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HOUSE BILL NO. 2032

House Amendments in [] - January 20, 2005

A BILL to amend and reenact §§ 2.2-3705.7 and 44-146.18 of the Code of Virginia, relating to powers and duties of the Department of Emergency Management; coordination of emergency services intelligence and response; Freedom of Information Act.

Patron Prior to Engrossment—Delegate Miles

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:**1. That §§ 2.2-3705.7 and 44-146.18 of the Code of Virginia are amended and reenacted as follows:**

§ 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 or the Division of Legislative Services; 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.

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

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

74 12. Records of the Virginia Retirement System, acting pursuant to § 51.1-124.30, or of a local
75 retirement system, acting pursuant to § 51.1-803, or of the Rector and Visitors of the University of
76 Virginia, acting pursuant to § 23-76.1, relating to the acquisition, holding or disposition of a security or
77 other ownership interest in an entity, where such security or ownership interest is not traded on a
78 governmentally regulated securities exchange, to the extent that: (i) such records contain confidential
79 analyses prepared for the Rector and Visitors of the University of Virginia, prepared by the retirement
80 system or provided to the retirement system under a promise of confidentiality, of the future value of
81 such ownership interest or the future financial performance of the entity, and (ii) disclosure of such
82 confidential analyses would have an adverse effect on the value of the investment to be acquired, held
83 or disposed of by the retirement system or the Rector and Visitors of the University of Virginia.
84 Nothing in this subdivision shall be construed to prevent the disclosure of records relating to the identity
85 of any investment held, the amount invested, or the present value of such investment.

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

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

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

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

116 17. As it pertains to any person, records related to the operation of toll facilities that identify an
117 individual, vehicle, or travel itinerary including, but not limited to, vehicle identification data, vehicle
118 enforcement system information; video or photographic images; Social Security or other identification
119 numbers appearing on driver's licenses; credit card or bank account data; home addresses; phone
120 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 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 [participating in the Statewide Alert Network , where the release of such information would compromise the security of the Statewide Alert Network or individuals participating in the Statewide Alert Network]*

§ 44-146.18. Department of Emergency Services continued as Department of Emergency Management; administration and operational control; coordinator and other personnel; powers and duties.

(a) A. The State Office of Emergency Services is continued and shall hereafter be known as the Department of Emergency Management. Wherever the words "State Department of Emergency Services" are used in any law of the Commonwealth, they shall mean the Department of Emergency Management. During a declared emergency this Department shall revert to the operational control of the Governor. The Department shall have a coordinator who shall be appointed by and serve at the pleasure of the Governor and also serve as State Emergency Planning Director. The Department shall employ the professional, technical, secretarial, and clerical employees necessary for the performance of its functions.

(b) B. The State Department of Emergency Management shall in the administration of emergency services and disaster preparedness programs:

(1) 1. In coordination with political subdivisions and state agencies, ensure that the Commonwealth has up-to-date assessments and preparedness plans to prevent, respond to and recover from all disasters including acts of terrorism;

(2) 2. Conduct a statewide emergency management assessment in cooperation with political subdivisions, private industry and other public and private entities deemed vital to preparedness, public safety and security. The assessment shall include a review of emergency response plans, which include the variety of hazards, natural and man-made. The assessment shall be updated annually;

(3) 3. Submit to the Governor and to the General Assembly, no later than the first day of each regular session of the General Assembly, an annual executive summary and report on the status of emergency management response plans throughout the Commonwealth and other measures taken or recommended to prevent, respond to and recover from disasters, including acts of terrorism. This report shall be made available to the Division of Legislative Automated Systems for the processing of legislative documents and reports. Information submitted in accordance with the procedures set forth in subdivision 4 of § 2.2-3705.2 shall not be disclosed unless:

(i) a. It is requested by law-enforcement authorities in furtherance of an official investigation or the prosecution of a criminal act;

(ii) b. The agency holding the record is served with a proper judicial order; or

182 ~~(iii)~~ c. The agency holding the record has obtained written consent to release the information from
183 the State Department of Emergency Management;
184 ~~(4)~~ 4. Promulgate plans and programs that are conducive to adequate disaster mitigation
185 preparedness, response and recovery programs;
186 ~~(5)~~ 5. Prepare and maintain a State Emergency Operations Plan for disaster response and recovery
187 operations that assigns primary and support responsibilities for basic emergency services functions to
188 state agencies, organizations and personnel as appropriate;
189 ~~(6)~~ 6. Coordinate and administer disaster mitigation, preparedness, response and recovery plans and
190 programs with the proponent federal, state and local government agencies and related groups;
191 ~~(7)~~ 7. Provide guidance and assistance to state agencies and units of local government in developing
192 and maintaining emergency management programs, plans and systems;
193 ~~(8)~~ 8. Make necessary recommendations to agencies of the federal, state, or local governments on
194 preventive and preparedness measures designed to eliminate or reduce disasters and their impact;
195 ~~(9)~~ 9. Determine requirements of the Commonwealth and its political subdivisions for those
196 necessities needed in the event of a declared emergency which are not otherwise readily available;
197 ~~(10)~~ 10. Assist state agencies and political subdivisions in establishing and operating training
198 programs and programs of public information and education regarding emergency services and disaster
199 preparedness activities;
200 ~~(11)~~ 11. Consult with the Board of Education regarding the development and revision of a model
201 school crisis and emergency management plan for the purpose of assisting public schools in establishing,
202 operating, and maintaining emergency services and disaster preparedness activities;
203 ~~(12)~~ 12. Consult with the State Council of Higher Education in the development and revision of a
204 model institutional crisis and emergency management plan for the purpose of assisting public and private
205 two-year and four-year institutions of higher education in establishing, operating, and maintaining
206 emergency services and disaster preparedness activities;
207 ~~(13)~~ 13. Develop standards, provide guidance and encourage the maintenance of local and state
208 agency emergency operations plans;
209 ~~(14)~~ 14. Prepare, maintain, coordinate or implement emergency resource management plans and
210 programs with federal, state and local government agencies and related groups, and make such surveys
211 of industries, resources, and facilities within the Commonwealth, both public and private, as are
212 necessary to carry out the purposes of this chapter;
213 ~~(15)~~ 15. Coordinate with the federal government and any public or private agency or entity in
214 achieving any purpose of this chapter and in implementing programs for disaster prevention, mitigation,
215 preparation, response, and recovery; ~~and~~
216 ~~(16)~~ 16. Establish guidelines pursuant to § 44-146.28, and administer payments to eligible applicants
217 as authorized by the Governor;
218 17. *Coordinate and be responsible for the receipt, evaluation, and dissemination of emergency*
219 *services intelligence pertaining to all probable hazards affecting the Commonwealth; and*
220 18. *Coordinate intelligence activities relating to terrorism with the Department of State Police.*
221 ~~(e)~~ C. The State Department of Emergency Management shall during a period of impending
222 emergency or declared emergency be responsible for:
223 ~~(1)~~ 1. The receipt, evaluation, and dissemination of intelligence pertaining to an impending or actual
224 disaster;
225 ~~(2)~~ 2. Providing facilities from which state agencies and supporting organizations may conduct
226 emergency operations;
227 ~~(3)~~ 3. Providing an adequate communications and warning system capable of notifying all political
228 subdivisions in the Commonwealth of an impending disaster within a reasonable time;
229 ~~(4)~~ 4. Establishing and maintaining liaison with affected political subdivisions;
230 ~~(5)~~ 5. Determining requirements for disaster relief and recovery assistance;
231 ~~(6)~~ 6. Coordinating disaster response actions of federal, state and volunteer relief agencies;
232 ~~(7)~~ 7. Coordinating and providing guidance and assistance to affected political subdivisions to ensure
233 orderly and timely response to and recovery from disaster effects.
234 ~~(d)~~ D. The State Department of Emergency Management shall be provided the necessary facilities
235 and equipment needed to perform its normal day-to-day activities and coordinate disaster-related
236 activities of the various federal, state, and other agencies during a state of emergency declaration by the
237 Governor or following a major disaster declaration by the President.
238 ~~(e)~~ E. The State Department of Emergency Management is authorized to enter into all contracts and
239 agreements necessary or incidental to performance of any of its duties stated in this section or otherwise
240 assigned to it by law, including contracts with the United States, other states, agencies and government
241 subdivisions of the Commonwealth, and other appropriate public and private entities.
242 ~~(f)~~ F. The State Department of Emergency Management shall encourage private industries whose
243 goods and services are deemed vital to the public good to provide annually updated preparedness

244 assessments to the local coordinator of emergency management on or before April 1 of each year, to
245 facilitate overall Commonwealth preparedness. For the purposes of this section, "private industry" means
246 companies, private hospitals, and other businesses or organizations deemed by the State Coordinator of
247 Emergency Management to be essential to the public safety and well-being of the citizens of the
248 Commonwealth.

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