the extent that: (i) such records contain confidential analyses prepared for the Rector and Visitors of the University of Virginia, prepared by the retirement system or the Virginia College Savings Plan, or provided to the retirement system or the Virginia College Savings Plan under a promise of confidentiality, of the future value of such ownership interest or the future financial performance of the entity; and (ii) disclosure of such confidential analyses would have an adverse effect on the value of the investment to be acquired, held or disposed of by the retirement system or the Rector and Visitors of the University of Virginia or the Virginia College Savings Plan. Nothing in this subdivision shall be construed to prevent the disclosure of records relating to the identity of any investment held, the amount invested, or the present value of such investment. Va. Code Ann. § 2.2-3705.7(12).

tt. *Proprietary Records of Private Energy Suppliers*: Confidential proprietary records related to inventory and sales, voluntarily provided by private energy suppliers to the Department of Mines, Minerals and Energy, used by that Department for energy contingency planning purposes or for developing consolidated statistical information on energy supplies. Va. Code Ann. § 2.2-3705.6(7).

uu. *Proprietary Records Provided to the Board of Medical Assistance Services*: Confidential proprietary information furnished to the Board of Medical Assistance Services or the Medicaid Prior Authorization Advisory Committee pursuant to Article 4 (§ 32.1-331.12 et seq.) of Chapter 10 of Title 32.1. Va. Code Ann. § 2.2-3705.6(8).

vv. *Proprietary and Commercial Records Provided by Private Transportation Businesses*: Proprietary, commercial or financial information, balance sheets, trade secrets, and revenue and cost projections provided by a private transportation business to the Virginia Department of Transportation and the Department of Rail and Public Transportation for the purpose of conducting transportation studies needed to obtain grants or other financial assistance under the Transportation Equity Act for the 21st Century, provided such information is exempt under the federal FOIA, the federal Interstate Commerce Act or other laws administered by the Federal Railroad Administration or the Surface Transportation Board. This section does not apply to any wholly owned subsidiary of a public body. Va. Code Ann. § 2.2-3705.6(9).

ww. *Records Relating to Subscribers of the Virginia Wildlife Magazine*: Names and addresses of subscribers to Virginia Wildlife magazine, published by the Department of Game and Inland Fisheries, provided the individual subscriber has requested in writing that the Department not release such information. Va. Code Ann. § 2.2-3705.7(13).

xx. *Health Care Professionals License Information*: Information to be provided pursuant to § 54.1-2506.1. Va. Code Ann. § 2.2-3705.5(8). This Code reference authorizes the Department of Health Professions to require individuals applying for licensure in health-related fields to provide additional information beyond that which is required to determine the individual's qualifications to be licensed.

yy. *Bids on Public Construction Projects*: Confidential information designated as provided in § 2.2-4342(F) as trade secrets or proprietary information by any person submitting to a public body a prequalification to bid on public construction projects in accordance with § 2.2-4317(B). Va. Code Ann. § 2.2-3705.6(10).

zz. *Fatality Records*: Information and records acquired (i) during a review of any child death by the State Child Fatality Review Team established pursuant to § 32.1-283.1, or by a local or regional child fatality review team to the extent made confidential by § 32.1-283.2; (ii) during a review of any death by a family violence fatality review team to the extent made confidential by § 32.1-283.3; or (iii) during a review of any adult death conducted by the Adult Fatality Review Team to the extent made confidential by § 32.1-283.5. Va. Code Ann. § 2.2-3705.5(9).

aaa. *Loan Records Submitted or Maintained by the Assistive Technology Loan Fund Authority*: Financial, medical, rehabilitative and other personal information concerning applicants for or recipients of loan funds submitted to or maintained by the Assistive Technology Loan Fund Authority. Va. Code Ann. § 2-3705.7(14).

bbb. *Proprietary Records submitted pursuant to the Public-Private Transportation Act*: Confidential proprietary records which are voluntarily provided, pursuant to a promise of confidentiality, by a private entity pursuant to a proposal filed with a public entity or an affected local jurisdiction under the Public-Private Transportation Act of 1995, and memoranda or other records which would adversely affect the financial interest of the entity or the process of competition or bargaining if released. The private entity must invoke the exclusion, identify the materials for which protection is sought, and state the reason for protection. However, nothing in this subdivision prohibits the release of procurement records as required by § 56-573.1 or 56-575.16. Va. Code Ann. § 2.2-3705.6(11).

ccc. *Records Relating to Safety and Security of Law Enforcement*: Records of law-enforcement agencies, to the extent that such records contain specific tactical plans, the disclosure of which would jeopardize the safety and security of law enforcement personnel or the general public. Records of emergency service agencies to the extent

that such records contain specific tactical plans relating to antiterrorist activity. Va. Code Ann. § 2.2-3705.2(4).

ddd. *Proprietary and Confidential Records of the University of Virginia and the University of Virginia Medical Center*: All records of the University of Virginia or the University of Virginia Medical Center or Eastern Virginia Medical School, which contain proprietary, business-related information pertaining to the operations of the University of Virginia Medical Center or Eastern Virginia Medical School, if disclosure would harm the competitive position of the Medical Center or Eastern Virginia Medical School. Va. Code Ann. § 2.2-3705.4(5).

eee. *Patient Records Collected by the Board of Health*: Patient level data collected by the Board of Health and not yet processed, verified, and released to the Board by the non-profit organization with which the Commissioner of Health has contracted. Va. Code Ann. § 2.2-3705.5(10).

fff. *Virginia Commonwealth University Health System Authority records*: Certain records pertaining to medical or teaching staffs, proprietary information, customer accounts, contract cost estimates, financial statements, consulting reports, study or research documents, or marketing or operational strategies. Va. Code Ann. § 2.2-3705.7(15).

ggg. *Confidential Proprietary information or trade secrets of the Virginia Resources Authority*: Confidential proprietary information or trade secrets provided by a private person or entity in connection with financial assistance rendered or to be rendered by the Virginia Resources Authority where, if such information were made public, the financial interest of the private person or entity would be adversely affected and where such information was provided pursuant to a promise of confidentiality. Va. Code Ann. § 2-3705.6(12).

hhh. *Franchisee records relating to new services*: Confidential proprietary information provided by a franchisee to its franchising authority, pursuant to a promise of confidentiality pertaining to the potential provision of new services, technologies or improvements where, if made public, the competitive advantage or financial interests of the franchisee would be adversely affected. The franchisee must invoke the exclusion, identify the date for which protection is sought, and state the reason for protection. Va. Code Ann. § 2.2-3705.6(13).

iii. *Records of the Health Practitioners' Monitoring Program Committee within the Department of Health Professions*: Such records to the extent that they may identify any practitioner who may be, or who is actually, impaired to the extent disclosure is prohibited by § 54.1-2517. Va. Code Ann. § 2.2-3705.5(11).

jjj. *Grant Applications to the Commonwealth Neurotrauma Initiative Advisory Board*: To the extent that such records contain (i) medical or mental records, or other identifying individual patents, or (ii) proprietary business or research-related information from research on medical, rehabilitative, scientific, technical or scholarly issues, when such information has not been publicly released, published, copyrighted or patented and disclosure would be harmful to the competitive position of the applicant. Va. Code Ann. § 2.2-3705.5(12).

kkk. *Railway safety information*: Information disclosing the security aspects of a system safety program plan adopted by the Rail Fixed Guideway Systems Safety Oversight Agency; and information in the possession of such agency, when the release of such information would jeopardize an ongoing investigation or other incident threatening railway safety. Va. Code Ann. § 2.2-3705.2(5).

lll. *Documents provided to the Department of Agriculture and Consumer Services regarding Charitable Gaming*: Information of a proprietary nature furnished by a supplier of charitable gaming supplies pursuant to § 18.2-340.34(E). Va. Code Ann. § 2.2-3705.6(14).

mmm. *Personal information provided to the Board of the Virginia College Savings Plan*: Personally identifying information of individuals who applied for, requested information about, or entered into prepaid tuition contracts or savings trust account agreements. Information may

be released in statistical or other form if it does not disclose personally identifying information. Individuals shall have access to their own information. Va. Code Ann. § 2.2-3705.4(6).

nnn. *Records reviewed by the Commissioner of Health*: Records, including books, files, accounts and computer recordings, reviewed by the Commissioner of Health while examining, reviewing or investigating a managed care health insurance plan licensee. Va. Code Ann. § 2.2-3705.5(13).

ooo. *Records necessary to security and employee safety*: Drawings, manuals and minutes or other records revealing surveillance techniques, personnel deployments, alarm technologies or operational protocols, the disclosure of which would jeopardize the security of any governmental building, facility, or structure or the employee safety at any governmental building, facility, or structure. Va. Code Ann. § 2.2-3705.2(6).

ppp. *Virginia apple producer sales records*: Records and reports related to sales provided to the Virginia State Apple Board pursuant to § 3.2-1215. Va. Code Ann. § 2.2-3705.6(15).

qqq. *Records relating to federal environmental enforcement*: Records of the Department of Environmental Quality, the State Water Control Board, the State Air Pollution Control Board or the Virginia Waste Management Board that relate to active federal environmental enforcement or enforcement strategies. This exception does not apply to disclosure of records related to inspection reports, notices of violation, and documents detailing the nature of any environmental contamination that may have occurred or similar documents. Va. Code Ann. § 2.2-3705.7(16).

rrr. *Identifying information related to the operation of toll facilities*: Records related to the operation of toll facilities that identify an individual, vehicle or travel itinerary. Va. Code Ann. § 2.2-3705.7(17).

sss. *Records of the Virginia Office for Protection and Advocacy*: Documentary evidence maintained by the Office in connection with specific complaints or investigations. Upon the conclusion of the investigation of a complaint, this exclusion no longer applies, but the Office shall not at any time release information about a person with mental illness, mental retardation, developmental disabilities or other disability unless required by court order or consented to by the person or his legal counsel. Va. Code Ann. § 2.2-3705.3(8).

ttt. *Information furnished in confidence to the Department of Employment Dispute Resolution*: Information relating to an investigation, consultation or mediation under Chapter 10 (§ 2.2-1000 et seq.) of this title, and records resulting from an investigation, consultation, or mediation, except that information may be distributed about inactive reports in a form that does not reveal the identity of the parties involved or of those supplying information. Va. Code Ann. § 2.2-3705.3(9).

uuu. *Trade Secrets*: Several trade secrets related rules are collected at Va. Code Ann. § 2.2-3705.6. See, e.g., Va. Code Ann. § 2.2-3705.6(16) (material submitted by CMRS providers to the Wireless Carrier E-911 Cost Recovery Subcommittee relating to the provision of wireless E-911 service).

vvv. *State Lottery Department Records*: Records pertaining to (i) the Social Security number, tax identification number, state sales tax number, home address and telephone number, personal and lottery banking account and transit numbers of a retailer, and financial information regarding the non-lottery operations of specific retail locations, and (ii) individual lottery winners, except that winner's name, hometown, and amount won shall be disclosed. Va. Code Ann. § 2.2-3705.7(18).

www. *Confidential Records*: Records, information and statistical registries required to be kept confidential pursuant to § 63.2-102 and 63.2-104. Va. Code Ann. § 2.2-3705.5(14).

xxx. *Personal information*: As defined in § 2.2-3801, including electronic mail addresses, furnished to a public body for the purpose of receiving electronic mail from the public body, provided that the elec-

tronic mail recipient has requested that the public body not disclose such information. However, access shall not be denied to the subject of the record. Va. Code Ann. § 2.2-3705.1(10).

yyy. *Virginia Administrative Dispute Resolution Act*: Communications and materials required to be kept confidential pursuant to § 2.2-4119 of the Virginia Administrative Dispute Resolution Act (§ 2.2-4115 et seq.). Va. Code Ann. § 2.2-3705.1(11).

zzz. *Negotiation and award of a specific contract*: Records relating to the negotiation and award of a specific contract where competition or bargaining is involved and where the release of such records would adversely affect the bargaining position or negotiating strategy of the public body. Such records shall not be withheld after the public body has made a decision to award or not to award the contract. In the case of procurement transactions conducted pursuant to the Virginia Public Procurement Act (§ 2.2-4300 et seq.), the provisions of this subdivision shall not apply, and any release of records relating to such transactions shall be governed by the Virginia Public Procurement Act. Va. Code Ann. § 2.2-3705.1(12).

aaaa. *School Safety Audits*: Security plans and specific assessment components of school safety audits, as provided in § 22.1-279.8. Nothing in this subdivision prohibits the disclosure of records relating to the effectiveness of security plans after (i) any school building or property has been subjected to fire, explosion, natural disaster or other catastrophic event, or (ii) any person on school property has suffered or been threatened with any personal injury. Va. Code Ann. § 2.2-3705.2(7).

bbbb. *Mental Health of Sexually Violent Predator*: Records of the Commitment Review Committee concerning the mental health assessment of an individual subject to commitment as a sexually violent predator under Chapter 9 (§ 37.2-900 et seq.) of Title 37.2; except that in no case shall records identifying the victims of a sexually violent predator be disclosed. Va. Code Ann. § 2.2-3705.2(9).

cccc. *Subscriber data*, which for the purposes of this subdivision, means the name, address, telephone number, and any other information identifying a subscriber of a telecommunications carrier, provided directly or indirectly by a telecommunications carrier to a public body that operates a 911 or E-911 emergency dispatch system or an emergency notification or reverse 911 system, if the data is in a form not made available by the telecommunications carrier to the public generally. Nothing in this subdivision prevents the release of subscriber data generated in connection with specific calls to a 911 emergency system, where the requester is seeking to obtain public records about the use of the system in response to a specific crime, emergency or other event as to which a citizen has initiated a 911 call. Va. Code Ann. § 2.2-3705.2(10).

dddd. *Subscriber data*, which for the purposes of this subdivision, means the name, address, telephone number, and any other information identifying a subscriber of a telecommunications carrier, collected by a local governing body in accordance with the Enhanced Public Safety Telephone Services Act (§ 56-484.12 et seq.), and other identifying information of a personal, medical, or financial nature provided to a local governing body in connection with a 911 or E-911 emergency dispatch system or an emergency notification or reverse 911 system, if such records are not otherwise publicly available. Nothing in this subdivision prevents the release of subscriber data generated in connection with specific calls to a 911 emergency system, where the requester is seeking to obtain public records about the use of the system in response to a specific crime, emergency or other event as to which a citizen has initiated a 911 call. Va. Code Ann. § 2.2-3705.2(11).

eeee. *Zoning Enforcement Complaints*: The names, addresses and telephone numbers of complainants furnished in confidence with respect to an investigation of individual zoning enforcement complaints made to a local governing body. Va. Code Ann. § 2.2-3705.3(10).

ffff. *Department of Criminal Justice Services*: Records of active investigations being conducted by the Department of Criminal Justice Ser-

vices pursuant to Article 4 (§ 9.1-138 et seq.), Article 4.1 (§ 9.1-150.1 et seq.), Article 11 (§ 9.1-185 et seq.) and Article 12 (§ 9.1-186 et seq.) of Chapter 1 of Title 9.1. Va. Code Ann. § 2.2-3705.3(11).

gggg. *Prescription Monitoring Program*: All data, records, and reports relating to the prescribing and dispensing of covered substances to recipients and any abstracts from such data, records, and reports that are in the possession of the Prescription Monitoring Program pursuant to Chapter 25.2 (§ 54.1-2519 et seq.) of Title 54.1 and any material relating to the operation or security of the Program. Va. Code Ann. § 2.2-3705.5(15).

hhhh. *Virginia Birth-Related Neurological Injury Compensation Program*: Records required to be kept confidential pursuant to § 38.2-5002.2. Va. Code Ann. § 2.2-3705.5(16).

iiii. *Quarantine Records of the State Health Commissioner*: relating to the health of any person or persons subject to an order of quarantine or an order of isolation pursuant to Article 3.02 (§ 32.1-48.05 et seq.) of Chapter 2 of Title 32.1; this provision shall not, however, be construed to prohibit the disclosure of statistical summaries, abstracts or other information in aggregate form. Va. Code Ann. § 2.2-3705.5(17).

jjjj. *Persons receiving transportation services*: Records containing the names and addresses or other contact information of persons receiving transportation services from a state or local public body or its designee under Title II of the Americans with Disabilities Act, (42 U.S.C. § 12131 et seq.) or funded by Temporary Assistance for Needy Families (TANF) created under § 63.2-600. Va. Code Ann. § 2.2-3705.5(18).

kkkk. *Innovation and Entrepreneurship Investment Authority and Commonwealth Health Research Board Applications*: Records submitted as a grant or loan application, or accompanying a grant or loan application, to the Innovation and Entrepreneurship Investment Authority or to the Commonwealth Health Research Board, to the extent such records contain proprietary business or research-related information produced or collected by the applicant in the conduct of or as a result of study or research on medical, rehabilitative, scientific, technical, technological or scholarly issues, when such information has not been publicly released, published, copyrighted or patented, if the disclosure of such information would be harmful to the competitive position of the applicant. Va. Code Ann. § 2.2-3705.6(17).

llll. *Confidential proprietary records and trade secrets developed and held by a local public body*: Including (i) providing telecommunication services pursuant to § 56-265.4:4 and (ii) providing cable television services pursuant to Article 1.1 (§ 15.2-2108.2 et seq.) of Chapter 21 of Title 15.2, to the extent that disclosure of such records would be harmful to the competitive position of the locality. In order for confidential proprietary information or trade secrets to be excluded from the provisions of this chapter, the locality in writing shall (i) invoke the protections of this subdivision, (ii) identify with specificity the records or portions thereof for which protection is sought, and (iii) state the reasons why protection is necessary. Va. Code Ann. § 2.2-3705.6(18).

mmmm. *Virginia Wireless Service Authorities Act*: Confidential proprietary records and trade secrets developed by or for a local authority created in accordance with the Virginia Wireless Service Authorities Act (§ 15.2-5431.1 et seq.) to provide qualifying communications services as authorized by Article 5.1 (§ 56-484.7:1 et seq.) of Chapter 15 of Title 56, where disclosure of such information would be harmful to the competitive position of the authority, except that records required to be maintained in accordance with § 15.2-2160 shall be released. Va. Code Ann. § 2.2-3705.6(19).

nnnn. *Board for Branch Pilots*: Records relating to the chemical or drug testing of a person regulated by the Board, where such person has tested negative or has not been the subject of a disciplinary action by the Board for a positive test result. Va. Code Ann. § 2.2-3705.7(19).

oooo. *Uniform Disposition of Unclaimed Property Act*: Records, investigative notes, correspondence, and information pertaining to the planning, scheduling and performance of examinations of holder records pursuant to the Uniform Disposition of Unclaimed Property

Act (§ 55-210.1 et seq.) prepared by or for the State Treasurer, his agents, employees or persons employed to perform an audit or examination of holder records. Va. Code Ann. § 2.2-3705.7(20).

pppp. *Virginia Department of Emergency Management or a local governing body*: Records relating to citizen emergency response teams established pursuant to an ordinance of a local governing body, to the extent that such records reveal the name, address, including e-mail address, telephone or pager numbers, or operating schedule of an individual participant in the program. Va. Code Ann. § 2.2-3705.7(21).

qqqq. *Records of state or local park and recreation departments*: To the extent such records contain information identifying a person under the age of 18 years, where the parent or legal guardian of such person has requested in writing that such information not be disclosed. However, the disclosure of information defined as directory information under regulations implementing the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g is not prohibited, unless the public body has undertaken the parental notification and opt-out requirements provided by such regulations. Access shall not be denied to the parent, including a noncustodial parent, or guardian of such person, unless the parent's parental rights have been terminated or a court of competent jurisdiction has restricted or denied such access. For records of such persons who are emancipated, the right of access may be asserted by the subject thereof. Va. Code Ann. § 2.2-3705.7(22).

rrrr. *Statewide Alert Network*: Records submitted for inclusion in the Statewide Alert Network administered by the Department of Emergency Management, to the extent that they reveal names, physical addresses, e-mail addresses, computer or internet protocol information, telephone numbers, pager numbers, other wireless or portable communications device information, or operating schedules of individuals or agencies, where the release of such information would compromise the security of the Statewide Alert Network or individuals participating in the Statewide Alert Network. Va. Code Ann. § 2.2-3705.7(23).

ssss. *Records of the Judicial Inquiry and Review Commission*: Records made confidential by § 17.1-913. Va. Code Ann. § 2.2-3705.7(24).

tttt. *Financial account information*: Portions of records that contain account numbers or routing information for any credit card, debt card, or financial account of any person or public body. Access will not be denied to the subject of the record. Va. Code Ann. § 2.2-3705.1(13).

uuuu. *Records of the state and local Military advisory councils*: Records of the Virginia Military Advisory Council, the Virginia National Defense Industrial Authority, or a local/regional military affairs organization appointed by a public body if those records (i) contain information relating to strategic decisions under consideration to prevent closure or realignment of federal assets or seek to limit the adverse economic effect of such realignment or closure, or (ii) disclose trade secrets. If invoking the trade secret exemption, the body must state with specificity the information protection sought and state why. Va. Code Ann. § 2.2-3705.2(12).

vvvv. *Internal Financial Controls*: Information as determined by the State Comptroller that describes the design, function, operation, or implementation of internal controls over the Commonwealth's financial processes and system, and the assessment of risks and vulnerabilities of those controls, the disclosure of which would harm the state's financial assets. This does not prohibit the Auditor of Public Accounts or the Joint Legislative Audit and Review Commission from reporting internal control deficiencies. Va. Code Ann. § 2.2-3705.2(13).

wwww. *Statewide Agencies Radio System information (STARS)*: Information on STARS or any similar public safety communications system that describes the design, function or operation of the system or relates to the frequencies assigned to the extent disclosure would jeopardize the security of a facility or a person. Va. Code Ann. § 2.2-3705.2(14).

xxxx. *Investigations Materials for Improper Testing*: Records provided or prepared by the Board of Education in connection with a review or investigation of any alleged breach in security, unauthorized alteration, or improper administration of tests by local school employees.

This does not bar local school boards from taking personnel action or from requesters seeing the documents after a closed investigation as long as the records do not have the identity of the person supplying information in it. Va. Code Ann. § 2.2-3705.3(12).

yyyy. *Investigation Materials for Teacher Licensure*: Information furnished in confidence with respect to an active investigation related to the denial, suspension, or revocation of teacher licenses. This section does not prohibit disclosure to local school boards in taking personnel action. Closed investigation information can be released as long as it does not reference person who provided information. If an investigation fails to support a complaint, the identity of the subject of the investigation will only be provided to that person. Va. Code Ann. § 2.2-3705.3(13).

zzzz. *Certain Records for Attorney General Investigation*: Records, notes and information provided in confidence and related to an investigation by the Attorney General under Article 1 (§ 3.2-4200 et seq.) or Article 3 (§ 3.2-4204 et seq.) of Chapter 42 of Title 3.2, Article 10 (§ 18.2-246.6 et seq.) of Chapter 6 or Chapter 13 (§ 18.2-512 et seq.) of Title 18.2, or Article 1 (§ 58.1-1000) of Chapter 10 of Title 58.1. However, records related to an investigation that has been inactive for more than six months shall, upon request, be disclosed provided such disclosure is not otherwise prohibited by law and does not reveal the identity of charging parties, complainants, persons supplying information, witnesses or other individuals involved in the investigation. Va. Code Ann. § 2.2-3705.3(14).

aaaa. *Fundraising Records*: Records related to fundraising activities by or for public institutions of higher education to the extent the records reveal strategies, wealth assessments, tax-planning or other personal information of donors or expected donors. This does not bar the release of the identity of donors unless anonymity is requested. Va. Code Ann. § 2.2-3705.4(7).

bbbb. *Threat assessment records*: Records of a threat assessment team established by a public institution of higher education relating to assessment or intervention with a specific individual. Records shall be released if person is prosecuted for a criminal act. Va. Code Ann. § 2.2-3705.4(8).

cccc. *Records of Retirement System or Virginia College Savings Plan*: Records with regarding to internal deliberations on investment strategies, investment management choices or trade secrets. Va. Code Ann. § 2.2-3705.7(25).

dddd. *Confidential Department of Corrections Records*: Records made confidential by § 53.1-233. Va. Code Ann. § 2.2-3705.7(26).

eeee. *Certain Treasury Records*: Records maintained by the Department of the Treasury or participants in the Local Government Investment Pool (§ 2.2-4600 et seq.), to the extent such records relate to information required to be provided by such participants to the Department to establish accounts in accordance with § 2.2-4602. Va. Code Ann. § 2.2-3705.7(27).

ffff. *Veterans Care Records*: Personal information contained in Veteran Care Center Resident Trust Funds concerning residents or patients of the Department of Veterans Service Care Centers, except access will not be denied to the subject of the records. Va. Code Ann. § 2.2-3705.7(27).

gggg. *Veterans Services Foundation Donor Data*: Records kept in connection with fundraising activities by the Veterans Services Foundation to the extent such records reveal personal identifying information on the donor. This does not exempt the release of the identity of donors. Va. Code Ann. § 2.2-3705.7(28).

B. Other statutory exclusions.

State Board Of Elections.

Records are not subject to disclosure under the Act to the extent the records describe protocols for maintaining the security of ballots or voting and counting equipment, or reveal the results of risk assess-

ments of specific local electoral procedures. Va. Code Ann. § 24.2-625.1(A).

Conditional Release from Department of Corrections.

If a person is placed on conditional release none of the information provided to the Department of Mental Health, Mental Retardation and Substance Abuse Services, or a parole or probation officer including all relevant criminal history information, medical and mental health records, presentence and postsentence reports and victim impact statements, and the mental health evaluations is subject to the Act. Va. Code Ann. § 37.2-912(B).

Reports by Physicians and Laboratory Directors.

Laboratory reports filed with the Department of Health regarding its inventory of dangerous microbes and pathogens is confidential and not a public record pursuant to the Act. Va. Code Ann. § 32.1-36(F).

Municipal Cable Television Service.

The Auditor of Public Accounts, in connection with the audit of a locality's cabletelevision services, shall not disclose the portions of a comprehensive business plan that reveal marketing strategies of a municipal cable television service. Va. Code Ann. § 15.2-2108.11(I).

Adult Protective Services.

Criminal investigative reports received from law-enforcement agencies by agencies reviewing suspected cases of adult abuse, neglect or exploitation shall not be further disseminated and are not subject to public disclosure. Va. Code Ann. § 63.2-1606(B).

Court records.

a. Jury lists are not required to be disclosed. See *Archer v. Mayes*, 213 Va. 633, 194 S.E.2d 707 (1973).

b. Except as prohibited by law, records and papers filed in civil suits are public records upon filing. Va. Code Ann. § 17.1-208. However, access to military discharge certificates is limited. Va. Code Ann. § 17.1-265.

c. Court records, including applications to carry a concealed weapon, are public records unless otherwise excluded by law or court order. 1982-1983 Va. Op. Atty. Gen. 723 (Feb. 25, 1983). For records to be sealed, the party must make specific factual findings to support a decision to seal, mere conclusions are not sufficient. *Perreault v. The Free Lance-Star*, 276 Va. 375, 389-390, 666 S.E.2d 352, 360 (Va. 2008).

C. Court-derived exclusions, common law prohibitions, recognized privileges against disclosure.

In *Taylor v. Worrell Enterprises*, 242 Va. 219, 409 S.E.2d 136 (1991) the Supreme Court of Virginia invoked a rule of executive privilege to protect the Governor from having to release records of his telephone calls.

D. Are segregable portions of records containing exempt material available?

The Act requires that any reasonably segregable portion of an official record be provided. Additionally, a written explanation must be given to the citizen as to why portions of the record are not available, making specific reference to the code section that exempts the withheld documents. Va. Code Ann. § 2.2-3704(B)(2).

E. Homeland Security Measures.

Virginia Code § 2.2-3705.2 generally addresses excluded records relating to public safety, with several subsections that relate to homeland security.

The Governor or agencies acting on his behalf may receive information, voluntarily submitted from both public and nonpublic entities, related to the protection of the nation's critical infrastructure sectors and components that are located in Virginia or affect the health, safety, and welfare of the citizens of Virginia. Information submitted by any public or nonpublic entity in accordance with the procedures set forth

in § 2.2-3705.2 shall not be disclosed unless: (1) it is requested by law-enforcement authorities in furtherance of an official investigation or the prosecution of a criminal act; (2) the agency holding the record is served with a proper judicial order; or (3) the agency holding the record has obtained the written consent to release the information from the entity voluntarily submitting it. Va. Code Ann. § 44-146.22(B).

Virginia Code § 44-146.18 limits disclosure of assessments and preparedness plans to prevent, respond to, and recover from all disasters including acts of terrorism.

III. STATE LAW ON ELECTRONIC RECORDS

A. Can the requester choose a format for receiving records?

Public bodies "shall make reasonable efforts" to reach an agreement with the requester as to the format in which to provide the records. If the nonexempt records are maintained in an electronic database, the public body shall produce them in any tangible medium identified by the requester, including posting the records on a Web site or delivering them through e-mail, if that medium is used by the public body in the regular course of business. Va. Code Ann. § 2.2-3704(G).

B. Can the requester obtain a customized search of computer databases to fit particular needs?

Public bodies must produce nonexempt computer records, but are not required to use a format not regularly utilized by the producing body. They must make reasonable efforts to produce information as agreed to with the requester at a reasonable cost. Excision of exempt data fields does not constitute the creation of a new record. Va. Code Ann. § 2.2-3704.G.

C. Does the existence of information in electronic format affect its openness?

No. Official records maintained by a public body on a computer or other electronic data processing system shall be made available to the public at reasonable costs. Va. Code Ann. § 2.2-3704(G).

D. How is e-mail treated?

1. Does e-mail constitute a record?

Electronic mail falls within the definition of "public records" and is subject to disclosure. Va. Code Ann. § 2.2-3701.

2. Public matter on government e-mail or government hardware

The subject matter determines whether the email qualifies as a public record, regardless of whether it is on public or private hardware. *Burton v. Mann*, 74 Va. Cir. 471, 474 (2008).

3. Private matter on government e-mail or government hardware

The subject matter determines whether the email qualifies as a public record, regardless of whether it is on public or private hardware. *Burton v. Mann*, 74 Va. Cir. 471, 474 (2008).

4. Public matter on private e-mail

The subject matter determines whether the email qualifies as a public record, regardless of whether it is on a public or private email account. *Burton v. Mann*, 74 Va. Cir. 471, 474 (2008).

5. Private matter on private e-mail

The subject matter determines whether the email qualifies as a public record, regardless of whether it is on public or private hardware. *Burton v. Mann*, 74 Va. Cir. 471, 474 (2008).

E. How are text messages and instant messages treated?

1. Do text messages and/or instant messages constitute a record?

Text messages and instant messages fall within the definition of "public record" and are subject to disclosure. Va. Code Ann. § 2.2-3701.

2. Public matter message on government hardware.

In the analogous situations of emails, it is the subject matter of the message that determines whether it is a public record. *Burton v. Mann*, 74 Va. Cir. 471, 474 (2008).

3. Private matter message on government hardware.

In the analogous situations of emails, it is the subject matter of the message that determines whether it is a public record. *Burton v. Mann*, 74 Va. Cir. 471, 474 (2008).

4. Public matter message on private hardware.

In the analogous situations of emails, it is the subject matter of the message that determines whether it is a public record. *Burton v. Mann*, 74 Va. Cir. 471, 474 (2008).

5. Private matter message on private hardware.

In the analogous situations of emails, it is the subject matter of the message that determines whether it is a public record. *Burton v. Mann*, 74 Va. Cir. 471, 474 (2008).

F. How are social media postings and messages treated?

Electronic messages fall within the definition of “public records” and is subject to disclosure. Va. Code Ann. § 2.2-3701. In the analogous situations of emails, it is the subject matter of the message that determines whether it is a public record. *Burton v. Mann*, 74 Va. Cir. 471, 474 (2008).

G. How are online discussion board posts treated?

No special treatment. General principles of access under the Act should apply based on purpose and content of discussion.

H. Computer software

1. Is software public?

Vendor proprietary information software which may be in the official records of a public body can be exempt from disclosure. Va. Code Ann. § 2.2-3705.1(6). Additionally, computer software developed by or for a state agency, state-supported institution of higher education or political subdivision is exempt. Va. Code Ann. § 2.2-3705.1(7).

2. Is software and/or file metadata public?

Metadata has no special treatment by statute. Presumably metadata related to excluded proprietary software is also excluded. Metadata related to other data files should be subject to general rules of access based on subject matter.

I. How are fees for electronic records assessed?

Official records maintained by a public body on a computer or other electronic data processing system shall be made available to the public at reasonable costs. Va. Code Ann. § 2.2-3704(G).

J. Money-making schemes.

1. Revenues.

A public body may make reasonable charges that do not exceed the actual cost of producing the records. The law specifically forbids a public body from imposing extraneous, intermediary or surplus fees or expenses to recoup the general costs associated with creating and keeping the records. Va. Code Ann. § 2.2-3704(F).

2. Geographic Information Systems.

Requests for geographic information system records can be provided at a reasonable cost. The owner of the land is exempt from this reasonable cost provision. The reasonable cost means not to exceed the actual cost of production with the exception that the public body may charge, on a pro rata per acre basis, for the cost of creating topographical maps developed by the public body, which encompass a contiguous area greater than 50 acres. All costs related with this sec-

tion must be estimated to advance to the requestor. Va. Code Ann. § 2.2-3704(F).

K. On-line dissemination.

If the nonexempt records are maintained in an electronic database, the public body shall produce them in any tangible medium identified by the requester, including posting the records on a Web site or delivering them through e-mail, if that medium is used by the public body in the regular course of business. Va. Code Ann. § 2.2-3704(G).

IV. RECORD CATEGORIES -- OPEN OR CLOSED

A. Autopsy reports.

Va. Code Ann. § 32.1-285 requires filing of all autopsy reports with the Chief Medical Examiner, with copies to the judge or Commonwealth's Attorney requesting the report. The Chief Medical Examiner may release such reports to the appropriate Commonwealth's Attorney or law enforcement agency investigating the death. Confidential records and information obtained from private and public entities and provided to the Office of the Chief Medical Examiner during the course of a death investigation shall remain confidential and shall not be subject to the provisions of the Act. Va. Code Ann. § 32.1-283.4(A).

B. Administrative enforcement records (e.g., worker safety and health inspections, or accident investigations)

1. Rules for active investigations.

Exceptions to disclosure for active investigations can be found in Va. Code Ann. § 2.2-3705.3. Generally, records of active investigations are exempt

2. Rules for closed investigations.

Exceptions to disclosure for investigations can be found in Va. Code Ann. § 2.2-3705.3. Generally, records for closed investigations are not exempt from disclosure as long as the identifying information for claimants and others providing information is removed.

C. Bank records.

Examination reports and information furnished to the State Corporation Commission or its divisions concerning any bank, savings institution or credit union, disclosure of which could endanger the safety or security of the entity — other than those required by law to be made public — are open only to specifically identified officials. Va. Code Ann. § 6.2-101. Banks, however, must report their financial condition periodically to the State Corporation Commission. This report is public. Va. Code Ann. § 6.2-907.

D. Budgets.

Budgets fall within the definition of “public records” and are subject to disclosure. Va. Code Ann. § 2.2-3701. But there may be a specific exemption for certain administrative records. *See* Va. Code Ann. § 2.2-3705.7.

E. Business records, financial data, trade secrets.

The following are exempt from disclosure: tax returns (Va. Code Ann. § 2.2-3705.7(1)); proprietary information of the Virginia Port Authority (Va. Code Ann. § 2.2-3705.6(1)); vendor proprietary software (Va. Code Ann. § 2.2-3705.1(6)); colleges and universities — educational research records (Va. Code Ann. § 2.2-3705.4(4)); industrial development financial statements (Va. Code Ann. § 2.2-3705.6(2)); bond owners (Va. Code Ann. § 2.2-3705.7(5)); information provided to a public body for the purpose of business, trade and tourism development or retention (Va. Code Ann. § 2.2-3705.6(3)); toxic substances (Va. Code Ann. § 2.2-3705.6(4)); computer software (Va. Code Ann. § 2.2-3705.1(7)) and fisheries data (Va. Code Ann. § 2.2-3705.6(5)); customer account information held by a public utility. Va. Code Ann. § 2.2-3705.7(7).

Although distress warrant information related to taxes may be disclosed, warrant information pertaining to transactions, property, income or business of a delinquent taxpayer is confidential and not subject to disclosure, unless the information is entered on public assessment books or published in the line of duty. 1999 Va. Op. Atty. Gen. 85 (November 22, 1999).

Financial records filed with a municipal purchasing department are open to inspection. 1978-1979 Va. Op. Atty. Gen. 315 (January 23, 1979). What constitutes a “financial statement” is undefined, so common usage determines its meaning. 1984-1985 Va. Op. Atty. Gen. 425 (July 24, 1984).

Trade secrets. The following may be exempt as trade secrets: building plans (Va. Code Ann. § 2.2-3705.2(2)); certain records of the Department of Rail and Public Transportation (Va. Code Ann. § 2.2-3705.6(9)); proprietary and commercial records provided by private transportation and construction businesses (Va. Code Ann. § 2.2-3705.6(11)); private bids for government contracts (Va. Code Ann. § 2.2-3705.6(10 & 13)); and CMRS information submitted to the Wireless Carrier E-911 Cost Recovery Subcommittee (Va. Code Ann. § 2.2-3705.6(16)); certain records of the Virginia Military Advisory Council, the Virginia National Defense Industrial Authority, or a local or regional military affairs organization appointed by a local governing body (Va. Code Ann. § 2.2-2705.2(12)); certain records provided to the Virginia Resources Authority (Va. Code Ann. § 2.2-2705.6(12)); certain records of the Department of Minority Business Enterprise (Va. Code Ann. § 2.2-2705.6(20)); certain records of the Virginia Department of Transportation (Va. Code Ann. § 2.2-2705.6(22)); certain records of the Virginia Tobacco Indemnification and Community Revitalization Commission (Va. Code Ann. § 2.2-2705.6(23)); certain information provided to the Virginia College Savings Plan (Va. Code Ann. § 2.2-3705.7(25)).

F. Contracts, proposals and bids.

Disclosure of records relating to procurement transactions by state agencies is comprehensively addressed in the Virginia Public Procurement Act. Va. Code Ann. § 2.2-4342. Contracts are generally open for inspection after they are awarded. The Act has a broad exclusion for records relating to public-private partnerships under the Public-Private Transportation Act of 1995 and the Public-Private Education Facilities and Infrastructure Act of 2002. Va. Code Ann. 2.2-3705.6(11).

Contracts between public officers and a public body may not be withheld. However, contracts settling public employee employment disputes are held confidential as personnel records. Va. Code Ann. § 2.2-3705.8(A)(i).

Cost estimates prepared for a public body engaged in procurement may be withheld. Va. Code Ann. § 2.2-4342(B); see also Va. Code Ann. § 2.2-3705.7(4)(cost estimates of Department of Transportation).

G. Collective bargaining records.

There is no specific law, but to the extent records are prepared exclusively for a properly held executive session, they are exempt from required disclosure.

H. Coroners reports.

See discussion of Chief Medical Examiner above.

I. Economic development records.

Records, voluntarily provided by a private business pursuant to a promise of confidentiality from a public body or prepared by the public body where competition or bargaining is involved, used for the purpose of business, trade and tourism development or retention are exempt. Va. Code Ann. § 2.2-3705.6(3).

J. Election records.

1. Voter registration records.

Registration records shall be opened to inspection by any registered voter. Va. Code Ann. § 24.2-444. However, no voter registration record containing an individual’s Social Security number or birthdate

shall be made available for inspection or copying by anyone. *Id.* Once the Social Security number has been redacted, the registration list is open for public inspection. *Rivera v. Long*, No. 070274 (Va. Feb. 8, 2008). No voter registration record containing an individual’s residence address shall be made available for inspection or copying. *Id.* Registration records are open for inspection, but the Code does not guarantee the right to copy those records. *Rivera v. Long*, No. 070274 (Va. Feb. 8, 2008).

2. Voting results.

The provisions of the Act will not apply until the results have been finally determined. Va. Code Ann. § 24.2-677. High school election votes need not be disclosed. *Wall v. Fairfax County Sch. Bd.*, 252 Va. 156, 475 S.E.2d 803 (1996).

K. Gun permits.

The Department of State Police possesses the discretionary authority to release the names of concealed carry handgun permittees under the Act. But identifying information of crime victims and witnesses on the list should not be disclosed. Per § 18.2-308(K) information from the concealed carry permit database should be limited to law-enforcement personnel for investigative purposes. 2007 Va. AG LEXIS 12 (April 6, 2007).

L. Hospital reports.

Publicly funded hospitals may report disciplinary actions against health professionals and certain disorders (e.g., drug addiction) affecting health professionals. 1980-1981 Va. Op. Atty. Gen. 189 (April 15, 1981). However, records of an active investigation are exempt from disclosure.

Hospital authorities must report their activities annually to the mayor of the city they serve. These reports are public. Va. Code Ann. § 15.2-5318.

Patient records. These are exempt from required disclosure under § 2.2-3705.5(1) and the Government Data Collection and Dissemination Practices Act. Va. Code Ann. § 2.2-3800 *et seq.*

M. Personnel records.

Personnel records concerning identifiable individuals are generally excluded. Va. Code Ann. § 2.2-3705.1(1). Contracts between public officers and a public body may not be withheld. Va. Code Ann. § 2.2-3705.8(A)(i). Personnel records of a terminated employee must be produced under the Act where that employee waives all claims of confidentiality. *Concerned Citizens for Educational Excellence v. Richmond Sch. Bd.*, 43 Va. Cir. 209, 212 (1997).

1. Salary.

Official salary or rates of pay of all employees receiving in excess of \$10,000 annually are open to the public. Va. Code Ann. § 2.2-3705.8.A.

2. Disciplinary records.

See above for personnel records generally. In addition, contracts settling personnel disputes are excluded from public access. Va. Code Ann. § 2.2-3705.8.A.

3. Applications.

Applications for admission to examinations or for licensure of professions regulated by the Department of Health Professions are excluded. Va. Code Ann. § 2.2-3705.5.2.

4. Personally identifying information.

Information protected by Virginia privacy statutes, including SSN, are excluded, as are email addresses. Va. Code Ann. § 2.2-3705.1.10.

5. Expense reports.

Records of all allowances or reimbursements paid to any officer, official or employee of a public body are open. Va. Code Ann. § 2.2-3705.8.

N. Police records.**1. Accident reports.**

No special rule for accident reports. General principles of access under Va. Code Ann. § 2.2-3706 apply.

2. Police blotter.

“Criminal incident information” for felony offenses, including a description of the criminal activity reported, the date and general location of the alleged crime, the identity of the investigating officer, and general description of the injuries, must be released upon request unless the release is likely to jeopardize an ongoing investigation or prosecution, or the safety of an individual, or result in the destruction of evidence, or could cause a suspect to flee. Va. Code Ann. § 2.2-3706(B).

3. 911 tapes.

911 records are presumed open under Va. Code Ann. § 2.2-3706.G., but personal, medical or financial information in those records may be withheld if the safety or privacy of any person is jeopardized

4. Investigatory records.**a. Rules for active investigations.**

“Criminal investigative files,” including any documents and information including complaints, court orders, memoranda, notes, and other records and evidence relating to a criminal investigation or prosecution are exempt from the Act. Va. Code Ann. § 2.2-3706(F)(1).

b. Rules for closed investigations.

The Act makes no distinction between active and closed investigations. Va. Code Ann. § 2.2-3706(A).

5. Arrest records.

Arrest records are subject to disclosure except that noncriminal incident or other investigative reports or materials that contain identifying information of a personal, medical or financial nature may be withheld where the release of such information would jeopardize the safety or privacy of any person. Va. Code Ann. § 2.2-3706(G).

6. Compilations of criminal histories.

No special rule.

7. Victims.

The identity of any victim need not but may be disclosed unless disclosure is prohibited under § 19.2-11.2. Va. Code Ann. § 2.2-3706(D).

8. Confessions.

No special rule.

9. Confidential informants.

The identity of any witness need not but may be disclosed unless disclosure is prohibited under § 19.2-11.2. Va. Code Ann. § 2.2-3706(D). But the identity of any individual providing information about a crime or criminal activity under a promise of anonymity shall not be disclosed. Va. Code Ann. § 2.2-3706(E).

10. Police techniques.

The identity of any investigative techniques or procedures need not but may be disclosed. Va. Code Ann. § 2.2-3706(D).

11. Mug shots.

Adult arrestee photographs are not subject if at the time it is necessary to avoid jeopardizing an investigation of a felony crime. Once the necessary no longer exists, the exemption does not apply. Va. Code Ann. § 2.2-3706(F)(2).

12. Sex offender records.

Sex Offender registry records are excluded from the Act, but the Code does require information to be posted to the Internet pursuant to §9.1-913. Va. Code Ann. § 2.2-3706(H).

13. Emergency medical services records.

Information and records collected for the designation and verification of trauma centers and other speciality care centers within the Statewide Emergency Services System and Services are exempt.

O. Prison, parole and probation reports.

All records of persons imprisoned in penal institutions in Virginia are exempt, provided the records relate to imprisonment. Va. Code Ann. § 2.2-3706(F)(6). Additionally, all records of adults under probation or parole supervision are exempt. Va. Code Ann. § 2.2-3706(F)(8).

P. Public utility records.

Customer account information is not available. Va. Code Ann. § 2.2-3705.7(7).

Q. Real estate appraisals, negotiations.**1. Appraisals.**

Appraisals and cost estimates of real property subject to a proposed purchase, sale or lease, prior to the completion of such purchase, sale or lease. Va. Code Ann. § 2.2-3701.1(8).

2. Negotiations.

Records compiled exclusively for use in a closed meeting are excluded. Va. Code Ann. § 2.2-3705.1.5. Under Va. Code Ann. § 2.2-3711.A.3, a closed meeting may be held to discuss acquisition of real property for a public purpose, or disposition of real property, where open discussion would adversely affect the bargaining position or negotiating strategy of the public body.

3. Transactions.

Records of completed transactions are presumed open.

4. Deeds, liens, foreclosures, title history.

Such records are presumed open when in the possession of a public body subject to the Act. Access to

such records when located in the Office of a Clerk of a Virginia Circuit court are open pursuant to Va. Code Ann. § 17.1-208.

5. Zoning records.

The Act makes no specific exemption for zoning records, except that names and identifying information of complainants of zoning enforcement complaints are exempt. Va. Code Ann. § 2.2-3705.3(10).

R. School and university records.

“Scholastic records” means those records containing information directly related to a student or an applicant for admission and maintained by a public body that is an educational agency or institution or by a person acting for such agency or institution. Va. Code Ann. § 2.2-3701. Scholastic records containing identifiable information are exempt from the Act, but the subjects of the records or the subject’s guardian will have access to the records. Va. Code Ann. § 2.2-3705.4.

1. Athletic records.

See above. No special rule.

2. Trustee records.

See above. No special rule.

3. Student records.

See above.

4. Other.

See Va. Code Ann. § 2.2-3705.4, generally for several exclusions relating to fundraising, letters of recommendation and certain rules specific to named universities, state medical schools and the Virginia College Savings Plan.

S. Vital statistics.

Vital statistics information including birth certificates, death certificates and marriage/divorce records shall be protected and not subject to public disclosure. Exceptions to this rule include valid and substantial research purposes and when a grandparent has demonstrated a need to access a grandchild's records. These records convert to public records either when 100 years of elapsed since the date of birth or 50 years since the date of death, marriage or divorce. Va. Code Ann. § 32.1-271.

4. Infectious disease and health epidemics.

Patient level data that is collected for health purposes will be exempt from the Act and publicly released data must be a format so to ensure patients cannot be identified. Va. Code Ann. § 32.1-276.9.

V. PROCEDURE FOR OBTAINING RECORDS

A. How to start.

All state public bodies created in the executive branch of state government and subject to the provisions of the VFOIA must provide to the public upon request: (1) an explanation of the rights of a requester, the procedures to obtain public records from the public body, and the responsibilities of the public body in complying with the VFOIA; (2) contact information for the person designated by the public body to assist a requester in making a request or to respond to requests; and (3) a general description of the types of records maintained by that public body; (4) a general description of any exemptions in the law that permit or require records to be withheld from release; and (5) any policy the public body has concerning the type of public records it routinely withholds from release as permitted by the VFOIA. In addition, that information must also be posted on the Internet. Virginia Code § 2.2-3704.1(A).

1. Who receives a request?

The request should be directed to the agency that is the custodian of the records that are being sought.

The Governor is not the custodian of records for each and every public body in the Commonwealth. *Davis v. Allen*, 44 Va. Cir. 237 (1997).

2. Does the law cover oral requests?

Yes, the Act does not mandate that the request be written. It is advisable, however, that the request be written if the requester anticipates a need to enforce his or her rights under the Act.

a. Arrangements to inspect & copy.

Requests for records must identify the requested records with reasonable specificity. The requester need not make reference to the Act. The public body shall reply within five (5) working days. Va. Code Ann. § 2.2-3704(B). All public records shall be open to inspection and copying during regular business hours of the custodian of such records. Va. Code Ann. § 2.2-3704(A). The public body may make reasonable charges for the actual cost of duplicating the records. Va. Code Ann. § 2.2-3704(F).

b. If an oral request is denied:

The act does not distinguish oral from written requests. The requester may pursue the remedies outlined in the Act upon denial. See Va. Code Ann. § 2.2-3714. If litigation is contemplated, it is wise to resubmit the request in writing. In the interest of establishing an unambiguous record, written follow up to a denied oral request is recommended.

3. Contents of a written request.

a. Description of the records.

The Act requires that the request shall identify the requested records with reasonable specificity. Va. Code Ann. § 2.2-3704(B). Fishing expeditions will not be allowed.

b. Need to address fee issues.

The Act does not require that fees be mentioned in the request. However, if requesting an estimate for search and copying charges, it is best to put it in writing. If the requester asks for an estimate, one must be provided. Va. Code Ann. § 2.2-3704(F).

If a public body determines in advance that charges for producing the requested records are likely to exceed \$200, the public body may, before continuing to process the request, require the requester to agree to payment of a deposit not to exceed the amount of the advance determination. Va. Code Ann. § 2.2-3704(H).

c. Plea for quick response.

Not addressed.

d. Can the request be for future records?

Not addressed, but it is likely that a court would find it implicit that the Act does not contemplate requests for records that are generated at a future date.

e. Other.

The right to inspect and copy records, including future access to records, can be waived. *Putnam v. City of Winchester*, 47 Va. Cir. 249 (1998). An employee may waive her right to keep her personnel records confidential. *Concerned Citizens for Educational Excellence v. Richmond Sch. Bd.*, 43 Va. Cir. 209 (1997).

B. How long to wait.

Five Day Initial Response: The custodian must provide an initial response within five *working* days of receipt of the request, informing the requester of one of the following:

The requested records will be provided. Va. Code Ann. § 2.2-3704(B).

All of the requested records are exempt from disclosure. A written explanation must be provided explaining why the records are unavailable, making specific reference to the relevant code provision. Va. Code Ann. § 2.2-3704(B)(1).

The requested records that are not exempt will be provided. A written explanation must be provided explaining why some records are being withheld and must name the specific code section authorizing the exemption. Va. Code Ann. § 2.2-3704(B)(2).

The requested records could not be found or do not exist. Va. Code Ann. § 2.2-3704(B)(3).

It is practically impossible to provide the requested documents or to determine whether they are available within the five working days prescribed and, therefore, the custodian shall have an additional seven (7) working days to provide one of the three aforementioned responses. Va. Code Ann. § 2.2-3704(B)(4).

Responding with an answer not found in the Act does not constitute a response for the Act's purposes. *Fenter v. Norfolk Airport Authority*, 274 Va. 524 (2007)(informing the requester that the request has been sent to a federal authority is insufficient).

Additional Time to Respond: The custodian may obtain an additional seven (7) days pursuant to § 2.2-3704(B)(4) as long as he provides an initial response within five days. The custodian also may petition the appropriate court for additional time if there is an extraordinary volume of records requested and a response within the time limit will prevent the public body from meeting its operational responsibilities. Va. Code Ann. § 2.2-3704(C).

1. Statutory, regulatory or court-set time limits for agency response.

Not addressed.

2. Informal telephone inquiry as to status.

Not addressed, but not prohibited.

3. Is delay recognized as a denial for appeal purposes?

A failure to respond to a request shall be deemed a denial and constitute a violation of the Act. Va. Code Ann. § 2.2-3704(E).

4. Any other recourse to encourage a response.

Not addressed.

C. Administrative appeal.

The Act has no provision for an administrative appeal. Informal appeals to a public body's chief executive officer or attorney are encouraged.

2. To whom is an appeal directed?

4. Contents of appeal letter.

D. Court action.

1. Who may sue?

Any citizen of the Commonwealth, including the Commonwealth's Attorney, who has been denied the rights and privileges under the Act. Va. Code Ann. § 2.2-3713(A)

2. Priority.

Suits to enforce the provisions of the Act must be heard within seven days of filing. However, if the court is not in its regular term, the hearing must be given precedence over all other cases which are not otherwise given precedence. Va. Code Ann. § 2.2-3713(C).

3. Pro se.

The Act does not require that a requester to be represented by an attorney. It has been held that a person who appears *pro se* cannot receive attorney fees for a suit to enforce the Act; however, he may recover court costs. *Fiscella v. ARHA*, 50 Va. Cir. 102 (1999). The Act overrides Virginia's general ethical prohibition on the appearance of a corporate party without counsel. Va. Code Ann. § 2.2-3713(B).

4. Issues the court will address:

In accordance with a greater weight of the evidence standard, the Court will generally determine whether the public body has violated the Act by either failing to timely respond to the request or improperly withholding records which are not exempted by the Act. See *RF&P Corp. v. Little*, 247 Va. 309, 440 S.E.2d 908(1994)(standard of proof). The public body bears the burden to prove its entitlement to an exception by a preponderance of the evidence. Va. Code Ann. § 2.2-3713(E).

"A citizen alleging violation of the rights and privileges afforded by the FOIA and seeking relief by mandamus pursuant to Code § 2.2-3713(A) is not required to prove a lack of an adequate remedy at law, nor can the mandamus proceeding be barred on the ground that there may be some other remedy at law available." *Cartwright v. Commonwealth Transportation Commissioner*, 270 Va. 58, 613 S.E.2d 449 (2005).

Request For Injunctive Relief: The Court will determine whether the violation was willful, knowing, and substantial. Injunction will not be granted where the procedural violation of the Act is minor and unintended. *Shenandoah Publishing House Inc. v. Winchester City Council*, 37 Va. Cir. 149 (1994).

Entitlement to Fees: Where the petitioner has substantially prevailed on the merits of the case, attorneys' fees and reasonable costs shall

be awarded, unless special circumstances make such an award unjust. Va. Code Ann. § 2.2-3713(D). See *Redinger v. Casteen*, 36 Va. Cir. 479 (1995).

Imposition of Penalties: The Court will determine whether there has been a willful and knowing violation of the Act. If so, a civil penalty will be imposed, as well as possibly a writ of mandamus or injunctive relief. Va. Code Ann. § 2.2-3714. *RF&P Corporation v. Little*, 247 Va. 309, 440 S.E.2d 908 (1994). Penalties will not be assessed where there is a technical violation of the Act. *Mannix v. Washington County Board of Supervisors*, 27 Va. Cir. 397 (1992).

5. Pleading format.

No special pleading format is required that would not be used in a petition for mandamus or for injunctive relief.

6. Time limit for filing suit.

Suit should be filed without unreasonable delay.

7. What court.

Suits brought to enforce the provisions of this Act shall be filed in the general district court or the circuit court of the county or city from which the public body has been elected or appointed and in which the denial of rights occurred. Va. Code Ann. § 2.2-3713(A). Suits against the state may be brought at the place of the aggrieved party's residence or in the City of Richmond. *Id.*

8. Judicial remedies available.

The primary remedies are a writ of mandamus or an injunction. The former compels compliance with the Act and the latter prohibits noncompliance. Va. Code Ann. § 2.2-3713(A). If court finds that the violations were willfully and knowingly made the court will access a civil penalty. Va. Code Ann. § 2.2-3714.

9. Litigation expenses.

a. Attorney fees.

Attorneys's fees can be awarded where the petitioner substantially prevails and where there are no special circumstances making the award unjust. Va. Code Ann. § 2.2-3713(D).

b. Court and litigation costs.

Costs and fees can be awarded where the petitioner substantially prevails and where there are no special circumstances making the award unjust. Va. Code Ann. § 2.2-3713(D).

10. Fines.

If the Court finds that the violation was willfully and knowingly made, it will impose upon the member of the public body, in his individual capacity, a civil penalty not less than \$250.00 and not more than \$1,000.00. The penalty for the second violation shall not be less than \$1,000.00 nor more than \$2,500.00. Va. Code Ann. § 2.2-3714.

11. Other penalties.

In light of a requester's repeated filings in the courts over the same matters that repeatedly had been rejected (over five times), the court granted sanctions in the amount of \$1500, and costs and fees, but refused to prohibit future filings because the next petition might not be frivolous. *Davis v. Allen*, 44 Va. Cir. 237, 243 (1997).

12. Settlement, pros and cons.

Settlement of disputes under the Act, like settlement of other disputes, is encouraged. Settlement should be without prejudice to future assertions of rights under the Act.

E. Appealing initial court decisions.

1. Appeal routes.

A suit brought in General District Court may be appealed to Circuit Court for a de novo hearing. Appeals from Circuit Court are to the Virginia Supreme Court.

2. Time limits for filing appeals.

Appeals from General District Court to Circuit Court must be taken within ten days of judgment. Va. Code Ann. § 16.1-106. Notice of appeal to the Supreme Court from Circuit Court must be filed within 30 days of final judgment. Va. Supreme Court Rule 5:17.

3. Contact of interested amici.

The Virginia Press Association, P.O. Box C-32015, Richmond, Virginia 23261-2015. Attn: Ginger Stanley, Executive Manager. (804) 798-2053.

Virginia First Amendment Hotline, c/o Christian & Barton, L.L.P., 909 East Main Street, Suite 1200, Richmond, Virginia 23219-3095. Attn: Craig T. Merritt. (804) 697-4100.

The Reporters Committee for Freedom of the Press often files *amicus* briefs in cases involving significant media law issues before a state's highest court.

F. Addressing government suits against disclosure.

This issue has not arisen in Virginia. The organizations above are contact points should such a situation arise.

Open Meetings

I. STATUTE -- BASIC APPLICATION.

A. Who may attend?

All meetings shall be open to the public unless the topic of discussion at such meetings falls within one of the enumerated exemptions in § 2.2-3707 or § 2.2-3711(A) and the requisite closure procedures for exempted meetings are followed pursuant to § 2.2-3712.

B. What governments are subject to the law?

The Act applies to all public bodies, defined as “any legislative body, authority, board, bureau, commission, district or agency of the Commonwealth or of any political subdivision of the Commonwealth, including cities, towns and counties; municipal councils, governing bodies of counties, school boards and planning commissions; boards of visitors of public institutions of higher education; and other organizations, corporations or agencies in the Commonwealth supported wholly or principally by public funds.” Va. Code Ann. § 2.2-3701.

C. What bodies are covered by the law?

1. Executive branch agencies.

The Act applies to all public bodies.

2. Legislative bodies.

The Act includes “any legislative body” in its definition of public bodies. Va. Code Ann. § 2.2-3701.

3. Courts.

Access to courts is governed by other Virginia statutes and case law. Court proceedings are presumed open under case law interpreting the Constitutions of the United States and Virginia.

4. Nongovernmental bodies receiving public funds or benefits.

Organizations, corporations and agencies that are not supported wholly or principally by public funds are exempted from the requirements of the Act. Va. Code Ann. § 2.2-3701.

5. Nongovernmental groups whose members include governmental officials.

“Public body” includes “any committee, subcommittee, or other entity however designated, of the public body created to perform delegated functions of the public body or to advise the public body. It shall not exclude any such committee, subcommittee or entity because it has private sector of citizen members.” Va. Code Ann. § 2.2-3701.

6. Multi-state or regional bodies.

These bodies are not statutorily exempt from the Act. A circuit court has held that the Act applies to an Industrial Development Authority. *Lee Jackson Motel Inc. v. Industrial Development Authority*, 4 Va. Cir. 125 (1983).

7. Advisory boards and commissions, quasi-governmental entities.

See subsection 5 above. It has also been held that certain citizen advisory boards are exempt from the Act. To qualify for the exemption, the committee (1) must not have been created by a public body, rather than by a member of the body; (2) must not perform a function delegated to it by the public body; (3) does not advise a public body; and (4) must not receive any public funds, including reimbursement for expenses. 1979 Va. Op. Atty. Gen. 316 (April 3, 1979).

8. Other bodies to which governmental or public functions are delegated.

See subsection 5 above.

9. Appointed as well as elected bodies.

Elected as well as appointed bodies are subject to the Act.

D. What constitutes a meeting subject to the law.

“Meetings” is defined as “the meetings including work sessions, when sitting physically, or through telephonic or video equipment pursuant to § 2.2-3708 or 2.2-3708.1, as a body or entity, or as an informal assemblage of (i) as many as three members, or (ii) a quorum, if less than three, of the constituent membership . . . of any public body.” Va. Code Ann. § 2.2-3701.

Members-elect do not count toward the number necessary to constitute a meeting under the VFOIA. See *Beck v. Shelton*, 267 Va. 482, 488, 593 S.E.2d 195, 198 (2004).

1. Number that must be present.

See above.

2. Nature of business subject to the law.

The Act applies if the public body’s business will be discussed or transacted in any way. Va. Code Ann. § 2.2-3701.

a. “Information gathering” and “fact-finding” sessions.

Work sessions are defined as meetings by § 2.2-3701. However, a court opinion suggests that “information gathering” sessions are not meetings within the scope of this section. *Nageotte v. Board of Supervisors*, 223 Va. 259, 269, 288 S.E.2d 423 (1982); but see *Little v. Virginia Retirement Sys.*, 28 Va. Cir. 411, 433 (Va. Cir. Ct. 1992) (“Unlike a meeting between two separate and distinct entities, with separate and distinct areas of responsibility, a meeting involving two inextricably linked entities cannot be said to involve the business of only one of those entities.”).

Public Gatherings: Where two city employees and three members of City Council were separately invited to a gathering at a street intersection to raise awareness over traffic concerns, no meeting within the meaning of the VFOIA took place. *Beck v. Shelton*, 267 Va. 482, 493-94, 593 S.E.2d 195, 200-01 (2004).

b. Deliberations toward decisions.

A meeting held to discuss or transact public business is still a meeting within the meaning of the Act even where no votes are taken or decisions made. Va. Code Ann. § 2.2-3701.

Non-Public Business: A meeting of Board of Supervisors to discuss communication and decision making skills is not a meeting subject to the provisions of this section. *WDB7 Television Inc. v. Roanoke County Supervisors*, 4 Va. Cir. 349 (1985).

Informal General Assembly Meetings: The open meeting provisions shall not apply to informal meetings or gatherings of members of the General Assembly. *ACLU v. Andrews*, 24 Va. Cir. 443 (1991).

3. Electronic meetings.

Local public bodies are prohibited from meeting via electronic, telephonic, or video communications. Va. Code Ann. § 2.2-3708(A) (nevertheless, such communications means may be employed to expand public participation).

No regular, special, or reconvened session of the General Assembly held pursuant to Article IV, Section 6 of the Constitution of Virginia shall be conducted using electronic communication means pursuant § 2.2-3708. Va. Code Ann. § 2.2-3707.01(D).

a. Conference calls and video/Internet conferencing.

State public bodies may conduct any meeting to discuss or transact public business through electronic communication means. Where a

quorum of a public body of the Commonwealth is physically assembled at one location for the purpose of conducting a meeting authorized under this section, additional members of such public body may participate in the meeting through electronic communication means provided such participation is available to the public. If a public body holds an electronic meeting pursuant to this section, the public body shall also hold at least one meeting annually where members in attendance at the meeting are physically assembled at one location and where no members participate by electronic communication means. Va. Code Ann. § 2.2-3708(B).

b. E-mail.

E-mail communications are included within the Act’s definition of “public records.” Va. Code Ann. § 2.2-3701. For purposes of electronic meetings, electronic communication means only includes any audio or combined audio and visual communication method. Therefore, e-mail would not be an appropriate medium for conducting a meeting. Va. Code Ann. § 2.2-3708(B); see also *Beck v. Shelton*, 267 Va. 482, 492, 593 S.E.2d 195, 200 (2004) (determining that e-mail communications at issue did not constitute a “meeting” under FOIA).

c. Text messages.

See E-mail section.

d. Instant messaging.

See E-mail section.

e. Social media and online discussion boards.

See E-mail section.

E. Categories of meetings subject to the law.

1. Regular meetings.

a. Definition.

“Regular meeting” is not a defined term. One may infer from Va. Code Ann. § 2.2-3707(D) that a regular meeting is any meeting not a special or emergency meeting.

b. Notice.

(1). Time limit for giving notice.

Every public body shall give notice of the date, time, and location of its meetings. The notice shall be posted at least three working days prior to the meeting. Va. Code Ann. § 2.2-3707(C). See 1991 Va. Op. Atty. Gen. 6 (1991). The public body shall provide notice of all meetings directly to each person requesting notification. Va. Code Ann. § 2.2-3707(E).

Notice of any electronic communication meetings must be given at least three working days in advance of the date scheduled for the meeting. Va. Code Ann. § 2.2-3708(C).

(2). To whom notice is given.

Direct notice need only be given to those citizens who request it. Request to be notified on a continual basis shall be made at least once a year in writing and include the name, address, zip code, daytime telephone number, electronic mail address (if available) and organization of the requester. Va. Code Ann. § 2.2-3707(E).

(3). Where posted.

Notices may be placed in a prominent public location at which notices are regularly posted and in the office of the clerk of the public body, or in the case of a public body which has no clerk, in the office of the Chief Administrator. All state public bodies subject to the provisions of this chapter must also post notice of their meetings on the Internet. Other public bodies are encouraged to publish meeting notices by electronic means. Va. Code Ann. § 2.2-3707(C).

(4). Public agenda items required.

Unless otherwise exempt, at least one copy of all agenda packets shall be made available for inspection by the public at the same time the documents are provided to the members of the public body. Va. Code Ann. § 2.2-3707(F).

(5). Other information required in notice.

In addition to the time, date and place of each meeting, the notice for state bodies where there is at least one member appointed by the Governor shall include whether or not public comment will be received and if so, approximately when those comments will be received. Va. Code Ann. § 2.2-3707(C).

For electronic communication meetings, the notice must include the date, time, place, and purpose for the meeting; identify the locations for the meeting; and include a telephone number that may be used at remote locations to notify the primary or central meeting location of any interruption in the telephonic or video broadcast of the meeting to the remote locations. Va. Code Ann. § 2.2-3708(C).

(6). Penalties and remedies for failure to give adequate notice.

The general FOI penalties apply. *See* Va. Code Ann. § 2.2-3714.

c. Minutes.

Minutes shall be recorded at all public meetings except those of (i) the committees of the General Assembly, (ii) legislative, interim study commissions and committees, (iii) study commissions or commissions appointed by the Governor, and (iv) study commissions, committees, or subcommittees appointed by the governing bodies or school boards except where the membership of any such bodies includes a majority of the governing body of a county, city or town or school board. Minutes, including draft minutes, and all other records of open meetings, including audio or audio/visual records are public records and subject to the provisions of this chapter. Va. Code Ann. § 2.2-3707(I).

All boards, commissions, councils, and other public bodies created in the executive branch of state government and subject to the provisions of this chapter shall post minutes of their meetings on such body's website and to on an electronic calendar maintained by the Virginia Information Technologies Agency. Draft minutes of meetings shall be posted as soon as possible but no later than ten working days after the conclusion of the meeting. Final approved meeting minutes shall be posted within three working days of final approval of the minutes. Va. Code Ann. § 2.2-3707.1.

(1). Information required.

Minutes shall include, but are not limited to, (i) the date, time, and location of the meeting; (ii) the members of the public body recorded as present and absent; and (iii) a summary of the discussion on matters proposed, deliberated or decided, and a record of any votes taken. In addition, for electronic communication meetings conducted in accordance with § 2.2-3708, minutes of state public bodies shall include (a) the identity of the members of the public body at each remote location identified in the notice who participated in the meeting through electronic communications means, (b) the identity of the members of the public body who were physically assembled at the primary or central meeting location, and (c) the identity of the members of the public body who were not present at the locations identified in clauses (a) and (b), but who monitored such meeting through electronic communications means. Va. Code Ann. § 2.2-3707(I).

If the public body chooses to go into a closed session, the minutes of the open meeting shall include a statement which makes specific reference to the relevant exemption and identifies the matters to be discussed. Va. Code Ann. § 2.2-3712(A). If the public body meets in an emergency telephone or video conference, the reason for the meeting must be outlined in the minutes. Va. Code Ann. § 2.2-3708(E).

(2). Are minutes public record?

Minutes of a regular meeting are public records subject to disclosure under the Act. Va. Code Ann. § 2.2-3707(I); 1989 Va. Op. Atty. Gen. 12 (February 21, 1989).

2. Special or emergency meetings.**a. Definition.**

"Special" or "emergency" meetings are not defined in the Act. The nature of the emergency must be stated in the minutes of the emergency meeting. Va. Code Ann. § 2.2-3708(F).

b. Notice requirements.

Notice, reasonable under the circumstances, of special or emergency meetings must be given contemporaneously with the notice provided to members of the public body. Va. Code Ann. § 2.2-3707(D).

c. Minutes.

The nature of the emergency shall be stated in the minutes of an emergency telephonic or videoconference. Va. Code Ann. § 2.2-3708(E).

(1). Information required.

The Act does not impose special minute-taking requirements for special or emergency meetings.

(2). Are minutes a public record?

The minutes are public records subject to disclosure under the Act. Va. Code Ann. § 2.2-3707(I).

3. Closed meetings or executive sessions.**a. Definition.**

During a properly convened public meeting, a public body may vote, pursuant to the proper procedures, to convene in a closed or executive session for the purpose of discussing any one of the enumerated topics. Va. Code Ann. § 2.2-3712(A).

b. Notice requirements.

The notice requirements relevant to regular meetings are applicable given that the public body must be in a properly convened meeting before members may vote to go into closed session. Once the open meeting is convened, the public body must move and vote in accordance with the provisions of Va. Code Ann. § 2.2-3712. Prior notice of closed meetings is not mandated, but the intention to conduct a closed meeting is typically disclosed in meeting agendas distributed in advance of regular meetings. An exception exists to the notice requirement when the public body is holding a closed meeting solely for the purpose of interviewing candidates for the position of chief administrative officer. For such interview, the public body must announce it will be holding closed meetings for that purpose within the next fifteen days. Va. Code Ann. § 2.2-3712(B).

c. Minutes.

Minutes of a closed meeting may be taken, but are not required. Va. Code Ann. § 2.2-3712(H).

(1). Information required.

The Act does not prescribe the items that must be included in the minutes.

(2). Are minutes a public record?

Unlike the minutes of regular and emergency meetings, the minutes of closed meetings are not subject to disclosure. Va. Code Ann. § 2.2-3712(H).

d. Requirement to meet in public before closing meeting.

The motion to go into closed or executive session must be made during a properly convened open meeting. Va. Code Ann. § 2.2-3712.

e. Requirement to state statutory authority for closing meetings before closure.

The Act states that a statement shall be included in the minutes of the open meeting which shall make specific reference to the relevant exemption. Va. Code Ann. § 2.2-3712(A). A general reference shall not be sufficient.

f. Tape recording requirements.

There are no tape recording requirements in the Act.

F. Recording/broadcast of meetings.

The Act provides that any person may photograph, film, record or otherwise reproduce any portion of a meeting required to be open. The public body may adopt rules with respect to the placement and use of such equipment so as to minimize interference. Va. Code Ann. § 2.2-3707(H).

1. Sound recordings allowed.

Any person may record any portion of a meeting required to be open. Va. Code Ann. § 2.2-3707(H).

2. Photographic recordings allowed.

Any person may photograph or film any portion of a meeting required to be open. Va. Code Ann. § 2.2-3707(H).

G. Are there sanctions for noncompliance?

See Va. Code Ann. § § 2.2-3713 & 3714 (addressing enforcement and penalties).

II. EXEMPTIONS AND OTHER LEGAL LIMITATIONS

A. Exemptions in the open meetings statute.

1. Character of exemptions.

a. General or specific.

Specific in Nature: There are forty-five (45) specific exemptions provided for in the Act. Va. Code Ann. § 2.2-3711(A).

Narrowly Construed: All exemptions are to be narrowly construed “in order that no thing which should be public may be hidden from any person.” *Hale v. Washington County Sch. Bd.*, 241 Va. 76, 79, 400 S.E.2d 175, 176 (1991) (quoting Va. Code Ann. § 2.2-3700 (formerly 2.1-340.1)); *Danville v. Laird*, 223 Va. 271, 288 S.E.2d 429 (1982).

b. Mandatory or discretionary closure.

Public bodies are not required to conduct executive or closed sessions. If they so choose, they only may do so pursuant to one or more of the enumerated exemptions. Va. Code Ann. § 2.2-3711.

2. Description of each exemption.

a. Personnel Matters: Discussion of candidates for employment; assignment, performance, salaries, disciplining or resignation of specific public officers; and evaluation of performance of departments or schools of public institutions of higher education discussing the performance or specific individuals, discipline and job performance. Also provides that a teacher, on written request, may be present in closed session where discussion involves the teacher’s disciplining of a student and student is also present. Va. Code Ann. § 2.2-3711(A)(1).

b. Admission and Discipline Matters: Discussion concerning admission or discipline of student(s) of any public institution of higher education or any state school system. Va. Code Ann. § 2.2-3711(A)(2).

c. Real Property: Discussion of the acquisition of real property for public purpose, or of the disposition of publicly held property, where public disclosure would adversely affect the bargaining position of the public body. Va. Code Ann. § 2.2-3711(A)(3).

d. Privacy of Individuals: Protection of the privacy of individuals in personal matters not related to public business. Va. Code Ann. § 2.2-3711(A)(4).

e. Prospective Business or Industry Expansion: Discussions where no previous announcement has been made of the business’ or industry’s interest in locating or expanding in the community. Va. Code Ann. § 2.2-3711(A)(5).

f. Investment of Public Funds: Where competition or bargaining is involved, where, if made public initially, the financial interest of the government would be adversely affected. Va. Code Ann. § 2.2-3711(A)(6).

g. Consultation and Legal Advice: Pertaining to actual or probable litigation or other specific legal matters requiring the provision of legal advice by counsel. Va. Code Ann. § 2.2-3711(A)(7). *See Marsh v. Richmond Newspapers, Inc.*, 223 Va. 245, 288 S.E.2d 415 (1982) (The governing body need not disclose in detail the legal matter or legal issues to be considered.).

h. Discussion of Gifts, Fundraising, and Bequests to State Institutions of Higher Education: Discussion by boards of visitors of public institutions of higher education, of matters relating to gifts, bequests and fundraising activities, and grants or contracts for services or work to be performed by such institution. However, if the gifts, financial contributions, or bequests are made by a foreign government or foreign person, the terms and conditions shall be subject to disclosure upon written request. Va. Code Ann. § 2.2-3711(A)(8).

i. Discussions of Gifts, Bequests, and Grants to Virginia Museum of Fine Arts and the Science Museum: Discussion by boards of trustees relating to specific gifts, bequests, and grants may be exempt from the open meeting provisions. Va. Code Ann. § 2.2-3711(A)(9).

j. Discussions Regarding Honorary Degrees and Special Awards: May be exempt from the open meeting provisions. Va. Code Ann. § 2.2-3711(A)(10).

k. Tests and Examinations: Discussion of tests, examinations or other records excluded pursuant to § 2.2-3705.1. Va. Code Ann. § 2.2-3711(A)(11).

l. Disciplinary Action Against a General Assembly Member: Discussion by appropriate committees of possible disciplinary action arising out of the possible inadequacy of the disclosure statement filed by the member. The member may request in writing that the meeting not be closed. Va. Code Ann. § 2.2-3711(A)(12).

m. Negotiation of Hazardous Waste Siting Agreements: May be exempt from the open meeting provisions if the governing body finds that an open meeting will have a detrimental effect upon the negotiating position of the government body. Va. Code Ann. § 2.2-3711(A)(13).

n. Forecasts or Estimates of General and Non-General Fund Revenues: Discussion by the governor and any economic advisory board reviewing economic forecasts and estimating revenues may be exempt from the open meeting provisions. Va. Code Ann. § 2.2-3711(A)(14).

o. Medical /Mental Records and disciplinary hearings: Discussion of medical and mental records excluded under § 2.2-3705.5. Va. Code Ann. § 2.2-3711(A)(15).

p. State Lottery Proprietary and Investigation Information: May be exempt from the open meeting provisions. In addition, deliberations of the State Lottery Board in a licensing appeal action regarding the denial or revocation of a license of a lottery sales agent may be exempt. Va. Code Ann. § 2.2-3711(A)(16).

q. Anonymous Crime Tips: Given to local government crime commissions under a promise of anonymity may be exempt from the open meeting provisions. Va. Code Ann. § 2.2-3711(A)(17).

r. Crime Tips Provided by Prisoners to Board of Corrections: May be exempt where the disclosure is likely to jeopardize the prisoner’s life or safety. Va. Code Ann. § 2.2-3711(A)(18).

s. Public Safety Plans Related to Terrorism: May be exempt from the open meeting provisions. Va. Code Ann. § 2.2-3711(A)(19).

t. *Proprietary Information Related to the Virginia Retirement System, any local retirement system, the Virginia College Savings Plan or the Rector and Visitors of the University of Virginia*: Discussion regarding the acquisition, holding or disposition of a security or other ownership interest in an entity, where such security or ownership interest is not traded on a governmentally regulated securities exchange, to the extent that such discussion (i) concerns confidential analyses prepared for the Rector and Visitors of the University of Virginia, prepared by the retirement system or Virginia College Savings Plan or provided to the retirement system or Virginia College Savings Plan under a promise of confidentiality, of the future value of such ownership interest or the future financial performance of the entity, and (ii) would have an adverse effect on the value of the investment to be acquired, held or disposed of by the retirement system or the Rector and Visitors of the University of Virginia or that Virginia College Savings Plan. Nothing in this subdivision shall be construed to prevent the disclosure of information relating to the identity of any investment held, the amount invested or the present value of such investment. Va. Code Ann. § 2.2-3711(A)(20).

u. *Discussions of State Child Fatality Review Team Regarding Individual Child Fatalities*: May be exempt from the open meeting provisions. Va. Code Ann. § 2.2-3711(A)(21).

v. *Proprietary and Business-Related Information Related to University of Virginia Medical Center or Eastern Virginia Medical School*: Discussions by University of Virginia Board of Visitors, Eastern Virginia Medical School Board of Visitors, or the management of University of Virginia Medical Center or Eastern Virginia Medical School, which, if disclosed, would be harmful to the competitive position of the Medical Center. Va. Code Ann. § 2.2-3711(A)(22).

w. *Proprietary and Business-Related Information Related to the Virginia Commonwealth University Health System Authority*: Which, if disclosed, would be harmful to the competitive position of the authority; members of its medical and teaching staffs and qualifications for appointments thereto; and qualifications or evaluations of other employees. Va. Code Ann. § 2.2-3711(A)(23).

x. *Health Practitioners' Monitoring Program Committee meetings within the Department of Health Professions*: To the extent such discussions identify any practitioner who may be, or is, impaired pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of Title 54.1. Va. Code Ann. § 2.2-3711(A)(24).

y. *Meetings of the Board of the Virginia College Savings Plan*: Where personal information about individuals requesting information about, or applying for, prepaid tuition contracts or savings trust account agreements is discussed. Va. Code Ann. § 2.2-3711(A)(25).

z. *Discussions of Trade Secrets by the Wireless Carrier E-911 Cost Recovery Subcommittee*: Discussion of trade secrets related to the provision of wireless E-911 service. Va. Code Ann. § 2.2-3711(A)(26).

aa. *Portions of Disciplinary Proceedings*: Any regulatory board within the Department of Professional and Occupational Regulation, Department of Health Professions, or the Board of Accountancy conducting disciplinary proceedings pursuant to § 2.2-4019 or § 2.2-4020 during which the board deliberates to reach a decision or meetings of health regulatory boards or conference committees of such boards to consider settlement proposals in pending disciplinary actions or modifications to previously issued board orders as requested by either of the parties. Va. Code Ann. § 2.2-3711(A)(27).

bb. *Confidential Proprietary Records*: Discussion or consideration by a responsible public entity or an affected local jurisdiction, as those terms are defined in § 56-557, of confidential proprietary records excluded from this chapter pursuant to § 2.2-3705.6. Va. Code Ann. § 2.2-3711(A)(28).

cc. *Bargaining Position or Negotiating Strategy*: Discussion of the award of a public contract involving the expenditure of public funds, including interviews of bidders or offerors, and discussion of the terms

or scope of such contract, where discussion in an open session would adversely affect the bargaining position or negotiating strategy of the public body. Va. Code Ann. § 2.2-3711(A)(29).

dd. *Grant Application Records*: Discussion or consideration by the Commonwealth Health Research Board or the Innovation and Entrepreneurship Investment Authority or a grant allocation committee of grant application records excluded from this chapter pursuant to § 2.2-3705.6(17). Va. Code Ann. § 2.2-3711(A)(30).

ee. *Sexually Violent Predators*: Discussion or consideration by the Commitment Review Committee of records excluded from this chapter under § 2.2-3705.2 relating to individuals subject to commitment as sexually violent predators under Chapter 9 (§ 37.2-900 et seq.) of Title 37.2. Va. Code Ann. § 2.2-3711(A)(31).

ff. *Proprietary Records and Trade Secrets*: Discussion or consideration of confidential proprietary records and trade secrets excluded pursuant to § 2.2-3705.6. Va. Code Ann. § 2.2-3711(A)(33).

gg. *Virginia Wireless Service Authorities Act ("VWSAA")*: Discussion or consideration by a local authority created in accordance with the VWSAA (§ 15.2-5431.1 et seq.) of confidential proprietary records and trade secrets excluded pursuant to § 2.2-3705.6. Va. Code Ann. § 2.2-3711(A)(34).

hh. *Voting Security Matters*: Discussion or consideration by the State Board of Elections or local electoral boards of voting security matters made confidential pursuant to § 24.2-625.1. Va. Code Ann. § 2.2-3711(A)(35).

ii. *Forensic Science Board or Scientific Advisory Committee*: Discussion or consideration by the Forensic Science Board or Scientific Advisory Committee are exempt. Va. Code Ann. § 2.2-3711(A)(36).

jj. *Brown v. Board of Education Scholarship Program Awards Committee*: Discussion or consideration by the committee to deliberate concerning the maximum scholarship award, review and consider applications and requests for scholarship award renewal, and to cancel, rescind, or recover scholarship awards. Va. Code Ann. § 2.2-3711(A)(37).

kk. *Virginia Port Authority*: Discussion or consideration of records excluded from this chapter pursuant to subdivision 1 of § 2.2-3705.6. Va. Code Ann. § 2.2-3711(A)(38).

ll. *Virginia Retirement System Board of Trustees*: Discussion or consideration by the Board of Trustees acting pursuant to § 51.1-124.30 by the Investment Advisory Committee appointed pursuant to § 51.1-124.26 by any local retirement system, acting pursuant to § 51.1-803, by the Board of the Virginia College Savings Plan acting pursuant to § 23-38.80, or by the Virginia College Savings Plan's Investment Advisory Committee appointed pursuant to § 23-38.79:1 of records excluded from this chapter pursuant to subdivision 25 of § 2.2-3705.7. Va. Code Ann. § 2.2-3711(A)(39).

mm. *Certain Trade Secret Information*: Discussion or consideration of certain records regarding trade secrets excluded from the Act pursuant to subdivision 3 of § 2.2-3705.6. Va. Code Ann. § 2.2-3711(A)(40).

nn. *Board of Education Licensure Matters*: Discussion or consideration by the Board of Education of records relating to the denial, suspension, or revocation of teacher licenses excluded from the Act pursuant to subdivision 13 of § 2.2-3705.2. Va. Code Ann. § 2.2-3711(A)(41).

oo. *Military Advisory Councils*: Those portions of meetings of the Virginia Military Advisory Council, the Virginia National Defense Industrial Authority, or a local or regional military affairs organization appointed by a local governing body, during which there is discussion of records excluded from the Act pursuant to subdivision 12 of § 2.2-3705.2. Va. Code Ann. § 2.2-3711(A)(42).

pp. *Veterans Care Center Advisory Council*: Discussion or consideration by the advisory committee for the veterans care centers established by the Commissioner of the Department of Veterans Services of records excluded from the Act pursuant to subdivision 28 of § 2.2-3705.7. Va. Code Ann. § 2.2-3711(A)(43).

qq. *Board of Trustees of the Veterans Services Foundation*: Discussion or consideration by the Board of those records excluded from the Act pursuant to subdivision 23 of § 2.2-3705.6. Va. Code Ann. § 2.2-3711(A)(44).

rr. *Virginia Tobacco Indemnification and Community Revitalization Commission*: Discussion or consideration by the Commission of those records excluded from the Act pursuant to subdivision 23 of § 2.2-3705.6. Va. Code Ann. § 2.2-3711(A)(45).

B. Any other statutory requirements for closed or open meetings.

1. *Discussion must be limited*: The discussion in the closed session shall be restricted to the matters identified in the motion to convene in closed session. Va. Code Ann. § 2.2-3712(C).

2. *Voting in Closed Session*: Is of no consequence, since no action of the public body becomes official until it is acted on in an open meeting. Va. Code Ann. § 2.2-3710 and Va. Code Ann. § 2.2-3712(G). No resolution, ordinance, rule, contract, regulation or motion adopted, passed or agreed to in a closed meeting shall become effective unless the public body, following the meeting, reconvenes in open meeting and takes a vote of the membership on such resolution, ordinance, rule, contract, regulation or motion that shall have its substance reasonably identified in the open meeting. Va. Code Ann. § 2.2-3711(B).

3. *Duty to Reconvene After Closed Session*: At the conclusion of a closed session, the public body must reconvene in open session and shall take a roll call or recorded vote certifying that to the best of each member's knowledge the matters discussed were those exempted from the Act's requirements and were identified previously in the motion to convene in closed session. Va. Code Ann. § 2.2-3712(D).

C. Court mandated opening, closing.

There are none.

III. MEETING CATEGORIES -- OPEN OR CLOSED.

A. Adjudications by administrative bodies.

1. Deliberations closed, but not fact-finding.

An administrative committee of faculty and administration to study and advise is not subject to the Act; but an advisory committee appointed by the Council on Higher Education is. 1975-1976 Va. Op. Atty. Gen. 406 (April 12, 1976).

2. Only certain adjudications closed, i.e. under certain statutes.

Boards of Zoning Appeals Meetings are open. 1985-1986 Va. Op. Atty. Gen. 103 (February 8, 1986).

B. Budget sessions.

Budget sessions are subject to the Act and may not be considered as a whole in executive session. 1973-1974 Va. Op. Atty. Gen. 450 (April 10, 1974).

C. Business and industry relations.

See Va. Code Ann. § 2.2-3711(A)(5)(prospective business or industry expansion).

D. Federal programs.

No specific section relates to subsidized housing.

E. Financial data of public bodies.

See Va. Code Ann. § 2.2-3711(A)(6)(Investment of public funds).

F. Financial data, trade secrets or proprietary data of private corporations and individuals.

Discussions where no previous announcement has been made of the business' or industry's interest in locating in the community or expanding in a community may be closed to the public. Va. Code Ann. § 2.2-3711(A)(5).

G. Gifts, trusts and honorary degrees.

Discussion by boards of visitors of state institutions of higher education, of matters relating to gifts, bequests and fundraising activities, and grants or contracts for services or work to be performed by such institution may be closed. Va. Code Ann. § 2.2-3711(A)(8).

Discussion by boards of trustees when considering matters relating to specific gifts, bequests, and grants may be exempt from the open meeting provisions. Va. Code Ann. § 2.2-3711(A)(9).

Discussion of honorary degrees or special awards may be closed. Va. Code Ann. § 2.2-3711(A)(10).

H. Grand jury testimony by public employees.

Grand juries are not subject to the Act. Va. Code Ann. § 2.2-3703(A)(2).

I. Licensing examinations.

Discussions involving the confidential records of applications for licenses made to the Alcohol Beverage Control Board, the State Lottery Board, the Virginia Racing Commission, or the Charitable Gaming Commission pursuant to Va. Code Ann. § 2.2-3705.3 may be closed. Va. Code Ann. § 2.2-3711(16).

Discussions involving any test or examination used, administered or prepared by any public body for purposes of evaluation of (i) any student or any student's performance (ii) any employee or employment seeker's qualifications or aptitude for employment, retention, or promotion, or (iii) qualifications for any license or certificate issued by any public body may be closed pursuant to Va. Code Ann. § 2.2-3705.1. Va. Code Ann. § 2.2-3711(11).

Discussions involving applications for admission to examinations or for licensure and scoring records maintained by the Department of Health Professions or any board in that department on individual licensees or applicants may be closed. Va. Code Ann. § 2.2-3705.5(2).

J. Litigation; pending litigation or other attorney-client privileges.

Discussions pertaining to actual or probable litigation or other specific legal matters requiring the provision of legal advice by counsel may be closed. Va. Code Ann. § 2.2-3711(A)(7).

A trial preparation conference is not a meeting subject to the Act. 1984-1985 Va. Op. Atty. Gen. 426 (March 8, 1985).

K. Negotiations and collective bargaining of public employees.

A board of supervisors may authorize its employees to meet and bargain with employee groups. Such negotiations are not required to be public. 1974-1975 Va. Op. Atty. Gen. 22 (November 19, 1974). See also Va. Code Ann. § 2.2-3701 (The gathering of employees of a public body shall not be deemed a "meeting" subject to provisions of this chapter.) However, those between public employees and the public body are required to be open. 1974-1975 Va. Op. Atty. Gen. 22 (November 19, 1974).

L. Parole board meetings, or meetings involving parole board decisions.

Not subject to the Act. Va. Code Ann. § 2.2-3703(A)(1).

M. Patients; discussions on individual patients.

Discussions and consideration of medical and mental records containing information concerning identifiable individuals may be closed. Va. Code Ann. § 2.2-3711(A)(15).

N. Personnel matters.

1. Interviews for public employment.

Prospective appointees may meet in closed session, 1985-1986 Va. Op. Atty. Gen. 250 (July 12, 1985), but the appointment must be public. Va. Code Ann. § 2.2-3712(G); see also Va. Code Ann. § 22.1-37

(required notice for appointments to school boards). The notice provisions of the statute are inapplicable when a closed meeting is held solely for the purpose of interviewing a candidate for chief administrative officer. Va. Code Ann. § 2.2-3712(B).

2. Disciplinary matters, performance or ethics of public employees.

Discussions concerning specific individuals are exempt from required disclosure. Va. Code Ann. § 2.2-3711(A)(1).

3. Dismissal; considering dismissal of public employees.

Discussions concerning specific individuals are exempt from required disclosure. Va. Code Ann. § 2.2-3711(A)(1).

O. Real estate negotiations.

Discussion of the acquisition of real property for public purpose, or of the disposition of publicly held property may be closed, where open discussion would adversely affect bargaining position on negotiating strategy of public body. Va. Code Ann. § 2.2-3711(A)(3).

P. Security, national and/or state, of buildings, personnel or other.

Discussion of protection of public from terrorist activity is exempt from the open meeting provisions. Va. Code Ann. § 2.2-3711(A)(19).

Q. Students; discussions on individual students.

Discussion concerning admission or discipline of student(s) of any public institution of higher education or any state school system. Va. Code Ann. § 2.2-3711(A)(2).

IV. PROCEDURE FOR ASSERTING RIGHT OF ACCESS

A. When to challenge.

Promptly challenging the closure of a meeting is recommended. Generally, an effort should be made to address the presiding officer, explain that the body is not complying with the requirements of the Act, and request reconsideration of the motion to close.

1. Does the law provide expedited procedure for reviewing request to attend upcoming meetings?

No.

2. When barred from attending.

The individual may petition the court for a writ of mandamus pursuant to the Act's enforcement provisions. § 2.2-3713.

3. To set aside decision.

The individual may bring a bill of complaint to set aside the public body's decision in accordance with the Act's enforcement provisions. Va. Code Ann. § 2.2-3713. Note, while it appears that if there was a substantial violation of the Act, the Virginia Supreme Court would set the public body's decision aside, they appear to do so reluctantly. They state "[u]nless there is a specific statutory provision for invalidation, courts are generally wary of imposing such a penalty for violation of 'open meeting' or 'right to know' statutes." *Nageotte v. King George County*, 223 Va. 259, 267 n.2, 288 S.E.2d 423, 427 n.2 (1982).

4. For ruling on future meetings.

The individual may petition the court for injunctive relief in accordance with the Act's enforcement provisions. Va. Code Ann. § 2.2-3713. Note that the court will not award injunctive relief where the violations are not willful and substantial. *Nageotte v. King George County*, 223 Va. 259, 269-70 (1982).

B. How to start.

In accordance with the provisions of Va. Code Ann. § 2.2-3713, an aggrieved individual may petition the court for a writ of mandamus or an injunction for alleged violations of the Act.

There are no administrative appeals provided for under the Act.

1. Where to ask for ruling.

a. Administrative forum.

C. Court review of administrative decision.

1. Who may sue?

Any citizen of the Commonwealth, including the Commonwealth's Attorney, who has been denied the rights and privileges under the Act. Va. Code Ann. § 2.2-3713(A).

2. Will the court give priority to the pleading?

Suits to enforce the provisions of the Act must be heard within seven (7) days of filing. However, if the court is not in its regular term, the hearing must be given precedence over all other cases which are not otherwise given precedence. Va. Code Ann. § 2.2-3713(C).

3. Pro se possibility, advisability.

The Act does not require that a natural person be represented by an attorney. In general district court, Va. Code Ann. § 2.2-3713(B) relaxes the general rule of Virginia law that a corporate entity must be represented by an attorney. Generally, assistance of counsel is advisable.

4. What issues will the court address?

Entitlement to Fees: Where it has been proven that the petitioner substantially has prevailed in showing that there has been a violation of the Act, the Court then must determine whether there are special circumstances making an award of attorneys' fees unjust. *Hale v. Washington County Sch. Bd.*, 241 Va. 76, 82, 400 S.E.2d 175, 178 (1991). See also *Redinger v. Casteen*, 36 Va. Cir. 479 (1995) (awarding fees).

Imposition of Penalties: The Court will determine whether there has been a willful violation of the Act. Penalties will not be assessed where there is a technical violation of the Act. *Mannix v. Washington County Board of Supervisors*, 27 Va. Cir. 397 (1992).

a. Open the meeting.

Although mandamus and injunctive relief are available, this remedy often is not available given that closure of a meeting has already taken place.

b. Invalidate the decision.

Not addressed.

c. Order future meetings open.

The Court only will restrain a governing body from closing future meetings where there is evidence that there was a willful and substantial violation, and that the violation will likely occur again. *Nageotte v. King George County*, 223 Va. 259, 269-70, 288 S.E.2d 423, 428 (1982).

5. Pleading format.

Suits for injunctive relief or for a writ of mandamus are equitable remedies, and thus, a suit in equity is appropriate.

6. Time limit for filing suit.

Suit should be filed without unreasonable delay.

7. What court.

Suits brought to enforce the provisions of this Act shall be filed in the general district court or the circuit court of the county or city from which the public body has been elected or appointed and in which the denial of rights occurred. Va. Code Ann. § 2.2-3713(A). Suits against state agencies or standing committees of the General Assembly shall be filed in the general district or circuit court of the residence of the aggrieved party or of the City of Richmond. Va. Code Ann. § 2.2-3713(A).

8. Judicial remedies available.

The primary remedies are a writ of mandamus or an injunction. The former compels compliance with the Act and the latter prohibits noncompliance.

9. Availability of court costs and attorneys' fees.

Costs and fees will be awarded where the petitioner has substantially prevailed and where there are no special circumstances making the award unjust. Va. Code Ann. § 2.2-3713(D).

10. Fines.

If the Court finds that the violation was willfully and knowingly made, it will impose upon the member of the public body, in his individual capacity, a civil penalty not less than \$250.00 and not more than \$1,000.00. The penalty for the second violation shall not be less than \$1,000.00 nor more than \$2,500.00. Va. Code Ann. § 2.2-3714.

11. Other penalties.

None.

D. Appealing initial court decisions.

1. Appeal routes.

If the suit was first brought in General District Court it may be appealed to Circuit Court for a de novo hearing. Appeals from Circuit Court are to the Virginia Supreme Court.

2. Time limits for filing appeals.

Appeals from General District Court to Circuit Court must be taken within ten days of judgment. Va. Code Ann. § 16.1-106. A petition for appeal to the Supreme Court from Circuit Court must be filed within thirty days of final judgment. Va. Supreme Court Rule 5:17.

3. Contact of interested amici.

The Virginia Press Association, P.O. Box C-32015, Richmond, Virginia 23261-2015. Attn: Ginger Stanley, Executive Manager. (804) 798-2053.

Virginia First Amendment Hotline, c/o Christian and Barton, L.L.P., 909 East Main Street, Suite 1200, Richmond, Virginia 23219-3095. Attn: Alexander Wellford or Craig T. Merritt, (804) 697-4100.

The Reporters Committee for Freedom of the Press often files *amicus* briefs in cases involving significant media law issues before a state's highest court.

V. ASSERTING A RIGHT TO COMMENT.

Not addressed.

Statute

Open Records and Meetings

Freedom of Information Act

Va. Code § 2.2-3700 et seq.

§ 2.2-3700. Short title; policy.

A. This chapter may be cited as "The Virginia Freedom of Information Act."

B. By enacting this chapter, the General Assembly ensures the people of the Commonwealth ready access to public records in the custody of a public body or its officers and employees, and free entry to meetings of public bodies wherein the business of the people is being conducted. The affairs of government are not intended to be conducted in an atmosphere of secrecy since at all times the public is to be the beneficiary of any action taken at any level of government. Unless a public body or its officers or employees specifically elect to exercise an exemption provided by this chapter or any other statute, every meeting shall be open to the public and all public records shall be available for inspection and copying upon request. All public records and meetings shall be presumed open, unless an exemption is properly invoked.

The provisions of this chapter shall be liberally construed to promote an increased awareness by all persons of governmental activities and afford every opportunity to citizens to witness the operations of government. Any exemption from public access to records or meetings shall be narrowly construed and no record shall be withheld or meeting closed to the public unless specifically made exempt pursuant to this chapter or other specific provision of law. This chapter shall not be construed to discourage the free discussion by government officials or employees of public matters with the citizens of the Commonwealth.

All public bodies and their officers and employees shall make reasonable efforts to reach an agreement with a requester concerning the production of the records requested.

Any ordinance adopted by a local governing body that conflicts with the provisions of this chapter shall be void.

§ 2.2-3701. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Closed meeting" means a meeting from which the public is excluded.

"Electronic communication" means any audio or combined audio and visual communication method.

"Emergency" means an unforeseen circumstance rendering the notice required by this chapter impossible or impracticable and which circumstance requires immediate action.

it "Meeting" or "meetings" means the meetings including work sessions, when sitting physically, or through telephonic or video equipment pursuant to § 2.2-3708 or 2.2-3708.1, as a body or entity, or as an informal assemblage of (i) as many as three members or (ii) a quorum, if less than three, of the constituent membership, wherever held, with or without minutes being taken, whether or not votes are cast, of any public body. The gathering of employees of a public body shall not be deemed a "meeting" subject to the provisions of this chapter.

"Open meeting" or "public meeting" means a meeting at which the public may be present.

"Public body" means any legislative body, authority, board, bureau, commission, district or agency of the Commonwealth or of any political subdivision of the Commonwealth, including cities, towns and counties, municipal councils, governing bodies of counties, school boards and planning commissions; boards of visitors of public institutions of higher education; and other organizations, corporations or agencies in the Commonwealth supported wholly or principally by public funds. It shall include (i) the Virginia Birth-Related Neurological Injury Compensation Program and its board of directors established pursuant to Chapter 50 (§ 38.2-5000 et seq.) of Title 38.2 and (ii) any committee, subcommittee, or other entity however designated, of the public body created to perform delegated functions of the public body or to advise the public body. It shall not exclude any such committee, subcommittee or entity because it

has private sector or citizen members. Corporations organized by the Virginia Retirement System are “public bodies” for purposes of this chapter.

For the purposes of the provisions of this chapter applicable to access to public records, constitutional officers shall be considered public bodies and, except as otherwise expressly provided by law, shall have the same obligations to disclose public records as other custodians of public records.

“Public records” means all writings and recordings that consist of letters, words or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photography, magnetic impulse, optical or magneto-optical form, mechanical or electronic recording or other form of data compilation, however stored, and regardless of physical form or characteristics, prepared or owned by, or in the possession of a public body or its officers, employees or agents in the transaction of public business.

“Regional public body” means a unit of government organized as provided by law within defined boundaries, as determined by the General Assembly, whose members are appointed by the participating local governing bodies, and such unit includes two or more counties or cities.

“Scholastic records” means those records containing information directly related to a student or an applicant for admission and maintained by a public body that is an educational agency or institution or by a person acting for such agency or institution.

§ 2.2-3702. Notice of chapter.

Any person elected, reelected, appointed or reappointed to any body not excepted from this chapter shall (i) be furnished by the public body’s administrator or legal counsel with a copy of this chapter within two weeks following election, reelection, appointment or reappointment and (ii) read and become familiar with the provisions of this chapter.

§ 2.2-3703. Public bodies and records to which chapter inapplicable; voter registration and election records; access by persons incarcerated in a state, local, or federal correctional facility.

A. The provisions of this chapter shall not apply to:

1. The Virginia Parole Board, except that (i) information from the Virginia Parole Board providing the number of inmates considered by such Board for discretionary parole, the number of inmates granted or denied parole, and the number of parolees returned to the custody of the Department of Corrections solely as a result of a determination by such Board of a violation of parole shall be open to inspection and available for release, on a monthly basis, as provided by § 2.2-3704 and (ii) all records concerning the finances of the Virginia Parole Board shall be public records and subject to the provisions of this chapter. The information required by clause (i) shall be furnished by offense, sex, race, age of the inmate, and the locality in which the conviction was obtained, upon the request of the party seeking the information;

2. Petit juries and grand juries;

3. Family assessment and planning teams established pursuant to § 2.2-5207;

4. The Virginia State Crime Commission; and

5. The records required by law to be maintained by the clerks of the courts of record, as defined in § 1-212, and courts not of record, as defined in § 16.1-69.5. However, other records maintained by the clerks of such courts shall be public records and subject to the provisions of this chapter.

B. Public access to voter registration and election records shall be governed by the provisions of Title 24.2 and this chapter. The provisions of Title 24.2 shall be controlling in the event of any conflict.

C. No provision of this chapter or Chapter 21 (§ 30-178 et seq.) of Title 30 shall be construed to afford any rights to any person (i) incarcerated in a state, local or federal correctional facility, whether or not such facility is (a) located in the Commonwealth or (b) operated pursuant to the Corrections Private Management Act (§ 53.1-261 et seq.) or (ii) civilly committed pursuant to the Sexually Violent Predators Act (§ 37.2-900 et seq.). However, this subsection shall not be construed to prevent such persons from exercising their constitutionally protected rights, including, but not limited to, their right to call for evidence in their favor in a criminal prosecution.

§ 2.2-3704. Public records to be open to inspection; procedure for requesting records and responding to request; charges; transfer of records for storage, etc.

A. Except as otherwise specifically provided by law, all public records shall be open to inspection and copying by any citizens of the Commonwealth during the regular office hours of the custodian of such records. Access to such records shall not be denied to citizens of the Commonwealth, representatives of newspapers and magazines with circulation in the Commonwealth, and representatives of radio and television stations broadcasting in or into the Commonwealth. The custodian may require the requester to provide his name and legal address. The custodian of such records shall take all necessary precautions for their preservation and safekeeping.

B. A request for public records shall identify the requested records with reasonable specificity. The request need not make reference to this chapter in order to invoke the provisions of this chapter or to impose the time limits for response by a public body. Any public body that is subject to this chapter and that is the custodian of the requested records shall promptly, but in all cases within five working days of receiving a request, provide the requested records to the requester or make one of the following responses in writing:

1. The requested records are being entirely withheld because their release is prohibited by law or the custodian has exercised his discretion to withhold the records in accordance with this chapter. Such response shall identify with reasonable particularity the volume and subject matter of withheld records, and cite, as to each category of withheld records, the specific Code section that authorizes the withholding of the records.

2. The requested records are being provided in part and are being withheld in part because the release of part of the records is prohibited by law or the custodian has exercised his discretion to withhold a portion of the records in accordance with this chapter. Such response shall identify with reasonable particularity the subject matter of withheld portions, and cite, as to each category of withheld records, the specific Code section that authorizes the withholding of the records. When a portion of a requested record is withheld, the public body may delete or excise only that portion of the record to which an exemption applies and shall release the remainder of the record.

3. The requested records could not be found or do not exist. However, if the public body that received the request knows that another public body has the requested records, the response shall include contact information for the other public body.

4. It is not practically possible to provide the requested records or to determine whether they are available within the five-work-day period. Such response shall specify the conditions that make a response impossible. If the response is made within five working days, the public body shall have an additional seven work days in which to provide one of the four preceding responses.

C. Any public body may petition the appropriate court for additional time to respond to a request for records when the request is for an extraordinary volume of records or requires an extraordinarily lengthy search, and a response by the public body within the time required by this chapter will prevent the public body from meeting its operational responsibilities. Before proceeding with the petition, however, the public body shall make reasonable efforts to reach an agreement with the requester concerning the production of the records requested.

D. Subject to the provisions of subsection G, no public body shall be required to create a new record if the record does not already exist. However, a public body may abstract or summarize information under such terms and conditions as agreed between the requester and the public body.

E. Failure to respond to a request for records shall be deemed a denial of the request and shall constitute a violation of this chapter.

F. A public body may make reasonable charges not to exceed its actual cost incurred in accessing, duplicating, supplying, or searching for the requested records. No public body shall impose any extraneous, intermediary or surplus fees or expenses to recoup the general costs associated with creating or maintaining records or transacting the general business of the public body. Any duplicating fee charged by a public body shall not exceed the actual cost of duplication. The public body may also make a reasonable charge for the cost incurred in supplying records produced from a geographic information system at the request of anyone other than the owner of the land that is the subject of the request. However, such charges shall not exceed the actual cost to the public body in supplying such records, except that the public body may charge, on a pro rata per acre basis, for the cost of creating topographical maps developed by the public body, for such maps or portions thereof, which encompass a contiguous area greater than 50 acres. All charges for the supplying of requested records shall be estimated in advance at the request of the citizen.

G. Public records maintained by a public body in an electronic data processing system, computer database, or any other structured collection of data shall be made available to a requester at a reasonable cost, not to exceed the actual cost in accordance with subsection F. When electronic or other databases are combined or contain exempt and nonexempt records, the public body may provide access to the exempt records if not otherwise prohibited by law, but shall provide access to the nonexempt records as provided by this chapter.

Public bodies shall produce nonexempt records maintained in an electronic database in any tangible medium identified by the requester, including, where the public body has the capability, the option of posting the records on a website or delivering the records through an electronic mail address provided by the requester, if that medium is used by the public body in the regular course of business. No public body shall be required to produce records from an electronic database in a format not regularly used by the public body. However, the public body shall make reasonable efforts to provide records in any format under such terms and conditions as agreed between the requester and public body, including the payment of reasonable costs. The excision of exempt fields of information from a database or the conversion of data from one available format to another shall not be deemed the creation, preparation or compilation of a new public record.

H. In any case where a public body determines in advance that charges for producing the requested records are likely to exceed \$200, the public body may, before continuing to process the request, require the requester to agree to payment of a deposit not to exceed the amount of the advance determination. The deposit shall be credited toward the final cost of supplying the requested records. The period within which the public body shall respond under this section shall be tolled for the amount of time that elapses between notice of the advance determination and the response of the requester.

I. Before processing a request for records, a public body may require the requester to pay any amounts owed to the public body for previous requests for records that remain unpaid 30 days or more after billing.

J. In the event a public body has transferred possession of public records to any entity, including but not limited to any other public body, for storage, maintenance, or archiving, the public body initiating the transfer of such records shall remain the custodian of such records for purposes of responding to requests for public records made pursuant to this chapter and shall be responsible for retrieving and supplying such public records to the requester. In the event a public body has transferred public records for storage, maintenance, or archiving and such transferring public body is no longer in existence, any public body that is a successor to the transferring public body shall be deemed the custodian of such records. In the event no successor entity exists, the entity in possession of the public records shall be deemed the custodian of the records for purposes of compliance with this chapter, and shall retrieve and supply such records to the requester.

§ 2.2-3704.1. Posting of notice of rights and responsibilities by state public bodies; assistance by the Freedom of Information Advisory Council.

A. All state public bodies created in the executive branch of state government and subject to the provisions of this chapter shall make available the following information to the public upon request and shall post such information on the Internet:

1. A plain English explanation of the rights of a requester under this chapter, the procedures to obtain public records from the public body, and the responsibilities of the public body in complying with this chapter. For purposes of this subdivision "plain English" means written in nontechnical, readily understandable language using words of common everyday usage and avoiding legal terms and phrases or other terms and words of art whose usage or special meaning primarily is limited to a particular field or profession;

2. Contact information for the person designated by the public body to (i) assist a requester in making a request for records or (ii) respond to requests for public records;

3. A general description, summary, list, or index of the types of public records maintained by such state public body;

4. A general description, summary, list, or index of any exemptions in law that permit or require such public records to be withheld from release; and

5. Any policy the public body has concerning the type of public records it routinely withholds from release as permitted by this chapter or other law.

B. The Freedom of Information Advisory Council, created pursuant to § 30-178, shall assist in the development and implementation of the provisions of subsection A, upon request.

§ 2.2-3705.1. Exclusions to application of chapter; exclusions of general application to public bodies.

The following records are excluded from the provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law:

1. Personnel records containing information concerning identifiable individuals, except that access shall not be denied to the person who is the subject thereof. Any person who is the subject of any personnel record and who is 18 years of age or older may waive, in writing, the protections afforded by this subdivision. If the protections are so waived, the public body shall open such records for inspection and copying.

2. Written advice of legal counsel to state, regional or local public bodies or the officers or employees of such public bodies, and any other records protected by the attorney-client privilege.

3. Legal memoranda and other work product compiled specifically for use in litigation or for use in an active administrative investigation concerning a matter that is properly the subject of a closed meeting under § 2.2-3711.

4. Any test or examination used, administered or prepared by any public body for purposes of evaluation of (i) any student or any student's performance, (ii) any employee or employment seeker's qualifications or aptitude for employment, retention, or promotion, or (iii) qualifications for any license or certificate issued by a public body.

As used in this subdivision, "test or examination" shall include (a) any scoring key for any such test or examination and (b) any other document that would jeopardize the security of the test or examination. Nothing contained in this subdivision shall prohibit the release of test scores or results as provided by law, or limit access to individual records as provided by law. However, the subject of such employment tests shall be entitled to review and inspect all records relative to his performance on such employment tests.

When, in the reasonable opinion of such public body, any such test or examination no longer has any potential for future use, and the security of future tests or examinations will not be jeopardized, the test or examination shall be made available to the public. However, minimum competency tests administered to public school children shall be made available to the public contemporaneously with statewide release of the scores of those taking such tests, but in no event shall such tests be made available to the public later than six months after the administration of such tests.

5. Records recorded in or compiled exclusively for use in closed meetings lawfully held pursuant to § 2.2-3711. However, no record that is otherwise open to inspection under this chapter shall be deemed exempt by virtue of the fact that it has been reviewed or discussed in a closed meeting.

6. Vendor proprietary information software that may be in the official records of a public body. For the purpose of this subdivision, "vendor proprietary software" means computer programs acquired from a vendor for purposes of processing data for agencies or political subdivisions of the Commonwealth.

7. Computer software developed by or for a state agency, state-supported institution of higher education or political subdivision of the Commonwealth.

8. Appraisals and cost estimates of real property subject to a proposed purchase, sale or lease, prior to the completion of such purchase, sale or lease.

9. Records concerning reserves established in specific claims administered by the Department of the Treasury through its Division of Risk Management as provided in Article 5 (§ 2.2-1832 et seq.) of Chapter 18 of this title, or by any county, city, or town; and investigative notes, correspondence and information furnished in confidence with respect to an investigation of a claim or a potential claim against a public body's insurance policy or self-insurance plan. However, nothing in this subdivision shall prohibit the disclosure of information taken from inactive reports upon expiration of the period of limitations for the filing of a civil suit.

10. Personal information, as defined in § 2.2-3801, including electronic mail addresses, furnished to a public body for the purpose of receiving electronic mail from the public body, provided that the electronic mail recipient has requested that the public body not disclose such information. However, access shall not be denied to the person who is the subject of the record.

11. Communications and materials required to be kept confidential pursuant to § 2.2-4119 of the Virginia Administrative Dispute Resolution Act (§ 2.2-4115 et seq.).

12. Records relating to the negotiation and award of a specific contract where competition or bargaining is involved and where the release of such records would adversely affect the bargaining position or negotiating strategy of the public body. Such records shall not be withheld after the public body has made a decision to award or not to award the contract. In the case of procurement transactions conducted pursuant to the Virginia Public Procurement Act (§ 2.2-4300 et seq.), the provisions of this subdivision shall not apply, and any release of records relating to such transactions shall be governed by the Virginia Public Procurement Act.

13. Those portions of records that contain account numbers or routing information for any credit card, debit card, or other account with a financial institution of any person or public body. However, access shall not be denied to the person who is the subject of the record. For the purposes of this subdivision, “financial institution” means any organization authorized to do business under state or federal laws relating to financial institutions, including, without limitation, banks and trust companies, savings banks, savings and loan companies or associations, and credit unions.

§ 2.2-3705.2. Exclusions to application of chapter; records relating to public safety.

The following records are excluded from the provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law:

1. Confidential records, including victim identity, provided to or obtained by staff in a rape crisis center or a program for battered spouses.

2. Those portions of engineering and construction drawings and plans submitted for the sole purpose of complying with the Building Code in obtaining a building permit that would identify specific trade secrets or other information, the disclosure of which would be harmful to the competitive position of the owner or lessee. However, such information shall be exempt only until the building is completed. Information relating to the safety or environmental soundness of any building shall not be exempt from disclosure.

Those portions of engineering and construction drawings and plans that reveal critical structural components, security equipment and systems, ventilation systems, fire protection equipment, mandatory building emergency equipment or systems, elevators, electrical systems, telecommunications equipment and systems, and other utility equipment and systems submitted for the purpose of complying with the Uniform Statewide Building Code (§ 36-97 et seq.) or the Statewide Fire Prevention Code (§ 27-94 et seq.), the disclosure of which would jeopardize the safety or security of any public or private commercial office, multifamily residential or retail building or its occupants in the event of terrorism or other threat to public safety, to the extent that the owner or lessee of such property, equipment or system in writing (i) invokes the protections of this paragraph; (ii) identifies the drawings, plans, or other materials to be protected; and (iii) states the reasons why protection is necessary.

Nothing in this subdivision shall prevent the disclosure of information relating to any building in connection with an inquiry into the performance of that building after it has been subjected to fire, explosion, natural disaster or other catastrophic event.

3. Documentation or other information that describes the design, function, operation or access control features of any security system, whether manual or automated, which is used to control access to or use of any automated data processing or telecommunications system.

4. Plans and information to prevent or respond to terrorist activity, the disclosure of which would jeopardize the safety of any person, including (i) critical infrastructure sector or structural components; (ii) vulnerability assessments, operational, procedural, transportation, and tactical planning or training manuals, and staff meeting minutes or other records; and (iii) engineering or architectural records, or records containing information derived from such records, to the extent such records reveal the location or operation of security equipment and systems, elevators, ventilation, fire protection, emergency, electrical, telecommunications or utility equipment and systems of any public building, structure or information storage facility, or telecommunications or utility equipment or systems. The same categories of records of any governmental or nongovernmental person or entity submitted to a public body for the purpose of antiterrorism response planning may be withheld from disclosure if such person or entity in writing (a) invokes the protections of this subdivision, (b) identifies with specificity the records or portions thereof for which protection is sought, and (c) states with reasonable particularity why the protection of such records from public disclosure is necessary to meet the objective of antiterrorism planning or protection. Such statement shall be a public record and shall be disclosed upon request. Nothing in this subdivision shall be construed

to prohibit the disclosure of records relating to the structural or environmental soundness of any building, nor shall it prevent the disclosure of information relating to any building in connection with an inquiry into the performance of that building after it has been subjected to fire, explosion, natural disaster or other catastrophic event.

5. Information that would disclose the security aspects of a system safety program plan adopted pursuant to 49 C.F.R. Part 659 by the Commonwealth’s designated Rail Fixed Guideway Systems Safety Oversight agency; and information in the possession of such agency, the release of which would jeopardize the success of an ongoing investigation of a rail accident or other incident threatening railway safety.

6. Engineering and architectural drawings, operational, procedural, tactical planning or training manuals, or staff meeting minutes or other records, the disclosure of which would reveal surveillance techniques, personnel deployments, alarm or security systems or technologies, or operational and transportation plans or protocols, to the extent such disclosure would jeopardize the security of any governmental facility, building or structure or the safety of persons using such facility, building or structure.

7. Security plans and specific assessment components of school safety audits, as provided in § 22.1-279.8.

Nothing in this subdivision shall be construed to prohibit the disclosure of records relating to the effectiveness of security plans after (i) any school building or property has been subjected to fire, explosion, natural disaster or other catastrophic event, or (ii) any person on school property has suffered or been threatened with any personal injury.

8. [Expired.]

9. Records of the Commitment Review Committee concerning the mental health assessment of an individual subject to commitment as a sexually violent predator under Chapter 9 (§ 37.2-900 et seq.) of Title 37.2; except that in no case shall records identifying the victims of a sexually violent predator be disclosed.

10. Subscriber data, which for the purposes of this subdivision, means the name, address, telephone number, and any other information identifying a subscriber of a telecommunications carrier, provided directly or indirectly by a telecommunications carrier to a public body that operates a 911 or E-911 emergency dispatch system or an emergency notification or reverse 911 system, if the data is in a form not made available by the telecommunications carrier to the public generally. Nothing in this subdivision shall prevent the release of subscriber data generated in connection with specific calls to a 911 emergency system, where the requester is seeking to obtain public records about the use of the system in response to a specific crime, emergency or other event as to which a citizen has initiated a 911 call.

11. Subscriber data, which for the purposes of this subdivision, means the name, address, telephone number, and any other information identifying a subscriber of a telecommunications carrier, collected by a local governing body in accordance with the Enhanced Public Safety Telephone Services Act (§ 56-484.12 et seq.), and other identifying information of a personal, medical, or financial nature provided to a local governing body in connection with a 911 or E-911 emergency dispatch system or an emergency notification or reverse 911 system, if such records are not otherwise publicly available. Nothing in this subdivision shall prevent the release of subscriber data generated in connection with specific calls to a 911 emergency system, where the requester is seeking to obtain public records about the use of the system in response to a specific crime, emergency or other event as to which a citizen has initiated a 911 call.

12. Records of the Virginia Military Advisory Council, the Virginia National Defense Industrial Authority, or a local or regional military affairs organization appointed by a local governing body, to the extent such records (i) contain information relating to strategies under consideration or development by the Council, the Authority, or such organizations to prevent the closure or realignment of federal military installations located in Virginia, to limit the adverse economic effect of such realignment or closure, or to seek additional tenant activity growth from the Department of Defense or (ii) disclose trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), provided to the Council, the Authority, or such organizations in connection with their work. In order to invoke the trade secret protection provided by clause (ii), the submitting entity shall, in writing and at the time of submission (a) invoke this exclusion, (b) identify with specificity the information for which such protection is sought, and (c) state the reason why such protection is necessary. Nothing in this subdivision shall be construed to authorize the withholding of all or part of any record, other than a trade secret that has been specifically identified as required by this subdivision, after the Department of Defense has issued a

final, unappealable decision, or in the event of litigation, a court of competent jurisdiction has entered a final, unappealable order concerning the closure, realignment, or expansion of the military installation or tenant activities for which records are sought.

13. Documentation or other information as determined by the State Comptroller that describes the design, function, operation, or implementation of internal controls over the Commonwealth's financial processes and systems, and the assessment of risks and vulnerabilities of those controls, including the annual assessment of internal controls mandated by the State Comptroller, the disclosure of which would jeopardize the security of the Commonwealth's financial assets. However, records relating to the investigation of and findings concerning the soundness of any fiscal process shall be disclosed in a form that does not compromise internal controls. Nothing in this subdivision shall be construed to prohibit the Auditor of Public Accounts or the Joint Legislative Audit and Review Commission from reporting internal control deficiencies discovered during the course of an audit.

14. Documentation or other information relating to the Statewide Agencies Radio System (STARS) or any other similar local or regional public safety communications system that (i) describes the design, function, programming, operation, or access control features of the overall system, components, structures, individual networks, and subsystems of the STARS or any other similar local or regional communications system or (ii) relates to radio frequencies assigned to or utilized by STARS or any other similar local or regional communications system, code plugs, circuit routing, addressing schemes, talk groups, fleet maps, encryption, programming maintained by or utilized by STARS or any other similar local or regional public safety communications system; those portions of engineering and construction drawings and plans that reveal critical structural components, interconnectivity, security equipment and systems, network monitoring, network operation center, master sites, ventilation systems, fire protection equipment, mandatory building emergency equipment, electrical systems, and other utility equipment and systems related to STARS or any other similar local or regional public safety communications system; and special event plans, operational plans, storm plans, or other pre-arranged programming, the disclosure of which would reveal surveillance techniques, personnel deployments, alarm or security systems or technologies, or operational and transportation plans or protocols, to the extent such disclosure would jeopardize the security of any governmental facility, building, or structure or the safety of any person.

§ 2.2-3705.3. Exclusions to application of chapter; records relating to administrative investigations.

The following records are excluded from the provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law:

1. Confidential records of all investigations of applications for licenses and permits, and of all licensees and permittees, made by or submitted to the Alcoholic Beverage Control Board, the State Lottery Department, the Virginia Racing Commission, the Department of Agriculture and Consumer Services relating to investigations and applications pursuant to Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2, or the Private Security Services Unit of the Department of Criminal Justice Services.

2. Records of active investigations being conducted by the Department of Health Professions or by any health regulatory board in the Commonwealth.

3. Investigator notes, and other correspondence and information, furnished in confidence with respect to an active investigation of individual employment discrimination complaints made to the Department of Human Resource Management or to such personnel of any local public body, including local school boards as are responsible for conducting such investigations in confidence. However, nothing in this section shall prohibit the disclosure of information taken from inactive reports in a form that does not reveal the identity of charging parties, persons supplying the information or other individuals involved in the investigation.

4. Records of active investigations being conducted by the Department of Medical Assistance Services pursuant to Chapter 10 (§ 32.1-323 et seq.) of Title 32.1.

5. Investigative notes and other correspondence and information furnished in confidence with respect to an investigation or conciliation process involving an alleged unlawful discriminatory practice under the Virginia Human Rights Act (§ 2.2-3900 et seq.) or under any local ordinance adopted in accordance with the authority specified in § 2.2-2638, or adopted pursuant to § 15.2-965, or adopted prior to July 1, 1987, in accordance with applicable law, relating to local human rights or human relations commissions. However, nothing in this section shall prohibit the distribution of information taken from inactive re-

ports in a form that does not reveal the identity of the parties involved or other persons supplying information.

6. Records of studies and investigations by the State Lottery Department of (i) lottery agents, (ii) lottery vendors, (iii) lottery crimes under §§ 58.1-4014 through 58.1-4018, (iv) defects in the law or regulations that cause abuses in the administration and operation of the lottery and any evasions of such provisions, or (v) the use of the lottery as a subterfuge for organized crime and illegal gambling where such official records have not been publicly released, published or copyrighted. All studies and investigations referred to under clauses (iii), (iv) and (v) shall be open to inspection and copying upon completion of the study or investigation.

7. Investigative notes, correspondence and information furnished in confidence, and records otherwise exempted by this chapter or any Virginia statute, provided to or produced by or for the (i) Auditor of Public Accounts; (ii) Joint Legislative Audit and Review Commission; (iii) an appropriate authority as defined in § 2.2-3010 with respect to an allegation of wrongdoing or abuse under the Fraud and Abuse Whistle Blower Protection Act (§ 2.2-3009 et seq.); (iv) Department of the State Internal Auditor with respect to an investigation initiated through the State Employee Fraud, Waste and Abuse Hotline; (v) committee or the auditor with respect to an investigation or audit conducted pursuant to § 15.2-825; or (vi) auditors, appointed by the local governing body of any county, city or town or a school board, who by charter, ordinance, or statute have responsibility for conducting an investigation of any officer, department or program of such body. Records of completed investigations shall be disclosed in a form that does not reveal the identity of the complainants or persons supplying information to investigators. Unless disclosure is prohibited by this section, the records disclosed shall include, but not be limited to, the agency involved, the identity of the person who is the subject of the complaint, the nature of the complaint, and the actions taken to resolve the complaint. If an investigation does not lead to corrective action, the identity of the person who is the subject of the complaint may be released only with the consent of the subject person. Local governing bodies shall adopt guidelines to govern the disclosure required by this subdivision.

8. Records of the Virginia Office for Protection and Advocacy consisting of documentary evidence received or maintained by the Office or its agents in connection with specific complaints or investigations, and records of communications between employees and agents of the Office and its clients or prospective clients concerning specific complaints, investigations or cases. Upon the conclusion of an investigation of a complaint, this exclusion shall no longer apply, but the Office may not at any time release the identity of any complainant or person with mental illness, mental retardation, developmental disabilities or other disability, unless (i) such complainant or person or his legal representative consents in writing to such identification or (ii) such identification is required by court order.

9. Information furnished in confidence to the Department of Employment Dispute Resolution with respect to an investigation, consultation, or mediation under Chapter 10 (§ 2.2-1000 et seq.) of this title, and memoranda, correspondence and other records resulting from any such investigation, consultation or mediation. However, nothing in this section shall prohibit the distribution of information taken from inactive reports in a form that does not reveal the identity of the parties involved or other persons supplying information.

10. The names, addresses and telephone numbers of complainants furnished in confidence with respect to an investigation of individual zoning enforcement complaints or complaints relating to the Uniform Statewide Building Code (§ 36-97 et seq.) or the Statewide Fire Prevention Code (§ 27-94 et seq.) made to a local governing body.

11. Records of active investigations being conducted by the Department of Criminal Justice Services pursuant to Article 4 (§ 9.1-138 et seq.), Article 4.1 (§ 9.1-150.1 et seq.), Article 11 (§ 9.1-185 et seq.), and Article 12 (§ 9.1-186 et seq.) of Chapter 1 of Title 9.1.

12. Records furnished to or prepared by the Board of Education pursuant to subsection D of § 22.1-253.13:3 in connection with the review or investigation of any alleged breach in security, unauthorized alteration, or improper administration of tests by local school board employees responsible for the distribution or administration of the tests. However, this section shall not prohibit the disclosure of records to (i) a local school board or division superintendent for the purpose of permitting such board or superintendent to consider or to take personnel action with regard to an employee or (ii) any requester, after the conclusion of a review or investigation, in a form that (a) does not reveal the identity of any person making a complaint or supplying information to the Board on a confidential basis and (b) does not compromise the security of any test mandated by the Board.

13. Investigator notes, and other correspondence and information, furnished in confidence with respect to an active investigation conducted by or for the Board of Education related to the denial, suspension, or revocation of teacher licenses. However, this subdivision shall not prohibit the disclosure of records to a local school board or division superintendent for the purpose of permitting such board or superintendent to consider or to take personnel action with regard to an employee. Records of completed investigations shall be disclosed in a form that does not reveal the identity of any complainant or person supplying information to investigators. The records disclosed shall include information regarding the school or facility involved, the identity of the person who was the subject of the complaint, the nature of the complaint, and the actions taken to resolve the complaint. If an investigation fails to support a complaint or does not lead to corrective action, the identity of the person who was the subject of the complaint may be released only with the consent of the subject person. No personally identifiable information in the records regarding a current or former student shall be released except as permitted by state or federal law.

14. Records, notes and information provided in confidence and related to an investigation by the Attorney General under Article 1 (§ 3.2-4200 et seq.) or Article 3 (§ 3.2-4204 et seq.) of Chapter 42 of Title 3.2, Article 10 (§ 18.2-246.6 et seq.) of Chapter 6 or Chapter 13 (§ 18.2-512 et seq.) of Title 18.2, or Article 1 (§ 58.1-1000) of Chapter 10 of Title 58.1. However, records related to an investigation that has been inactive for more than six months shall, upon request, be disclosed provided such disclosure is not otherwise prohibited by law and does not reveal the identity of charging parties, complainants, persons supplying information, witnesses or other individuals involved in the investigation.

§ 2.2-3705.4. Exclusions to application of chapter; educational records and certain records of educational institutions.

The following records are excluded from the provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law:

1. Scholastic records containing information concerning identifiable individuals, except that such access shall not be denied to the person who is the subject thereof, or the parent or legal guardian of the student. However, no student shall have access to (i) financial records of a parent or guardian or (ii) records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto, that are in the sole possession of the maker thereof and that are not accessible or revealed to any other person except a substitute.

The parent or legal guardian of a student may prohibit, by written request, the release of any individual information regarding that student until the student reaches the age of 18 years. For scholastic records of students under the age of 18 years, the right of access may be asserted only by his legal guardian or parent, including a noncustodial parent, unless such parent's parental rights have been terminated or a court of competent jurisdiction has restricted or denied such access. For scholastic records of students who are emancipated or attending a state-supported institution of higher education, the right of access may be asserted by the student.

Any person who is the subject of any scholastic record and who is 18 years of age or older may waive, in writing, the protections afforded by this subdivision. If the protections are so waived, the public body shall open such records for inspection and copying.

2. Confidential letters and statements of recommendation placed in the records of educational agencies or institutions respecting (i) admission to any educational agency or institution, (ii) an application for employment, or (iii) receipt of an honor or honorary recognition.

3. Records of the Brown v. Board of Education Scholarship Awards Committee relating to personally identifiable information, including scholarship applications, personal financial information, and confidential correspondence and letters of recommendation.

4. Data, records or information of a proprietary nature produced or collected by or for faculty or staff of public institutions of higher education, other than the institutions' financial or administrative records, in the conduct of or as a result of study or research on medical, scientific, technical or scholarly issues, whether sponsored by the institution alone or in conjunction with a governmental body or a private concern, where such data, records or information has not been publicly released, published, copyrighted or patented.

5. All records of the University of Virginia or the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, that contain proprietary, business-related information pertaining to the operations of the University of Virginia Medical Center or Eastern Virginia Medical

School, as the case may be, including business development or marketing strategies and activities with existing or future joint venturers, partners, or other parties with whom the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, has formed, or forms, any arrangement for the delivery of health care, if disclosure of such information would be harmful to the competitive position of the Medical Center or Eastern Virginia Medical School, as the case may be.

6. Personal information, as defined in § 2.2-3801, provided to the Board of the Virginia College Savings Plan or its employees by or on behalf of individuals who have requested information about, applied for, or entered into prepaid tuition contracts or savings trust account agreements pursuant to Chapter 4.9 (§ 23-38.75 et seq.) of Title 23. Nothing in this subdivision shall be construed to prohibit disclosure or publication of information in a statistical or other form that does not identify individuals or provide personal information. Individuals shall be provided access to their own personal information.

7. Records maintained in connection with fundraising activities by or for a public institution of higher education to the extent that such records reveal (i) personal fundraising strategies relating to identifiable donors or prospective donors or (ii) wealth assessments; estate, financial, or tax planning information; health-related information; employment, familial, or marital status information; electronic mail addresses, facsimile or telephone numbers; birth dates or social security numbers of identifiable donors or prospective donors. Nothing in this subdivision, however, shall be construed to authorize the withholding of records relating to the amount, date, purpose, and terms of the pledge or donation, or the identity of the donor unless the donor has requested anonymity in connection with or as a condition of making a pledge or donation. The exclusion provided by this subdivision shall not apply to protect from disclosure (i) the identities of sponsors providing grants to or contracting with the institution for the performance of research services or other work or (ii) the terms and conditions of such grants or contracts.

8. Records of a threat assessment team established by a public institution of higher education pursuant to § 23-9.2:10 relating to the assessment or intervention with a specific individual. However, in the event an individual who has been under assessment commits an act, or is prosecuted for the commission of an act that has caused the death of, or caused serious bodily injury, including any felony sexual assault, to another person, the records of such threat assessment team concerning the individual under assessment shall be made available as provided by this chapter, with the exception of any criminal history records obtained pursuant to § 19.2-389 or 19.2-389.1, health records obtained pursuant to § 32.1-127.1:03, or scholastic records as defined in § 22.1-289. The public body providing such records shall remove information identifying any person who provided information to the threat assessment team under a promise of confidentiality.

§ 2.2-3705.5. Exclusions to application of chapter; health and social services records.

The following records are excluded from the provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law:

1. Health records, except that such records may be personally reviewed by the individual who is the subject of such records, as provided in subsection F of § 32.1-127.1:03.

Where the person who is the subject of health records is confined in a state or local correctional facility, the administrator or chief medical officer of such facility may assert such confined person's right of access to the health records if the administrator or chief medical officer has reasonable cause to believe that such confined person has an infectious disease or other medical condition from which other persons so confined need to be protected. Health records shall only be reviewed and shall not be copied by such administrator or chief medical officer. The information in the health records of a person so confined shall continue to be confidential and shall not be disclosed by the administrator or chief medical officer of the facility to any person except the subject or except as provided by law.

Where the person who is the subject of health records is under the age of 18, his right of access may be asserted only by his guardian or his parent, including a noncustodial parent, unless such parent's parental rights have been terminated, a court of competent jurisdiction has restricted or denied such access, or a parent has been denied access to the health record in accordance with § 20-124.6. In instances where the person who is the subject thereof is an emancipated minor, a student in a public institution of higher education, or is a minor who has consented to his own treatment as authorized by § 16.1-338 or 54.1-2969, the right of access may be asserted by the subject person.

For the purposes of this chapter, statistical summaries of incidents and statistical data concerning patient abuse as may be compiled by the Commissioner of Behavioral Health and Developmental Services shall be open to inspection and copying as provided in § 2.2-3704. No such summaries or data shall include any patient-identifying information.

2. Applications for admission to examinations or for licensure and scoring records maintained by the Department of Health Professions or any board in that department on individual licensees or applicants. However, such material may be made available during normal working hours for copying, at the requester's expense, by the individual who is the subject thereof, in the offices of the Department of Health Professions or in the offices of any health regulatory board, whichever may possess the material.

3. Reports, documentary evidence and other information as specified in §§ 2.2-706 and 63.2-104.

4. Investigative notes; proprietary information not published, copyrighted or patented; information obtained from employee personnel records; personally identifiable information regarding residents, clients or other recipients of services; and other correspondence and information furnished in confidence to the Department of Social Services in connection with an active investigation of an applicant or licensee pursuant to Chapters 17 (§ 63.2-1700 et seq.) and 18 (§ 63.2-1800 et seq.) of Title 63.2. However, nothing in this section shall prohibit disclosure of information from the records of completed investigations in a form that does not reveal the identity of complainants, persons supplying information, or other individuals involved in the investigation.

5. Information and records collected for the designation and verification of trauma centers and other specialty care centers within the Statewide Emergency Medical Services System and Services pursuant to Article 2.1 (§ 32.1-111.1 et seq.) of Chapter 4 of Title 32.1.

6. Reports and court documents relating to involuntary admission required to be kept confidential pursuant to § 37.2-818.

7. Data formerly required to be submitted to the Commissioner of Health relating to the establishment of new or the expansion of existing clinical health services, acquisition of major medical equipment, or certain projects requiring capital expenditures pursuant to former § 32.1-102.3:4.

8. Information required to be provided to the Department of Health Professions by certain licensees pursuant to § 54.1-2506.1.

9. Information and records acquired (i) during a review of any child death conducted by the State Child Fatality Review team established pursuant to § 32.1-283.1 or by a local or regional child fatality review team to the extent made confidential by § 32.1-283.2; (ii) during a review of any death conducted by a family violence fatality review team to the extent made confidential by § 32.1-283.3; or (iii) during a review of any adult death conducted by the Adult Fatality Review Team to the extent made confidential by § 32.1-283.5.

10. Patient level data collected by the Board of Health and not yet processed, verified, and released, pursuant to § 32.1-276.9, to the Board by the nonprofit organization with which the Commissioner of Health has contracted pursuant to § 32.1-276.4.

11. Records of the Health Practitioners' Monitoring Program Committee within the Department of Health Professions, to the extent such records may identify any practitioner who may be, or who is actually, impaired to the extent disclosure is prohibited by § 54.1-2517.

12. Records submitted as a grant application, or accompanying a grant application, to the Commonwealth Neurotrauma Initiative Advisory Board pursuant to Chapter 3.1 (§ 51.5-12.1 et seq.) of Title 51.5, to the extent such records contain (i) medical or mental records, or other data identifying individual patients or (ii) proprietary business or research-related information produced or collected by the applicant in the conduct of or as a result of study or research on medical, rehabilitative, scientific, technical or scholarly issues, when such information has not been publicly released, published, copyrighted or patented, if the disclosure of such information would be harmful to the competitive position of the applicant.

13. Any record copied, recorded or received by the Commissioner of Health in the course of an examination, investigation or review of a managed care health insurance plan licensee pursuant to §§ 32.1-137.4 and 32.1-137.5, including books, records, files, accounts, papers, documents, and any or all computer or other recordings.

14. Records, information and statistical registries required to be kept confidential pursuant to §§ 63.2-102 and 63.2-104.

15. All data, records, and reports relating to the prescribing and dispensing of covered substances to recipients and any abstracts from such data, records, and reports that are in the possession of the Prescription Monitoring Program pursuant to Chapter 25.2 (§ 54.1-2519 et seq.) of Title 54.1 and any material relating to the operation or security of the Program.

16. Records of the Virginia Birth-Related Neurological Injury Compensation Program required to be kept confidential pursuant to § 38.2-5002.2.

17. Records of the State Health Commissioner relating to the health of any person or persons subject to an order of quarantine or an order of isolation pursuant to Article 3.02 (§ 32.1-48.05 et seq.) of Chapter 2 of Title 32.1; this provision shall not, however, be construed to prohibit the disclosure of statistical summaries, abstracts or other information in aggregate form.

18. Records containing the names and addresses or other contact information of persons receiving transportation services from a state or local public body or its designee under Title II of the Americans with Disabilities Act, (42 U.S.C. § 12131 et seq.) or funded by Temporary Assistance for Needy Families (TANF) created under § 63.2-600.

§ 2.2-3705.6. Exclusions to application of chapter; proprietary records and trade secrets.

The following records are excluded from the provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law:

1. Proprietary information gathered by or for the Virginia Port Authority as provided in § 62.1-132.4 or 62.1-134.1.

2. Financial statements not publicly available filed with applications for industrial development financings in accordance with Chapter 49 (§ 15.2-4900 et seq.) of Title 15.2.

3. Confidential proprietary records, voluntarily provided by private business pursuant to a promise of confidentiality from a public body, used by the public body for business, trade and tourism development or retention; and memoranda, working papers or other records related to businesses that are considering locating or expanding in Virginia, prepared by a public body, where competition or bargaining is involved and where, if such records are made public, the financial interest of the public body would be adversely affected.

4. Information that was filed as confidential under the Toxic Substances Information Act (§ 32.1-239 et seq.), as such Act existed prior to July 1, 1992.

5. Fisheries data that would permit identification of any person or vessel, except when required by court order as specified in § 28.2-204.

6. Confidential financial statements, balance sheets, trade secrets, and revenue and cost projections provided to the Department of Rail and Public Transportation, provided such information is exempt under the federal Freedom of Information Act or the federal Interstate Commerce Act or other laws administered by the Surface Transportation Board or the Federal Railroad Administration with respect to data provided in confidence to the Surface Transportation Board and the Federal Railroad Administration.

7. Confidential proprietary records related to inventory and sales, voluntarily provided by private energy suppliers to the Department of Mines, Minerals and Energy, used by that Department for energy contingency planning purposes or for developing consolidated statistical information on energy supplies.

8. Confidential proprietary information furnished to the Board of Medical Assistance Services or the Medicaid Prior Authorization Advisory Committee pursuant to Article 4 (§ 32.1-331.12 et seq.) of Chapter 10 of Title 32.1.

9. Proprietary, commercial or financial information, balance sheets, trade secrets, and revenue and cost projections provided by a private transportation business to the Virginia Department of Transportation and the Department of Rail and Public Transportation for the purpose of conducting transportation studies needed to obtain grants or other financial assistance under the Transportation Equity Act for the 21st Century (P.L. 105-178) for transportation projects, provided such information is exempt under the federal Freedom of Information Act or the federal Interstate Commerce Act or other laws administered by the Surface Transportation Board or the Federal Railroad Administration with respect to data provided in confidence to the Surface Transportation Board and the Federal Railroad Administration. However, the exemption provided by this subdivision shall not apply to any wholly owned subsidiary of a public body.

10. Confidential information designated as provided in subsection F of § 2.2-4342 as trade secrets or proprietary information by any person who has

submitted to a public body an application for prequalification to bid on public construction projects in accordance with subsection B of § 2.2-4317.

11. a. Memoranda, staff evaluations, or other records prepared by the responsible public entity, its staff, outside advisors, or consultants exclusively for the evaluation and negotiation of proposals filed under the Public-Private Transportation Act of 1995 (§ 56-556 et seq.) or the Public-Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.), where (i) if such records were made public prior to or after the execution of an interim or a comprehensive agreement, § 56-573.1:1 or 56-575.17 notwithstanding, the financial interest or bargaining position of the public entity would be adversely affected, and (ii) the basis for the determination required in clause (i) is documented in writing by the responsible public entity; and

b. Records provided by a private entity to a responsible public entity, affected jurisdiction, or affected local jurisdiction pursuant to the provisions of the Public-Private Transportation Act of 1995 or the Public-Private Education Facilities and Infrastructure Act of 2002, to the extent that such records contain (i) trade secrets of the private entity as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.); (ii) financial records of the private entity, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise; or (iii) other information submitted by the private entity, where, if the records were made public prior to the execution of an interim agreement or a comprehensive agreement, the financial interest or bargaining position of the public or private entity would be adversely affected. In order for the records specified in clauses (i), (ii) and (iii) to be excluded from the provisions of this chapter, the private entity shall make a written request to the responsible public entity:

1. Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;

2. Identifying with specificity the data or other materials for which protection is sought; and

3. Stating the reasons why protection is necessary.

The responsible public entity shall determine whether the requested exclusion from disclosure is necessary to protect the trade secrets or financial records of the private entity. To protect other records submitted by the private entity from disclosure, the responsible public entity shall determine whether public disclosure prior to the execution of an interim agreement or a comprehensive agreement would adversely affect the financial interest or bargaining position of the public or private entity. The responsible public entity shall make a written determination of the nature and scope of the protection to be afforded by the responsible public entity under this subdivision. Once a written determination is made by the responsible public entity, the records afforded protection under this subdivision shall continue to be protected from disclosure when in the possession of any affected jurisdiction or affected local jurisdiction.

Except as specifically provided in subdivision 11 a, nothing in this subdivision shall be construed to authorize the withholding of (a) procurement records as required by § 56-573.1:1 or 56-575.17; (b) information concerning the terms and conditions of any interim or comprehensive agreement, service contract, lease, partnership, or any agreement of any kind entered into by the responsible public entity and the private entity; (c) information concerning the terms and conditions of any financing arrangement that involves the use of any public funds; or (d) information concerning the performance of any private entity developing or operating a qualifying transportation facility or a qualifying project.

For the purposes of this subdivision, the terms “affected jurisdiction,” “affected local jurisdiction,” “comprehensive agreement,” “interim agreement,” “qualifying project,” “qualifying transportation facility,” “responsible public entity,” and “private entity” shall mean the same as those terms are defined in the Public-Private Transportation Act of 1995 or in the Public-Private Education Facilities and Infrastructure Act of 2002.

12. Confidential proprietary information or trade secrets, not publicly available, provided by a private person or entity to the Virginia Resources Authority or to a fund administered in connection with financial assistance rendered or to be rendered by the Virginia Resources Authority where, if such information were made public, the financial interest of the private person or entity would be adversely affected, and, after June 30, 1997, where such information was provided pursuant to a promise of confidentiality.

13. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), or confidential proprietary records that are not generally available to the public through regulatory disclosure or otherwise, provided by a (a) bidder or applicant for a franchise or (b) franchisee under Chapter 21 (§ 15.2-2100 et

seq.) of Title 15.2 to the applicable franchising authority pursuant to a promise of confidentiality from the franchising authority, to the extent the records relate to the bidder’s, applicant’s, or franchisee’s financial capacity or provision of new services, adoption of new technologies or implementation of improvements, where such new services, technologies or improvements have not been implemented by the franchisee on a nonexperimental scale in the franchise area, and where, if such records were made public, the competitive advantage or financial interests of the franchisee would be adversely affected.

In order for trade secrets or confidential proprietary information to be excluded from the provisions of this chapter, the bidder, applicant, or franchisee shall (i) invoke such exclusion upon submission of the data or other materials for which protection from disclosure is sought, (ii) identify the data or other materials for which protection is sought, and (iii) state the reason why protection is necessary.

No bidder, applicant, or franchisee may invoke the exclusion provided by this subdivision if the bidder, applicant, or franchisee is owned or controlled by a public body or if any representative of the applicable franchising authority serves on the management board or as an officer of the bidder, applicant, or franchisee.

14. Documents and other information of a proprietary nature furnished by a supplier of charitable gaming supplies to the Department of Agriculture and Consumer Services pursuant to subsection E of § 18.2-340.34.

15. Records and reports related to Virginia apple producer sales provided to the Virginia State Apple Board pursuant to § 3.2-1215.

16. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.) of Title 59.1, submitted by CMRS providers as defined in § 56-484.12 to the Wireless Carrier E-911 Cost Recovery Subcommittee created pursuant to § 56-484.15, relating to the provision of wireless E-911 service.

17. Records submitted as a grant or loan application, or accompanying a grant or loan application, to the Innovation and Entrepreneurship Investment Authority pursuant to Article 3 (§ 2.2-2233.1 et seq.) of Chapter 22 of Title 2.2 or to the Commonwealth Health Research Board pursuant to Chapter 22 (§ 23-277 et seq.) of Title 23 to the extent such records contain proprietary business or research-related information produced or collected by the applicant in the conduct of or as a result of study or research on medical, rehabilitative, scientific, technical, technological, or scholarly issues, when such information has not been publicly released, published, copyrighted, or patented, if the disclosure of such information would be harmful to the competitive position of the applicant.

18. Confidential proprietary records and trade secrets developed and held by a local public body (i) providing telecommunication services pursuant to § 56-265.4:4 and (ii) providing cable television services pursuant to Article 1.1 (§ 15.2-2108.2 et seq.) of Chapter 21 of Title 15.2, to the extent that disclosure of such records would be harmful to the competitive position of the locality. In order for confidential proprietary information or trade secrets to be excluded from the provisions of this chapter, the locality in writing shall (i) invoke the protections of this subdivision, (ii) identify with specificity the records or portions thereof for which protection is sought, and (iii) state the reasons why protection is necessary.

19. Confidential proprietary records and trade secrets developed by or for a local authority created in accordance with the Virginia Wireless Service Authorities Act (§ 15.2-5431.1 et seq.) to provide qualifying communications services as authorized by Article 5.1 (§ 56-484.7:1 et seq.) of Chapter 15 of Title 56, where disclosure of such information would be harmful to the competitive position of the authority, except that records required to be maintained in accordance with § 15.2-2160 shall be released.

20. Trade secrets as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.) or financial records of a business, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise, provided to the Department of Minority Business Enterprise as part of an application for (i) certification as a small, women-owned, or minority-owned business in accordance with Chapter 14 (§ 2.2-1400 et seq.) of this title or (ii) a claim made by a disadvantaged business or an economically disadvantaged individual against the Capital Access Fund for Disadvantaged Businesses created pursuant to § 2.2-2311. In order for such trade secrets or financial records to be excluded from the provisions of this chapter, the business shall (a) invoke such exclusion upon submission of the data or other materials for which protection from disclosure is sought, (b) identify the data or other materials for which protection is sought, and (c) state the reasons why protection is necessary.

21. Documents and other information of a proprietary or confidential nature disclosed by a carrier to the State Health Commissioner pursuant to § 32.1-276.5:1.

22. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), including, but not limited to, financial records, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise, and revenue and cost projections supplied by a private or nongovernmental entity to the Inspector General of the Virginia Department of Transportation for the purpose of an audit, special investigation, or any study requested by the Inspector General's Office in accordance with law.

In order for the records specified in this subdivision to be excluded from the provisions of this chapter, the private or nongovernmental entity shall make a written request to the Department:

1. Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;
2. Identifying with specificity the data or other materials for which protection is sought; and
3. Stating the reasons why protection is necessary.

The Inspector General of the Virginia Department of Transportation shall determine whether the requested exclusion from disclosure is necessary to protect the trade secrets or financial records of the private entity. The Virginia Department of Transportation shall make a written determination of the nature and scope of the protection to be afforded by it under this subdivision.

23. Records submitted as a grant application, or accompanying a grant application, to the Virginia Tobacco Indemnification and Community Revitalization Commission to the extent such records contain (i) trade secrets as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), (ii) financial records of a grant applicant that is not a public body, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise, or (iii) research-related information produced or collected by the applicant in the conduct of or as a result of study or research on medical, rehabilitative, scientific, technical, technological, or scholarly issues, when such information has not been publicly released, published, copyrighted, or patented, if the disclosure of such information would be harmful to the competitive position of the applicant; and memoranda, staff evaluations, or other records prepared by the Commission or its staff exclusively for the evaluation of grant applications. The exclusion provided by this subdivision shall apply to grants that are consistent with the powers of and in furtherance of the performance of the duties of the Commission pursuant to § 3.2-3103.

In order for the records specified in this subdivision to be excluded from the provisions of this chapter, the applicant shall make a written request to the Commission:

1. Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;
2. Identifying with specificity the data, records or other materials for which protection is sought; and
3. Stating the reasons why protection is necessary.

The Commission shall determine whether the requested exclusion from disclosure is necessary to protect the trade secrets, financial records or research-related information of the applicant. The Commission shall make a written determination of the nature and scope of the protection to be afforded by it under this subdivision.

§ 2.2-3705.7. Exclusions to application of chapter; records of specific public bodies and certain other limited exemptions.

The following records are excluded from the provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law:

1. State income, business, and estate tax returns, personal property tax returns, scholastic and confidential records held pursuant to § 58.1-3.
2. Working papers and correspondence of the Office of the Governor; Lieutenant Governor; the Attorney General; the members of the General Assembly, the Division of Legislative Services, or the Clerks of the House of Delegates and the Senate of Virginia; the mayor or chief executive officer of any political subdivision of the Commonwealth; or the president or other chief executive officer of any public institution of higher education in Virginia. However,

no record, which is otherwise open to inspection under this chapter, shall be deemed exempt by virtue of the fact that it has been attached to or incorporated within any working paper or correspondence.

As used in this subdivision:

"Office of the Governor" means the Governor; his chief of staff, counsel, director of policy, Cabinet Secretaries, and the Director of the Virginia Liaison Office; and those individuals to whom the Governor has delegated his authority pursuant to § 2.2-104.

"Working papers" means those records prepared by or for an above-named public official for his personal or deliberative use.

3. Library records that can be used to identify both (i) any library patron who has borrowed material from a library and (ii) the material such patron borrowed.

4. Contract cost estimates prepared for the confidential use of the Department of Transportation in awarding contracts for construction or the purchase of goods or services, and records and automated systems prepared for the Department's Bid Analysis and Monitoring Program.

5. Lists of registered owners of bonds issued by a political subdivision of the Commonwealth, whether the lists are maintained by the political subdivision itself or by a single fiduciary designated by the political subdivision.

6. Records and writings furnished by a member of the General Assembly to a meeting of a standing committee, special committee or subcommittee of his house established solely for the purpose of reviewing members' annual disclosure statements and supporting materials filed under § 30-110 or of formulating advisory opinions to members on standards of conduct, or both.

7. Customer account information of a public utility affiliated with a political subdivision of the Commonwealth, including the customer's name and service address, but excluding the amount of utility service provided and the amount of money paid for such utility service.

8. Personal information, as defined in § 2.2-3801, (i) filed with the Virginia Housing Development Authority concerning individuals who have applied for or received loans or other housing assistance or who have applied for occupancy of or have occupied housing financed, owned or otherwise assisted by the Virginia Housing Development Authority; (ii) concerning persons participating in or persons on the waiting list for federally funded rent-assistance programs; (iii) filed with any local redevelopment and housing authority created pursuant to § 36-4 concerning persons participating in or persons on the waiting list for housing assistance programs funded by local governments or by any such authority; or (iv) filed with any local redevelopment and housing authority created pursuant to § 36-4 or any other local government agency concerning persons who have applied for occupancy or who have occupied affordable dwelling units established pursuant to § 15.2-2304 or 15.2-2305. However, access to one's own information shall not be denied.

9. Records regarding the siting of hazardous waste facilities, except as provided in § 10.1-1441, if disclosure of them would have a detrimental effect upon the negotiating position of a governing body or on the establishment of the terms, conditions and provisions of the siting agreement.

10. Records containing information on the site specific location of rare, threatened, endangered or otherwise imperiled plant and animal species, natural communities, caves, and significant historic and archaeological sites if, in the opinion of the public body that has the responsibility for such information, disclosure of the information would jeopardize the continued existence or the integrity of the resource. This exemption shall not apply to requests from the owner of the land upon which the resource is located.

11. Records, memoranda, working papers, graphics, video or audio tapes, production models, data and information of a proprietary nature produced by or for or collected by or for the State Lottery Department relating to matters of a specific lottery game design, development, production, operation, ticket price, prize structure, manner of selecting the winning ticket, manner of payment of prizes to holders of winning tickets, frequency of drawings or selections of winning tickets, odds of winning, advertising, or marketing, where such official records have not been publicly released, published, copyrighted or patented. Whether released, published or copyrighted, all game-related information shall be subject to public disclosure under this chapter upon the first day of sales for the specific lottery game to which it pertains.

12. Records of the Virginia Retirement System, acting pursuant to § 51.1-124.30, or of a local retirement system, acting pursuant to § 51.1-803, or of the Rector and Visitors of the University of Virginia, acting pursuant to § 23-76.1,

or of the Virginia College Savings Plan, acting pursuant to § 23-38.77, relating to the acquisition, holding or disposition of a security or other ownership interest in an entity, where such security or ownership interest is not traded on a governmentally regulated securities exchange, to the extent that: (i) such records contain confidential analyses prepared for the Rector and Visitors of the University of Virginia, prepared by the retirement system or the Virginia College Savings Plan, or provided to the retirement system or the Virginia College Savings Plan under a promise of confidentiality, of the future value of such ownership interest or the future financial performance of the entity; and (ii) disclosure of such confidential analyses would have an adverse effect on the value of the investment to be acquired, held or disposed of by the retirement system, the Rector and Visitors of the University of Virginia, or the Virginia College Savings Plan. Nothing in this subdivision shall be construed to prevent the disclosure of records relating to the identity of any investment held, the amount invested, or the present value of such investment.

13. Names and addresses of subscribers to Virginia Wildlife magazine, published by the Department of Game and Inland Fisheries, provided the individual subscriber has requested in writing that the Department not release such information.

14. Financial, medical, rehabilitative and other personal information concerning applicants for or recipients of loan funds submitted to or maintained by the Assistive Technology Loan Fund Authority under Chapter 11 (§ 51.5-53 et seq.) of Title 51.5.

15. Records of the Virginia Commonwealth University Health System Authority pertaining to any of the following: an individual's qualifications for or continued membership on its medical or teaching staffs; proprietary information gathered by or in the possession of the Authority from third parties pursuant to a promise of confidentiality; contract cost estimates prepared for confidential use in awarding contracts for construction or the purchase of goods or services; data, records or information of a proprietary nature produced or collected by or for the Authority or members of its medical or teaching staffs; financial statements not publicly available that may be filed with the Authority from third parties; the identity, accounts or account status of any customer of the Authority; consulting or other reports paid for by the Authority to assist the Authority in connection with its strategic planning and goals; the determination of marketing and operational strategies where disclosure of such strategies would be harmful to the competitive position of the Authority; and data, records or information of a proprietary nature produced or collected by or for employees of the Authority, other than the Authority's financial or administrative records, in the conduct of or as a result of study or research on medical, scientific, technical or scholarly issues, whether sponsored by the Authority alone or in conjunction with a governmental body or a private concern, when such data, records or information have not been publicly released, published, copyrighted or patented.

16. Records of the Department of Environmental Quality, the State Water Control Board, State Air Pollution Control Board or the Virginia Waste Management Board relating to (i) active federal environmental enforcement actions that are considered confidential under federal law and (ii) enforcement strategies, including proposed sanctions for enforcement actions. Upon request, such records shall be disclosed after a proposed sanction resulting from the investigation has been proposed to the director of the agency. This subdivision shall not be construed to prohibit the disclosure of records related to inspection reports, notices of violation, and documents detailing the nature of any environmental contamination that may have occurred or similar documents.

17. As it pertains to any person, records related to the operation of toll facilities that identify an individual, vehicle, or travel itinerary including, but not limited to, vehicle identification data, vehicle enforcement system information; video or photographic images; Social Security or other identification numbers appearing on driver's licenses; credit card or bank account data; home addresses; phone numbers; or records of the date or time of toll facility use.

18. Records of the State Lottery Department pertaining to (i) the social security number, tax identification number, state sales tax number, home address and telephone number, personal and lottery banking account and transit numbers of a retailer, and financial information regarding the nonlottery operations of specific retail locations; and (ii) individual lottery winners, except that a winner's name, hometown, and amount won shall be disclosed.

19. Records of the Board for Branch Pilots relating to the chemical or drug testing of a person regulated by the Board, where such person has tested negative or has not been the subject of a disciplinary action by the Board for a positive test result.

20. Records, investigative notes, correspondence, and information pertaining to the planning, scheduling and performance of examinations of holder

records pursuant to the Uniform Disposition of Unclaimed Property Act (§ 55-210.1 et seq.) prepared by or for the State Treasurer, his agents, employees or persons employed to perform an audit or examination of holder records.

21. Records of the Virginia Department of Emergency Management or a local governing body relating to citizen emergency response teams established pursuant to an ordinance of a local governing body, to the extent that such records reveal the name, address, including e-mail address, telephone or pager numbers, or operating schedule of an individual participant in the program.

22. Records of state or local park and recreation departments and local and regional park authorities to the extent such records contain information identifying a person under the age of 18 years, where the parent or legal guardian of such person has requested in writing that such information not be disclosed. However, nothing in this subdivision shall operate to prohibit the disclosure of information defined as directory information under regulations implementing the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, unless the public body has undertaken the parental notification and opt-out requirements provided by such regulations. Access shall not be denied to the parent, including a noncustodial parent, or guardian of such person, unless the parent's parental rights have been terminated or a court of competent jurisdiction has restricted or denied such access. For records of such persons who are emancipated, the right of access may be asserted by the subject thereof.

23. Records submitted for inclusion in the Statewide Alert Network administered by the Department of Emergency Management, to the extent that they reveal names, physical addresses, email addresses, computer or internet protocol information, telephone numbers, pager numbers, other wireless or portable communications device information, or operating schedules of individuals or agencies, where the release of such information would compromise the security of the Statewide Alert Network or individuals participating in the Statewide Alert Network.

24. Records of the Judicial Inquiry and Review Commission made confidential by § 17.1-913.

25. Records of the Virginia Retirement System acting pursuant to § 51.1-124.30, of a local retirement system acting pursuant to § 51.1-803 (hereinafter collectively referred to as the retirement system), or of the Virginia College Savings Plan, acting pursuant to § 23-38.77 relating to:

a. Internal deliberations of or decisions by the retirement system or the Virginia College Savings Plan on the pursuit of particular investment strategies, or the selection or termination of investment managers, prior to the execution of such investment strategies or the selection or termination of such managers, to the extent that disclosure of such records would have an adverse impact on the financial interest of the retirement system or the Virginia College Savings Plan; and

b. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), provided by a private entity to the retirement system or the Virginia College Savings Plan, to the extent disclosure of such records would have an adverse impact on the financial interest of the retirement system or the Virginia College Savings Plan.

For the records specified in subdivision b to be excluded from the provisions of this chapter, the entity shall make a written request to the retirement system or the Virginia College Savings Plan:

(1) Invoking such exclusion prior to or upon submission of the data or other materials for which protection from disclosure is sought;

(2) Identifying with specificity the data or other materials for which protection is sought; and

(3) Stating the reasons why protection is necessary.

The retirement system or the Virginia College Savings Plan shall determine whether the requested exclusion from disclosure meets the requirements set forth in subdivision b.

Nothing in this subdivision shall be construed to authorize the withholding of the identity or amount of any investment held or the present value and performance of all asset classes and subclasses.

26. Records of the Department of Corrections made confidential by § 53.1-233.

27. Records maintained by the Department of the Treasury or participants in the Local Government Investment Pool (§ 2.2-4600 et seq.), to the extent such records relate to information required to be provided by such participants to the Department to establish accounts in accordance with § 2.2-4602.

28. Personal information, as defined in § 2.2-3801, contained in the Veterans Care Center Resident Trust Funds concerning residents or patients of the Department of Veterans Services Care Centers, except that access shall not be denied to the person who is the subject of the record.

29. Records maintained in connection with fundraising activities by the Veterans Services Foundation pursuant to § 2.2-2716 to the extent that such records reveal the address, electronic mail address, facsimile or telephone number, social security number or other identification number appearing on a driver's license, or credit card or bank account data of identifiable donors, except that access shall not be denied to the person who is the subject of the record. Nothing in this subdivision, however, shall be construed to authorize the withholding of records relating to the amount, date, purpose, and terms of the pledge or donation or the identity of the donor. The exclusion provided by this subdivision shall not apply to protect from disclosure (i) the identities of sponsors providing grants to or contracting with the foundation for the performance of services or other work or (ii) the terms and conditions of such grants or contracts.

§ 2.2-3705.8. Limitation on record exclusions.

A. Neither any provision of this chapter nor any provision of Chapter 38 (§ 2.2-3800 et seq.) of this title shall be construed as denying public access to (i) contracts between a public body and its officers or employees, other than contracts settling public employee employment disputes held confidential as personnel records under § 2.2-3705.1; (ii) records of the position, job classification, official salary or rate of pay of, and records of the allowances or reimbursements for expenses paid to any officer, official or employee of a public body; or (iii) the compensation or benefits paid by any corporation organized by the Virginia Retirement System or its officers or employees.

The provisions of this subsection, however, shall not require public access to records of the official salaries or rates of pay of public employees whose annual rate of pay is \$10,000 or less.

B. Nothing in this chapter shall be construed as denying public access to the nonexempt portions of a report of a consultant hired by or at the request of a local public body or the mayor or chief executive or administrative officer of such public body if (i) the contents of such report have been distributed or disclosed to members of the local public body or (ii) the local public body has scheduled any action on a matter that is the subject of the consultant's report.

§ 2.2-3706. Disclosure of criminal records; limitations.

A. As used in this section:

"Criminal incident information" means a general description of the criminal activity reported, the date and general location the alleged crime was committed, the identity of the investigating officer, and a general description of any injuries suffered or property damaged or stolen.

"Criminal investigative file" means any documents and information including complaints, court orders, memoranda, notes, diagrams, maps, photographs, correspondence, reports, witness statements, and evidence relating to a criminal investigation or prosecution, other than criminal incident information.

B. Law-enforcement agencies shall make available upon request criminal incident information relating to felony offenses. However, where the release of criminal incident information is likely to jeopardize an ongoing investigation or prosecution, or the safety of an individual; cause a suspect to flee or evade detection; or result in the destruction of evidence, such information may be withheld until the above-referenced damage is no longer likely to occur from release of the information. Nothing in this subsection shall be construed to prohibit the release of those portions of such information that are not likely to cause the above-referenced damage.

C. Information in the custody of law-enforcement agencies relative to the identity of any individual, other than a juvenile, who is arrested and charged, and the status of the charge or arrest shall be released.

D. The identity of any victim, witness or undercover officer, or investigative techniques or procedures need not but may be disclosed unless disclosure is prohibited or restricted under § 19.2-11.2.

E. The identity of any individual providing information about a crime or criminal activity under a promise of anonymity shall not be disclosed.

F. The following records are excluded from the provisions of this chapter, but may be disclosed by the custodian, in his discretion, except where such disclosure is prohibited by law:

1. Criminal investigative files as defined in subsection A;
2. Adult arrestee photographs when necessary to avoid jeopardizing an in-

vestigation in felony cases until such time as the release of the photograph will no longer jeopardize the investigation;

3. Reports submitted in confidence to (i) state and local law-enforcement agencies, (ii) investigators authorized pursuant to § 53.1-16 or § 66-3.1, and (iii) campus police departments of public institutions of higher education established pursuant to Chapter 17 (§ 23-232 et seq.) of Title 23;

4. Portions of records of local government crime commissions that would identify individuals providing information about crimes or criminal activities under a promise of anonymity;

5. Records of local law-enforcement agencies relating to neighborhood watch programs that include the names, addresses, and operating schedules of individual participants in the program that are provided to such agencies under a promise of anonymity;

6. All records of persons imprisoned in penal institutions in the Commonwealth provided such records relate to the imprisonment;

7. Records of law-enforcement agencies, to the extent that such records contain specific tactical plans, the disclosure of which would jeopardize the safety or security of law-enforcement personnel or the general public;

8. All records of adult persons under (i) investigation or supervision by a local pretrial services agency in accordance with Article 5 (§ 19.2-152.2 et seq.) of Chapter 9 of Title 19.2; (ii) investigation, probation supervision or monitoring by a local community-based probation services agency in accordance with Article 9 (§ 9.1-173 et seq.) of Chapter 1 of Title 9.1; or (iii) investigation or supervision by state probation and parole services in accordance with Article 2 (§ 53.1-141 et seq.) of Chapter 4 of Title 53.1;

9. Records of a law-enforcement agency to the extent that they disclose the telephone numbers for cellular telephones, pagers, or comparable portable communication devices provided to its personnel for use in the performance of their official duties;

10. Those portions of any records containing information related to undercover operations or protective details that would reveal the staffing, logistics, or tactical plans of such undercover operations or protective details. Nothing in this subdivision shall operate to allow the withholding of information concerning the overall costs or expenses associated with undercover operations or protective details; and

11. Records of (i) background investigations of applicants for law-enforcement agency employment, (ii) administrative investigations relating to allegations of wrongdoing by employees of a law-enforcement agency, and (iii) other administrative investigations conducted by law-enforcement agencies that are made confidential by law.

G. Records kept by law-enforcement agencies as required by § 15.2-1722 shall be subject to the provisions of this chapter except that those portions of noncriminal incident or other investigative reports or materials that contain identifying information of a personal, medical or financial nature may be withheld where the release of such information would jeopardize the safety or privacy of any person.

H. Records of the Sex Offender and Crimes Against Minors Registry maintained by the Department of State Police pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1 are excluded from the provisions of this chapter, including information obtained from state, local and regional officials, except to the extent that information is required to be posted on the Internet pursuant to § 9.1-913.

I. In the event of conflict between this section as it relates to requests made under this section and other provisions of law, this section shall control.

§ 2.2-3707. Meetings to be public; notice of meetings; recordings; minutes.

A. All meetings of public bodies shall be open, except as provided in §§ 2.2-3707.01 and 2.2-3711.

B. No meeting shall be conducted through telephonic, video, electronic or other communication means where the members are not physically assembled to discuss or transact public business, except as provided in § 2.2-3708, 2.2-3708.1 or as may be specifically provided in Title 54.1 for the summary suspension of professional licenses.

C. Every public body shall give notice of the date, time, and location of its meetings by placing the notice in a prominent public location at which notices are regularly posted and in the office of the clerk of the public body, or in the case of a public body that has no clerk, in the office of the chief administrator. All state public bodies subject to the provisions of this chapter shall also post

notice of their meetings on their websites and on the electronic calendar maintained by the Virginia Information Technologies Agency commonly known as the Commonwealth Calendar. Publication of meeting notices by electronic means by other public bodies shall be encouraged. The notice shall be posted at least three working days prior to the meeting. Notices for meetings of state public bodies on which there is at least one member appointed by the Governor shall state whether or not public comment will be received at the meeting and, if so, the approximate point during the meeting when public comment will be received.

D. Notice, reasonable under the circumstance, of special or emergency meetings shall be given contemporaneously with the notice provided members of the public body conducting the meeting.

E. Any person may annually file a written request for notification with a public body. The request shall include the requester's name, address, zip code, daytime telephone number, electronic mail address, if available, and organization, if any. The public body receiving such request shall provide notice of all meetings directly to each such person. Without objection by the person, the public body may provide electronic notice of all meetings in response to such requests.

F. At least one copy of all agenda packets and, unless exempt, all materials furnished to members of a public body for a meeting shall be made available for public inspection at the same time such documents are furnished to the members of the public body.

G. Nothing in this chapter shall be construed to prohibit the gathering or attendance of two or more members of a public body (i) at any place or function where no part of the purpose of such gathering or attendance is the discussion or transaction of any public business, and such gathering or attendance was not called or prearranged with any purpose of discussing or transacting any business of the public body or (ii) at a public forum, candidate appearance, or debate, the purpose of which is to inform the electorate and not to transact public business or to hold discussions relating to the transaction of public business, even though the performance of the members individually or collectively in the conduct of public business may be a topic of discussion or debate at such public meeting. The notice provisions of this chapter shall not apply to informal meetings or gatherings of the members of the General Assembly.

H. Any person may photograph, film, record or otherwise reproduce any portion of a meeting required to be open. The public body conducting the meeting may adopt rules governing the placement and use of equipment necessary for broadcasting, photographing, filming or recording a meeting to prevent interference with the proceedings, but shall not prohibit or otherwise prevent any person from photographing, filming, recording, or otherwise reproducing any portion of a meeting required to be open. No public body shall conduct a meeting required to be open in any building or facility where such recording devices are prohibited.

I. Minutes shall be recorded at all open meetings. However, minutes shall not be required to be taken at deliberations of (i) standing and other committees of the General Assembly; (ii) legislative interim study commissions and committees, including the Virginia Code Commission; (iii) study committees or commissions appointed by the Governor; or (iv) study commissions or study committees, or any other committees or subcommittees appointed by the governing bodies or school boards of counties, cities and towns, except where the membership of any such commission, committee or subcommittee includes a majority of the governing body of the county, city or town or school board.

Minutes, including draft minutes, and all other records of open meetings, including audio or audio/visual records shall be deemed public records and subject to the provisions of this chapter.

Minutes shall be in writing and shall include (i) the date, time, and location of the meeting; (ii) the members of the public body recorded as present and absent; and (iii) a summary of the discussion on matters proposed, deliberated or decided, and a record of any votes taken. In addition, for electronic communication meetings conducted in accordance with § 2.2-3708, minutes of state public bodies shall include (a) the identity of the members of the public body at each remote location identified in the notice who participated in the meeting through electronic communications means, (b) the identity of the members of the public body who were physically assembled at the primary or central meeting location, and (c) the identity of the members of the public body who were not present at the locations identified in clauses (a) and (b), but who monitored such meeting through electronic communications means.

2.2-3707.01. Meetings of the General Assembly.

A. Except as provided in subsection B, public access to any meeting of the General Assembly or a portion thereof shall be governed by rules established by the Joint Rules Committee and approved by a majority vote of each house

at the next regular session of the General Assembly. At least 60 days before the adoption of such rules, the Joint Rules Committee shall (i) hold regional public hearings on such proposed rules and (ii) provide a copy of such proposed rules to the Virginia Freedom of Information Advisory Council.

B. Floor sessions of either house of the General Assembly; meetings, including work sessions, of any standing or interim study committee of the General Assembly; meetings, including work sessions, of any subcommittee of such standing or interim study committee; and joint committees of conference of the General Assembly; or a quorum of any such committees or subcommittees, shall be open and governed by this chapter.

C. Meetings of the respective political party caucuses of either house of the General Assembly, including meetings conducted by telephonic or other electronic communication means, without regard to (i) whether the General Assembly is in or out of regular or special session or (ii) whether such caucuses invite staff or guests to participate in their deliberations, shall not be deemed meetings for the purposes of this chapter.

D. No regular, special, or reconvened session of the General Assembly held pursuant to Article IV, Section 6 of the Constitution of Virginia shall be conducted using electronic communication means pursuant § 2.2-3708.

§ 2.2-3707.1. Posting of minutes for state boards and commissions.

All boards, commissions, councils, and other public bodies created in the executive branch of state government and subject to the provisions of this chapter shall post minutes of their meetings on such body's website, if any, and on the electronic calendar maintained by the Virginia Information Technologies Agency commonly known as the Commonwealth Calendar. Draft minutes of meetings shall be posted as soon as possible but no later than ten working days after the conclusion of the meeting. Final approved meeting minutes shall be posted within three working days of final approval of the minutes.

§ 2.2-3708. Electronic communication meetings; applicability; physical quorum required; notice; report.

A. Except as expressly provided in subsection G of this section or § 2.2-3708.1, no local governing body, school board, or any authority, board, bureau, commission, district or agency of local government, any committee thereof, or any entity created by a local governing body, school board, or any local authority, board, or commission shall conduct a meeting wherein the public business is discussed or transacted through telephonic, video, electronic or other communication means where the members are not physically assembled. Nothing in this section shall be construed to prohibit the use of interactive audio or video means to expand public participation.

B. Except as provided in subsection D of § 2.2-3707.01, state public bodies may conduct any meeting wherein the public business is discussed or transacted through electronic communication means, provided (i) a quorum of the public body is physically assembled at one primary or central meeting location, (ii) notice of the meeting has been given in accordance with subsection C, and (iii) the remote locations, from which additional members of the public body participate through electronic communication means, are open to the public. All persons attending the meeting at any of the meeting locations shall be afforded the same opportunity to address the public body as persons attending the primary or central location. State public bodies, however, may meet by electronic communication means without a quorum of the public body physically assembled at one location when (a) the Governor has declared a state of emergency in accordance with § 44-146.17, (b) the meeting is necessary to take action to address the emergency, and (c) the public body otherwise complies with the provisions of this section.

If an authorized public body holds an electronic meeting pursuant to this section, it shall also hold at least one meeting annually where members in attendance at the meeting are physically assembled at one location and where no members participate by electronic communication means.

C. Notice of any meetings held pursuant to this section shall be provided at least three working days in advance of the date scheduled for the meeting. The notice shall include the date, time, place, and purpose for the meeting; shall identify the locations for the meeting; and shall include a telephone number that may be used at remote locations to notify the primary or central meeting location of any interruption in the telephonic or video broadcast of the meeting to the remote locations. Any interruption in the telephonic or video broadcast of the meeting shall result in the suspension of action at the meeting until repairs are made and public access restored.

D. Agenda packets and, unless exempt, all materials that will be distributed to members of the public body and that have been made available to the staff of the public body in sufficient time for duplication and forwarding to all loca-

tions where public access will be provided shall be made available to the public at the time of the meeting. Minutes of all meetings held by electronic communication means shall be recorded as required by § 2.2-3707. Votes taken during any meeting conducted through electronic communication means shall be recorded by name in roll-call fashion and included in the minutes.

E. Three working days' notice shall not be required for meetings authorized under this section held in accordance with subsection G or that are continued to address an emergency or to conclude the agenda of the meeting for which proper notice has been given, when the date, time, place, and purpose of the continued meeting are set during the meeting prior to adjournment. Public bodies conducting emergency meetings through electronic communication means shall comply with the provisions of subsection D requiring minutes of the meeting. The nature of the emergency shall be stated in the minutes.

F. Any authorized public body that meets by electronic communication means shall make a written report of the following to the Virginia Freedom of Information Advisory Council and the Joint Commission on Technology and Science by December 15 of each year:

1. The total number of electronic communication meetings held that year;
2. The dates and purposes of the meetings;
3. The number of sites for each meeting;
4. The types of electronic communication means by which the meetings were held;
5. The number of participants, including members of the public, at each meeting location;
6. The identity of the members of the public body recorded as absent and those recorded as present at each meeting location;
7. A summary of any public comment received about the electronic communication meetings; and
8. A written summary of the public body's experience using electronic communication meetings, including its logistical and technical experience.

G. Any local governing body, school board, or any authority, board, bureau, commission, district, or agency of local government may meet by electronic communication means without a quorum of the public body physically assembled at one location when the Governor has declared a state of emergency in accordance with § 44-146.17, provided (i) the catastrophic nature of the declared emergency makes it impracticable or unsafe to assemble a quorum in a single location and (ii) the purpose of the meeting is to address the emergency. The local public body convening a meeting in accordance with this subsection shall (a) give public notice using the best available method given the nature of the emergency, which notice shall be given contemporaneously with the notice provided members of the local public body conducting the meeting; (b) make arrangements for public access to such meeting; and (c) otherwise comply with the provisions of this section. The nature of the emergency and the fact that the meeting was held by electronic communication means shall be stated in the minutes.

§ 2.2-3708.1. Participation in meetings in event of emergency; certain disabilities; distance from meeting location for certain public bodies.

A. A member of a public body may participate in a meeting governed by this chapter through electronic communication means from a remote location that is not open to the public only as follows and subject to the requirements of subsection B:

1. If, on the day of a meeting, a member of the public body holding the meeting notifies the chair of the public body that such member is unable to attend the meeting due to an emergency and identifies with specificity the nature of the emergency, and the public body holding the meeting (a) approves such member's participation by a majority vote of the members present and (b) records in its minutes the specific nature of the emergency and the remote location from which the member participated.

Such participation by the member shall be limited each calendar year to two meetings or 25 percent of the meetings of the public body, whichever is fewer;

2. If a member of a public body notifies the chair of the public body that such member is unable to attend a meeting due to a temporary or permanent disability or other medical condition that prevents the member's physical attendance and the public body records this fact and the remote location from which the member participated in its minutes; or

3. If, on the day of a meeting, a member of a regional public body notifies the chair of the public body that such member's principal residence is more than 60 miles from the meeting location identified in the required notice for

such meeting and the public body holding the meeting (a) approves such member's participation by a majority vote of the members present and (b) records in its minutes the remote location from which the member participated.

B. Participation by a member of a public body as authorized under subsection A shall be only under the following conditions:

1. A quorum of the public body is physically assembled at the primary or central meeting location; and

2. The public body makes arrangements for the voice of the remote participant to be heard by all persons at the primary or central meeting location.

§ 2.2-3710. Transaction of public business other than by votes at meetings prohibited.

A. Unless otherwise specifically provided by law, no vote of any kind of the membership, or any part thereof, of any public body shall be taken to authorize the transaction of any public business, other than a vote taken at a meeting conducted in accordance with the provisions of this chapter. No public body shall vote by secret or written ballot, and unless expressly provided by this chapter, no public body shall vote by telephone or other electronic communication means.

B. Notwithstanding the foregoing, nothing contained herein shall be construed to prohibit (i) separately contacting the membership, or any part thereof, of any public body for the purpose of ascertaining a member's position with respect to the transaction of public business, whether such contact is done in person, by telephone or by electronic communication, provided the contact is done on a basis that does not constitute a meeting as defined in this chapter or (ii) the House of Delegates or the Senate of Virginia from adopting rules relating to the casting of votes by members of standing committees. Nothing in this subsection shall operate to exclude any public record from the provisions of this chapter.

§ 2.2-3711. Closed meetings authorized for certain limited purposes.

A. Public bodies may hold closed meetings only for the following purposes:

1. Discussion, consideration, or interviews of prospective candidates for employment; assignment, appointment, promotion, performance, demotion, salaries, disciplining, or resignation of specific public officers, appointees, or employees of any public body; and evaluation of performance of departments or schools of public institutions of higher education where such evaluation will necessarily involve discussion of the performance of specific individuals. Any teacher shall be permitted to be present during a closed meeting in which there is a discussion or consideration of a disciplinary matter that involves the teacher and some student and the student involved in the matter is present, provided the teacher makes a written request to be present to the presiding officer of the appropriate board.

2. Discussion or consideration of admission or disciplinary matters or any other matters that would involve the disclosure of information contained in a scholastic record concerning any student of any Virginia public institution of higher education or any state school system. However, any such student, legal counsel and, if the student is a minor, the student's parents or legal guardians shall be permitted to be present during the taking of testimony or presentation of evidence at a closed meeting, if such student, parents, or guardians so request in writing and such request is submitted to the presiding officer of the appropriate board.

3. Discussion or consideration of the acquisition of real property for a public purpose, or of the disposition of publicly held real property, where discussion in an open meeting would adversely affect the bargaining position or negotiating strategy of the public body.

4. The protection of the privacy of individuals in personal matters not related to public business.

5. Discussion concerning a prospective business or industry or the expansion of an existing business or industry where no previous announcement has been made of the business' or industry's interest in locating or expanding its facilities in the community.

6. Discussion or consideration of the investment of public funds where competition or bargaining is involved, where, if made public initially, the financial interest of the governmental unit would be adversely affected.

7. Consultation with legal counsel and briefings by staff members or consultants pertaining to actual or probable litigation, where such consultation or briefing in open meeting would adversely affect the negotiating or litigating posture of the public body; and consultation with legal counsel employed or

retained by a public body regarding specific legal matters requiring the provision of legal advice by such counsel. For the purposes of this subdivision, “probable litigation” means litigation that has been specifically threatened or on which the public body or its legal counsel has a reasonable basis to believe will be commenced by or against a known party. Nothing in this subdivision shall be construed to permit the closure of a meeting merely because an attorney representing the public body is in attendance or is consulted on a matter.

8. In the case of boards of visitors of public institutions of higher education, discussion or consideration of matters relating to gifts, bequests and fund-raising activities, and grants and contracts for services or work to be performed by such institution. However, the terms and conditions of any such gifts, bequests, grants, and contracts made by a foreign government, a foreign legal entity, or a foreign person and accepted by a public institution of higher education in Virginia shall be subject to public disclosure upon written request to the appropriate board of visitors. For the purpose of this subdivision, (i) “foreign government” means any government other than the United States government or the government of a state or a political subdivision thereof; (ii) “foreign legal entity” means any legal entity created under the laws of the United States or of any state thereof if a majority of the ownership of the stock of such legal entity is owned by foreign governments or foreign persons or if a majority of the membership of any such entity is composed of foreign persons or foreign legal entities, or any legal entity created under the laws of a foreign government; and (iii) “foreign person” means any individual who is not a citizen or national of the United States or a trust territory or protectorate thereof.

9. In the case of the boards of trustees of the Virginia Museum of Fine Arts, the Virginia Museum of Natural History, and The Science Museum of Virginia, discussion or consideration of matters relating to specific gifts, bequests, and grants.

10. Discussion or consideration of honorary degrees or special awards.

11. Discussion or consideration of tests, examinations, or other records excluded from this chapter pursuant to subdivision 4 of § 2.2-3705.1.

12. Discussion, consideration, or review by the appropriate House or Senate committees of possible disciplinary action against a member arising out of the possible inadequacy of the disclosure statement filed by the member, provided the member may request in writing that the committee meeting not be conducted in a closed meeting.

13. Discussion of strategy with respect to the negotiation of a hazardous waste siting agreement or to consider the terms, conditions, and provisions of a hazardous waste siting agreement if the governing body in open meeting finds that an open meeting will have an adverse effect upon the negotiating position of the governing body or the establishment of the terms, conditions and provisions of the siting agreement, or both. All discussions with the applicant or its representatives may be conducted in a closed meeting.

14. Discussion by the Governor and any economic advisory board reviewing forecasts of economic activity and estimating general and nongeneral fund revenues.

15. Discussion or consideration of medical and mental records excluded from this chapter pursuant to subdivision 1 of § 2.2-3705.5.

16. Deliberations of the State Lottery Board in a licensing appeal action conducted pursuant to subsection D of § 58.1-4007 regarding the denial or revocation of a license of a lottery sales agent; and discussion, consideration or review of State Lottery Department matters related to proprietary lottery game information and studies or investigations exempted from disclosure under subdivision 6 of § 2.2-3705.3 and subdivision 11 of § 2.2-3705.7.

17. Those portions of meetings by local government crime commissions where the identity of, or information tending to identify, individuals providing information about crimes or criminal activities under a promise of anonymity is discussed or disclosed.

18. Those portions of meetings in which the Board of Corrections discusses or discloses the identity of, or information tending to identify, any prisoner who (i) provides information about crimes or criminal activities, (ii) renders assistance in preventing the escape of another prisoner or in the apprehension of an escaped prisoner, or (iii) voluntarily or at the instance of a prison official renders other extraordinary services, the disclosure of which is likely to jeopardize the prisoner’s life or safety.

19. Discussion of plans to protect public safety as it relates to terrorist activity and briefings by staff members, legal counsel, or law-enforcement or emergency service officials concerning actions taken to respond to such activity or a related threat to public safety; or discussion of reports or plans related to

the security of any governmental facility, building or structure, or the safety of persons using such facility, building or structure.

20. Discussion by the Board of the Virginia Retirement System, acting pursuant to § 51.1-124.30, or of any local retirement system, acting pursuant to § 51.1-803, or of the Rector and Visitors of the University of Virginia, acting pursuant to § 23-76.1, or by the Board of the Virginia College Savings Plan, acting pursuant to § 23-38.80, regarding the acquisition, holding or disposition of a security or other ownership interest in an entity, where such security or ownership interest is not traded on a governmentally regulated securities exchange, to the extent that such discussion (i) concerns confidential analyses prepared for the Rector and Visitors of the University of Virginia, prepared by the retirement system or by the Virginia College Savings Plan or provided to the retirement system or the Virginia College Savings Plan under a promise of confidentiality, of the future value of such ownership interest or the future financial performance of the entity, and (ii) would have an adverse effect on the value of the investment to be acquired, held or disposed of by the retirement system, the Rector and Visitors of the University of Virginia, or the Virginia College Savings Plan. Nothing in this subdivision shall be construed to prevent the disclosure of information relating to the identity of any investment held, the amount invested or the present value of such investment.

21. Those portions of meetings in which individual child death cases are discussed by the State Child Fatality Review team established pursuant to § 32.1-283.1, and those portions of meetings in which individual child death cases are discussed by a regional or local child fatality review team established pursuant to § 32.1-283.2, and those portions of meetings in which individual death cases are discussed by family violence fatality review teams established pursuant to § 32.1-283.3.

22. Those portions of meetings of the University of Virginia Board of Visitors or the Eastern Virginia Medical School Board of Visitors, as the case may be, and those portions of meetings of any persons to whom management responsibilities for the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, have been delegated, in which there is discussed proprietary, business-related information pertaining to the operations of the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, including business development or marketing strategies and activities with existing or future joint venturers, partners, or other parties with whom the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, has formed, or forms, any arrangement for the delivery of health care, if disclosure of such information would adversely affect the competitive position of the Medical Center or Eastern Virginia Medical School, as the case may be.

23. In the case of the Virginia Commonwealth University Health System Authority, discussion or consideration of any of the following: the acquisition or disposition of real or personal property where disclosure would adversely affect the bargaining position or negotiating strategy of the Authority; operational plans that could affect the value of such property, real or personal, owned or desirable for ownership by the Authority; matters relating to gifts, bequests and fund-raising activities; grants and contracts for services or work to be performed by the Authority; marketing or operational strategies where disclosure of such strategies would adversely affect the competitive position of the Authority; members of its medical and teaching staffs and qualifications for appointments thereto; and qualifications or evaluations of other employees.

24. Those portions of the meetings of the Health Practitioners’ Monitoring Program Committee within the Department of Health Professions to the extent such discussions identify any practitioner who may be, or who actually is, impaired pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of Title 54.1.

25. Meetings or portions of meetings of the Board of the Virginia College Savings Plan wherein personal information, as defined in § 2.2-3801, which has been provided to the Board or its employees by or on behalf of individuals who have requested information about, applied for, or entered into prepaid tuition contracts or savings trust account agreements pursuant to Chapter 4.9 (§ 23-38.75 et seq.) of Title 23 is discussed.

26. Discussion or consideration, by the Wireless Carrier E-911 Cost Recovery Subcommittee created pursuant to § 56-484.15, of trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), submitted by CMRS providers as defined in § 56-484.12, related to the provision of wireless E-911 service.

27. Those portions of disciplinary proceedings by any regulatory board within the Department of Professional and Occupational Regulation, Department of Health Professions, or the Board of Accountancy conducted pursuant to § 2.2-4019 or 2.2-4020 during which the board deliberates to reach a decision or meetings of health regulatory boards or conference committees of

such boards to consider settlement proposals in pending disciplinary actions or modifications to previously issued board orders as requested by either of the parties.

28. Discussion or consideration of records excluded from this chapter pursuant to subdivision 11 of § 2.2-3705.6 by a responsible public entity or an affected local jurisdiction, as those terms are defined in § 56-557, or any independent review panel appointed to review information and advise the responsible public entity concerning such records.

29. Discussion of the award of a public contract involving the expenditure of public funds, including interviews of bidders or offerors, and discussion of the terms or scope of such contract, where discussion in an open session would adversely affect the bargaining position or negotiating strategy of the public body.

30. Discussion or consideration of grant or loan application records excluded from this chapter pursuant to subdivision 17 of § 2.2-3705.6 by (i) the Commonwealth Health Research Board or (ii) the Innovation and Entrepreneurship Investment Authority or a grant allocation committee appointed to advise the Innovation and Entrepreneurship Investment Authority on the grant applications.

31. Discussion or consideration by the Commitment Review Committee of records excluded from this chapter pursuant to subdivision 9 of § 2.2-3705.2 relating to individuals subject to commitment as sexually violent predators under Chapter 9 (§ 37.2-900 et seq.) of Title 37.2.

32. [Expired.]

33. Discussion or consideration of confidential proprietary records and trade secrets excluded from this chapter pursuant to subdivision 18 of § 2.2-3705.6.

34. Discussion or consideration by a local authority created in accordance with the Virginia Wireless Service Authorities Act (§ 15.2-5431.1 et seq.) of confidential proprietary records and trade secrets excluded from this chapter pursuant to subdivision 19 of § 2.2-3705.6.

35. Discussion or consideration by the State Board of Elections or local electoral boards of voting security matters made confidential pursuant to § 24.2-625.1.

36. Discussion or consideration by the Forensic Science Board or the Scientific Advisory Committee created pursuant to Article 2 (§ 9.1-1109 et seq.) of Chapter 11 of Title 9.1 of records excluded from this chapter pursuant to subdivision F 1 of § 2.2-3706.

37. Discussion or consideration by the Brown v. Board of Education Scholarship Program Awards Committee of records or confidential matters excluded from this chapter pursuant to subdivision 3 of § 2.2-3705.4, and meetings of the Committee to deliberate concerning the annual maximum scholarship award, review and consider scholarship applications and requests for scholarship award renewal, and cancel, rescind, or recover scholarship awards.

38. Discussion or consideration by the Virginia Port Authority of records excluded from this chapter pursuant to subdivision 1 of § 2.2-3705.6.

39. Discussion or consideration by the Board of Trustees of the Virginia Retirement System acting pursuant to § 51.1-124.30, by the Investment Advisory Committee appointed pursuant to § 51.1-124.26, by any local retirement system, acting pursuant to § 51.1-803, by the Board of the Virginia College Savings Plan acting pursuant to § 23-38.80, or by the Virginia College Savings Plan's Investment Advisory Committee appointed pursuant to § 23-38.79:1 of records excluded from this chapter pursuant to subdivision 25 of § 2.2-3705.7.

40. Discussion or consideration of records excluded from this chapter pursuant to subdivision 3 of § 2.2-3705.6.

41. Discussion or consideration by the Board of Education of records relating to the denial, suspension, or revocation of teacher licenses excluded from this chapter pursuant to subdivision 13 of § 2.2-3705.3.

42. Those portions of meetings of the Virginia Military Advisory Council, the Virginia National Defense Industrial Authority, or a local or regional military affairs organization appointed by a local governing body, during which there is discussion of records excluded from this chapter pursuant to subdivision 12 of § 2.2-3705.2.

43. Discussion or consideration by the advisory committee for veterans care centers established by the Commissioner of the Virginia Department of Veterans Services pursuant to § 2.2-2004.1 of records excluded from this chapter pursuant to subdivision 28 of § 2.2-3705.7.

44. Discussion or consideration by the Board of Trustees of the Veterans Services Foundation of records excluded from this chapter pursuant to subdivision 29 of § 2.2-3705.7.

45. Discussion or consideration by the Virginia Tobacco Indemnification and Community Revitalization Commission of records excluded from this chapter pursuant to subdivision 23 of § 2.2-3705.6.

B. No resolution, ordinance, rule, contract, regulation or motion adopted, passed or agreed to in a closed meeting shall become effective unless the public body, following the meeting, reconvenes in open meeting and takes a vote of the membership on such resolution, ordinance, rule, contract, regulation, or motion that shall have its substance reasonably identified in the open meeting.

C. Public officers improperly selected due to the failure of the public body to comply with the other provisions of this section shall be de facto officers and, as such, their official actions are valid until they obtain notice of the legal defect in their election.

D. Nothing in this section shall be construed to prevent the holding of conferences between two or more public bodies, or their representatives, but these conferences shall be subject to the same procedures for holding closed meetings as are applicable to any other public body.

E. This section shall not be construed to (i) require the disclosure of any contract between the Department of Health Professions and an impaired practitioner entered into pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of Title 54.1 or (ii) require the board of directors of any authority created pursuant to the Industrial Development and Revenue Bond Act (§ 15.2-4900 et seq.), or any public body empowered to issue industrial revenue bonds by general or special law, to identify a business or industry to which subdivision A 5 applies. However, such business or industry shall be identified as a matter of public record at least 30 days prior to the actual date of the board's authorization of the sale or issuance of such bonds.

§ 2.2-3712. Closed meetings procedures; certification of proceedings.

A. No closed meeting shall be held unless the public body proposing to convene such meeting has taken an affirmative recorded vote in an open meeting approving a motion that (i) identifies the subject matter, (ii) states the purpose of the meeting and (iii) makes specific reference to the applicable exemption from open meeting requirements provided in § 2.2-3707 or subsection A of § 2.2-3711. The matters contained in such motion shall be set forth in detail in the minutes of the open meeting. A general reference to the provisions of this chapter, the authorized exemptions from open meeting requirements, or the subject matter of the closed meeting shall not be sufficient to satisfy the requirements for holding a closed meeting.

B. The notice provisions of this chapter shall not apply to closed meetings of any public body held solely for the purpose of interviewing candidates for the position of chief administrative officer. Prior to any such closed meeting for the purpose of interviewing candidates, the public body shall announce in an open meeting that such closed meeting shall be held at a disclosed or undisclosed location within fifteen days thereafter.

C. The public body holding a closed meeting shall restrict its discussion during the closed meeting only to those matters specifically exempted from the provisions of this chapter and identified in the motion required by subsection A.

D. At the conclusion of any closed meeting, the public body holding such meeting shall immediately reconvene in an open meeting and shall take a roll call or other recorded vote to be included in the minutes of that body, certifying that to the best of each member's knowledge (i) only public business matters lawfully exempted from open meeting requirements under this chapter and (ii) only such public business matters as were identified in the motion by which the closed meeting was convened were heard, discussed or considered in the meeting by the public body. Any member of the public body who believes that there was a departure from the requirements of clauses (i) and (ii), shall so state prior to the vote, indicating the substance of the departure that, in his judgment, has taken place. The statement shall be recorded in the minutes of the public body.

E. Failure of the certification required by subsection D to receive the affirmative vote of a majority of the members of the public body present during a meeting shall not affect the validity or confidentiality of such meeting with respect to matters considered therein in compliance with the provisions of this chapter. The recorded vote and any statement made in connection therewith, shall upon proper authentication, constitute evidence in any proceeding brought to enforce the provisions of this chapter.

F. A public body may permit nonmembers to attend a closed meeting if such persons are deemed necessary or if their presence will reasonably aid the public body in its consideration of a topic that is a subject of the meeting.

G. Except as specifically authorized by law, in no event may any public body take action on matters discussed in any closed meeting, except at an open meeting for which notice was given as required by § 2.2-3707.

H. Minutes may be taken during closed meetings of a public body, but shall not be required. Such minutes shall not be subject to mandatory public disclosure.

§ 2.2-3713. Proceedings for enforcement of chapter.

A. Any person, including the attorney for the Commonwealth acting in his official or individual capacity, denied the rights and privileges conferred by this chapter may proceed to enforce such rights and privileges by filing a petition for mandamus or injunction, supported by an affidavit showing good cause. Such petition may be brought in the name of the person notwithstanding that a request for public records was made by the person's attorney in his representative capacity. Venue for the petition shall be addressed as follows:

1. In a case involving a local public body, to the general district court or circuit court of the county or city from which the public body has been elected or appointed to serve and in which such rights and privileges were so denied;

2. In a case involving a regional public body, to the general district or circuit court of the county or city where the principal business office of such body is located; and

3. In a case involving a board, bureau, commission, authority, district, institution, or agency of the state government, including a public institution of higher education, or a standing or other committee of the General Assembly, to the general district court or the circuit court of the residence of the aggrieved party or of the City of Richmond.

B. In any action brought before a general district court, a corporate petitioner may appear through its officer, director or managing agent without the assistance of counsel, notwithstanding any provision of law or Rule of the Supreme Court of Virginia to the contrary.

C. Notwithstanding the provisions of § 8.01-644, the petition for mandamus or injunction shall be heard within seven days of the date when the same is made. However, any petition made outside of the regular terms of the circuit court of a county that is included in a judicial circuit with another county or counties, the hearing on the petition shall be given precedence on the docket of such court over all cases that are not otherwise given precedence by law.

D. The petition shall allege with reasonable specificity the circumstances of the denial of the rights and privileges conferred by this chapter. A single instance of denial of the rights and privileges conferred by this chapter shall be sufficient to invoke the remedies granted herein. If the court finds the denial to be in violation of the provisions of this chapter, the petitioner shall be entitled to recover reasonable costs, including costs and reasonable fees for expert witnesses, and attorneys' fees from the public body if the petitioner substantially prevails on the merits of the case, unless special circumstances would make an award unjust. In making this determination, a court may consider, among other things, the reliance of a public body on an opinion of the Attorney General or a decision of a court that substantially supports the public body's position.

E. In any action to enforce the provisions of this chapter, the public body shall bear the burden of proof to establish an exemption by a preponderance of the evidence. Any failure by a public body to follow the procedures established by this chapter shall be presumed to be a violation of this chapter.

F. Failure by any person to request and receive notice of the time and place of meetings as provided in § 2.2-3707 shall not preclude any person from enforcing his rights and privileges conferred by this chapter.

§ 2.2-3714. Violations and penalties.

In a proceeding commenced against members of public bodies under § 2.2-3713 for a violation of § 2.2-3704, 2.2-3705.1 through 2.2-3705.8, 2.2-3706, 2.2-3707, 2.2-3708, 2.2-3708.1, 2.2-3710, 2.2-3711 or 2.2-3712, the court, if it finds that a violation was willfully and knowingly made, shall impose upon such member in his individual capacity, whether a writ of mandamus or injunctive relief is awarded or not, a civil penalty of not less than \$250 nor more than \$1,000, which amount shall be paid into the State Literary Fund. For a second or subsequent violation, such civil penalty shall be not less than \$1,000 nor more than \$2,500.