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SENATE BILL NO. 149

Senate Amendments in [] — February 9, 2004

A *BILL to amend and reenact § 2.2-3705 of the Code of Virginia, relating to the Freedom of Information Act; record exemption; certain client lists.*

Patrons Prior to Engrossment—Senator Deeds; Delegate: Abbitt

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:**1. That § 2.2-3705 of the Code of Virginia is amended and reenacted as follows:**

§ 2.2-3705. Exclusions to application of chapter.

A. 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 all licensees and permittees made by or submitted to the Alcoholic Beverage Control Board, the State Lottery Department, the Virginia Racing Commission, or the Department of Charitable Gaming.

2. State income, business, and estate tax returns, personal property tax returns, scholastic and confidential records held pursuant to § 58.1-3.

3. 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, which 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.

4. 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.

5. Medical and mental records, except that such records may be personally reviewed by the subject person or a physician of the subject person's choice. However, the subject person's mental records may not be personally reviewed by such person when the subject person's treating physician has made a part of such person's records a written statement that in his opinion a review of such records by the subject person would be injurious to the subject person's physical or mental health or well-being.

Where the person who is the subject of medical 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 medical 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. Medical records shall only be reviewed and shall not be copied by such administrator or chief medical officer. The information in the medical 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 medical and mental 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 or a court of competent jurisdiction has restricted or denied such access. In instances where the person who is the subject thereof is an emancipated minor or a student in a public institution of higher education, the right of access may be asserted by the subject person.

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59 For the purposes of this chapter, statistical summaries of incidents and statistical data concerning
60 patient abuse as may be compiled by the Commissioner of the Department of Mental Health, Mental
61 Retardation and Substance Abuse Services shall be open to inspection and copying as provided in
62 § 2.2-3704. No such summaries or data shall include any patient-identifying information.

63 6. Working papers and correspondence of the Office of the Governor; Lieutenant Governor; the
64 Attorney General; the members of the General Assembly or the Division of Legislative Services; the
65 mayor or chief executive officer of any political subdivision of the Commonwealth; or the president or
66 other chief executive officer of any public institution of higher education in Virginia. However, no
67 record, which is otherwise open to inspection under this chapter, shall be deemed exempt by virtue of
68 the fact that it has been attached to or incorporated within any working paper or correspondence.

69 As used in this subdivision:

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

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

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

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

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

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

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

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

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

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

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

108 14. Records recorded in or compiled exclusively for use in closed meetings lawfully held pursuant to
109 § 2.2-3711. However, no record that is otherwise open to inspection under this chapter shall be deemed
110 exempt by virtue of the fact that it has been reviewed or discussed in a closed meeting.

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

112 16. Proprietary information gathered by or for the Virginia Port Authority as provided in
113 § 62.1-132.4 or § 62.1-134.1.

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

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

120 19. Financial statements not publicly available filed with applications for industrial development

121 financings.

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

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

131 22. Confidential proprietary records, voluntarily provided by private business pursuant to a promise
132 of confidentiality from the Department of Business Assistance, the Virginia Economic Development
133 Partnership, the Virginia Tourism Authority, or local or regional industrial or economic development
134 authorities or organizations, used by the Department, the Partnership, the Authority, or such entities for
135 business, trade and tourism development; and memoranda, working papers or other records related to
136 businesses that are considering locating or expanding in Virginia, prepared by the Partnership, where
137 competition or bargaining is involved and where, if such records are made public, the financial interest
138 of the governmental unit would be adversely affected.

139 23. Information that was filed as confidential under the Toxic Substances Information Act
140 (§ 32.1-239 et seq.), as such Act existed prior to July 1, 1992.

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

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

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

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

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

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

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

163 31. Investigative notes and other correspondence and information furnished in confidence with
164 respect to an investigation or conciliation process involving an alleged unlawful discriminatory practice
165 under the Virginia Human Rights Act (§ 2.2-3900 et seq.) or under any local ordinance adopted in
166 accordance with the authority specified in § 2.2-2638, or adopted pursuant to § 15.2-965, or adopted
167 prior to July 1, 1987, in accordance with applicable law, relating to local human rights or human
168 relations commissions. However, nothing in this section shall prohibit the distribution of information
169 taken from inactive reports in a form that does not reveal the identity of the parties involved or other
170 persons supplying information.

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

179 33. Personal information, as defined in § 2.2-3801, (i) filed with the Virginia Housing Development
180 Authority concerning individuals who have applied for or received loans or other housing assistance or
181 who have applied for occupancy of or have occupied housing financed, owned or otherwise assisted by

182 the Virginia Housing Development Authority; (ii) concerning persons participating in or persons on the
183 waiting list for federally funded rent-assistance programs; (iii) filed with any local redevelopment and
184 housing authority created pursuant to § 36-4 concerning persons participating in or persons on the
185 waiting list for housing assistance programs funded by local governments or by any such authority; or
186 (iv) filed with any local redevelopment and housing authority created pursuant to § 36-4 or any other
187 local government agency concerning persons who have applied for occupancy or who have occupied
188 affordable dwelling units established pursuant to § 15.2-2304 or § 15.2-2305. However, access to one's
189 own information shall not be denied.

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

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

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

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

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

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

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

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

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

243 41. 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.

42. Reports and court documents required to be kept confidential pursuant to § 37.1-67.3.

43. 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) Department of the State Internal Auditor with respect to an investigation initiated through the State Employee Fraud, Waste and Abuse Hotline; or (iv) committee or the auditor with respect to an investigation or audit conducted pursuant to § 15.2-825. 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.

44. 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.

45. 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.

46. 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.

47. 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, 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 provided to the retirement system 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. 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.

48. 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.

49. 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.

50. 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.

51. 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.

52. Information required to be provided pursuant to § 54.1-2506.1.

53. Confidential information designated as provided in subsection D of § 2.2-4342 as trade secrets or proprietary information by any person who has submitted to a public body an application for

305 prequalification to bid on public construction projects in accordance with subsection B of § 2.2-4317.

306 54. All information and records acquired during a review of any child death by the State Child
307 Fatality Review team established pursuant to § 32.1-283.1, during a review of any child death by a local
308 or regional child fatality review team established pursuant to § 32.1-283.2, and all information and
309 records acquired during a review of any death by a family violence fatality review team established
310 pursuant to § 32.1-283.3.

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

314 56. Confidential proprietary records that are voluntarily provided by a private entity pursuant to a
315 proposal filed with a public entity or an affected local jurisdiction under the Public-Private
316 Transportation Act of 1995 (§ 56-556 et seq.) or the Public-Private Education Facilities and
317 Infrastructure Act of 2002 (§ 56-575.1 et seq.), pursuant to a promise of confidentiality from the
318 responsible public entity or affected local jurisdiction, used by the responsible public entity or affected
319 local jurisdiction for purposes related to the development of a qualifying transportation facility or
320 qualifying project; and memoranda, working papers or other records related to proposals filed under the
321 Public-Private Transportation Act of 1995 or the Public-Private Education Facilities and Infrastructure
322 Act of 2002, where, if such records were made public, the financial interest of the public or private
323 entity involved with such proposal or the process of competition or bargaining would be adversely
324 affected. In order for confidential proprietary information to be excluded from the provisions of this
325 chapter, the private entity shall (i) invoke such exclusion upon submission of the data or other materials
326 for which protection from disclosure is sought, (ii) identify the data or other materials for which
327 protection is sought, and (iii) state the reasons why protection is necessary. For the purposes of this
328 subdivision, the terms "affected local jurisdiction", "public entity" and "private entity" shall be defined
329 as they are defined in the Public-Private Transportation Act of 1995 or in the Public-Private Education
330 Facilities and Infrastructure Act of 2002. However, nothing in this subdivision shall be construed to
331 prohibit the release of procurement records as required by § 56-573.1 or § 56-575.16. Procurement
332 records shall not be interpreted to include proprietary, commercial or financial information, balance
333 sheets, financial statements, or trade secrets that may be provided by the private entity as evidence of its
334 qualifications.

335 57. Plans and information to prevent or respond to terrorist activity, the disclosure of which would
336 jeopardize the safety of any person, including (i) critical infrastructure sector or structural components;
337 (ii) vulnerability assessments, operational, procedural, transportation, and tactical planning or training
338 manuals, and staff meeting minutes or other records; and (iii) engineering or architectural records, or
339 records containing information derived from such records, to the extent such records reveal the location
340 or operation of security equipment and systems, elevators, ventilation, fire protection, emergency,
341 electrical, telecommunications or utility equipment and systems of any public building, structure or
342 information storage facility. The same categories of records of any governmental or nongovernmental
343 person or entity submitted to a public body for the purpose of antiterrorism response planning may be
344 withheld from disclosure if such person or entity in writing (a) invokes the protections of this
345 subdivision, (b) identifies with specificity the records or portions thereof for which protection is sought,
346 and (c) states with reasonable particularity why the protection of such records from public disclosure is
347 necessary to meet the objective of antiterrorism planning or protection. Such statement shall be a public
348 record and shall be disclosed upon request. Nothing in this subdivision shall be construed to prohibit the
349 disclosure of records relating to the structural or environmental soundness of any building, nor shall it
350 prevent the disclosure of information relating to any building in connection with an inquiry into the
351 performance of that building after it has been subjected to fire, explosion, natural disaster or other
352 catastrophic event.

353 58. All records of the University of Virginia or the University of Virginia Medical Center or Eastern
354 Virginia Medical School, as the case may be, that contain proprietary, business-related information
355 pertaining to the operations of the University of Virginia Medical Center or Eastern Virginia Medical
356 School, as the case may be, including business development or marketing strategies and activities with
357 existing or future joint venturers, partners, or other parties with whom the University of Virginia
358 Medical Center or Eastern Virginia Medical School, as the case may be, has formed, or forms, any
359 arrangement for the delivery of health care, if disclosure of such information would be harmful to the
360 competitive position of the Medical Center or Eastern Virginia Medical School, as the case may be.

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

364 60. Records of the Virginia Commonwealth University Health System Authority pertaining to any of
365 the following: an individual's qualifications for or continued membership on its medical or teaching
366 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; and 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.

61. 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.

62. Confidential proprietary records that are provided by a franchisee under § 15.2-2108 to its franchising authority pursuant to a promise of confidentiality from the franchising authority that relates to the franchisee's potential 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 confidential proprietary information to be excluded from the provisions of this chapter, the 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.

63. Records of the Intervention 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.

64. 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.

65. 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.

66. Documents and other information of a proprietary nature furnished by a supplier of charitable gaming supplies to the Department of Charitable Gaming pursuant to subsection E of § 18.2-340.34.

67. 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.

68. 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.

69. 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.

70. Records and reports related to Virginia apple producer sales provided to the Virginia State Apple Board pursuant to §§ 3.1-622 and 3.1-624.

71. 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.

72. 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.

73. 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.

74. 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.

75. 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.

76. 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.

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

78. 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.

79. (For effective date, see note) 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.

80. Communications and materials required to be kept confidential pursuant to § 2.2-4119 of the Virginia Administrative Dispute Resolution Act.

81. 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.

82. 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.

83. Records submitted as a grant application, or accompanying a grant application, 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 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.

84. 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.

85. Security plans and specific vulnerability 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.

86. 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.

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

88. *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 [~~to~~ for] Needy Families (TANF) created under § 63.2-600.*

B. 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 subdivision A 4; (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.

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 incarcerated in a state, local or federal correctional facility, whether or not such facility is (i) located in the Commonwealth or (ii) operated pursuant to the Corrections Private Management Act (§ 53.1-261 et seq.). However, this subsection shall not be construed to prevent an incarcerated person from exercising his constitutionally protected rights, including, but not limited to, his rights to call for evidence in his favor in a criminal prosecution.

D. 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.