

055503820

SENATE BILL NO. 1157

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice)

(Patron Prior to Substitute—Senator Stolle)

Senate Amendments in [ ] — January 31, 2005

A BILL to amend and reenact §§ 2.2-3705.7 and 17.1-913 of the Code of Virginia, relating to Judicial Inquiry and Review Commission; confidentiality; Freedom of Information Act.

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-3705.7 and 17.1-913 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.

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,

ENGROSSED

SB1157ES1

60 disclosure of the information would jeopardize the continued existence or the integrity of the resource.  
61 This exemption shall not apply to requests from the owner of the land upon which the resource is  
62 located.

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

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

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

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

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

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

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

119 18. Records of the State Lottery Department pertaining to (i) the social security number, tax  
120 identification number, state sales tax number, home address and telephone number, personal and lottery  
121 banking account and transit numbers of a retailer, and financial information regarding the nonlottery

122 operations of specific retail locations; and (ii) individual lottery winners, except that a winner's name,  
123 hometown, and amount won shall be disclosed.

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

127 20. Records, investigative notes, correspondence, and information pertaining to the planning,  
128 scheduling and performance of examinations of holder records pursuant to the Uniform Disposition of  
129 Unclaimed Property Act (§ 55-210.1 et seq.) prepared by or for the State Treasurer, his agents,  
130 employees or persons employed to perform an audit or examination of holder records.

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

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

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

146 § 17.1-913. Confidentiality of papers and proceedings.

147 A. All papers filed with and proceedings before the Commission, and under §§ 17.1-909 and  
148 17.1-910, including the identification of the subject judge as well as all testimony and other evidence  
149 and any transcript thereof made by a reporter, shall be confidential and shall not be divulged, other than  
150 to the Commission, by any person who (i) either files a complaint with the Commission, or receives  
151 such complaint in an official capacity; (ii) investigates such complaint; (iii) is interviewed concerning  
152 such complaint by a member, employee or agent of the Commission; or (iv) participates in any  
153 proceeding of the Commission or in the official recording or transcription thereof, except that the record  
154 of any proceeding filed with the Supreme Court shall lose its confidential character. However, if the  
155 Commission finds cause to believe that any witness under oath has willfully and intentionally testified  
156 falsely, the Commission may direct the chairman or one of its members to report such finding and the  
157 details leading thereto including any transcript thereof to the attorney for the Commonwealth of the city  
158 or county where such act occurred for such disposition as to a charge of perjury as the Commonwealth  
159 may be advised. In any subsequent prosecution for perjury based thereon, the proceedings before the  
160 Commission relevant thereto shall lose their confidential character.

161 All records of proceedings before the Commission which are not filed with the Supreme Court in  
162 connection with a formal complaint filed with that tribunal, shall be kept in the confidential files of the  
163 Commission.

164 However, a judge who is under investigation by the Commission, or any person authorized by him,  
165 may divulge information pertaining to a complaint filed against such judge as may be necessary for the  
166 judge to investigate the allegations in the complaint in preparation for the proceedings before the  
167 Commission.

168 B. *Advice on judicial ethics given by an attorney employed by the Commission to a judge and the*  
169 *records of such advice shall be confidential and not be divulged except as permitted in subsection A.*  
170 *However, the Commission may share such advice, but not the identity of the judge to whom the advice*  
171 *was given, with a committee established by the Supreme Court for the development of formal judicial*  
172 *ethics advisory opinions. Any such shared information shall remain confidential within such committee.*

173 [ 2. That the provisions of this act are declaratory of existing law. ]