

047063702

SENATE BILL NO. 182

Offered January 14, 2004

Prefiled January 13, 2004

A BILL to amend and reenact §§ 2.2-3704 and 2.2-3705 of the Code of Virginia, relating to the Freedom of Information Act; exclusions from chapter; certain portions of GIS systems.

Patron—Blevins

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:**1. That §§ 2.2-3704 and 2.2-3705 of the Code of Virginia are amended and reenacted as follows:**

§ 2.2-3704. Public records to be open to inspection; procedure for requesting records and responding to request; charges.

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, make one of the following responses:

1. The requested records will be provided to the requester.

2. The requested records will be 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 (i) be in writing, (ii) identify with reasonable particularity the volume and subject matter of withheld records, and (iii) cite, as to each category of withheld records, the specific Code section that authorizes the withholding of the records.

3. The requested records will be provided in part and 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 (i) be in writing, (ii) identify with reasonable particularity the subject matter of withheld portions, and (iii) 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.

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 be in writing and 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 three 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 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 subsections G and J, 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 *those portions of a*

59 geographic information system *not otherwise excluded from this chapter pursuant to subdivision A 88 of*
60 *§ 2.2-3705* at the request of anyone other than the owner of the land that is the subject of the request.
61 However, such charges shall not exceed the actual cost to the public body in supplying such records,
62 except that the public body may charge, on a pro rata per acre basis, for the cost of creating
63 topographical maps developed by the public body, for such maps or portions thereof, which encompass
64 a contiguous area greater than 50 acres. All charges for the supplying of requested records shall be
65 estimated in advance at the request of the citizen.

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

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

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

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

91 J. Every public body of state government shall compile, and annually update, an index of computer
92 databases that contains at a minimum those databases created by them on or after July 1, 1997.
93 "Computer database" means a structured collection of data or records residing in a computer. Such index
94 shall be a public record and shall include, at a minimum, the following information with respect to each
95 database listed therein: a list of data fields, a description of the format or record layout, the date last
96 updated, a list of any data fields to which public access is restricted, a description of each format in
97 which the database can be copied or reproduced using the public body's computer facilities, and a
98 schedule of fees for the production of copies in each available form. The form, context, language, and
99 guidelines for the indices and the databases to be indexed shall be developed by the Virginia
100 Information Technologies Agency in consultation with the Librarian of Virginia and the State Archivist.
101 The public body shall not be required to disclose its software security, including passwords.

102 § 2.2-3705. Exclusions to application of chapter.

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

105 1. Confidential records of all investigations of applications for licenses and permits, and all licensees
106 and permittees made by or submitted to the Alcoholic Beverage Control Board, the State Lottery
107 Department, the Virginia Racing Commission, or the Department of Charitable Gaming.

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

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

116 The parent or legal guardian of a student may prohibit, by written request, the release of any
117 individual information regarding that student until the student reaches the age of 18 years. For scholastic
118 records of students under the age of 18 years, the right of access may be asserted only by his legal
119 guardian or parent, including a noncustodial parent, unless such parent's parental rights have been
120 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.

For the purposes of this chapter, statistical summaries of incidents and statistical data concerning patient abuse as may be compiled by the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

182 Nothing contained in this subdivision shall prohibit the release of test scores or results as provided by
183 law, or limit access to individual records as provided by law. However, the subject of such employment
184 tests shall be entitled to review and inspect all records relative to his performance on such employment
185 tests.

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

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

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

199 14. Records recorded in or compiled exclusively for use in closed meetings lawfully held pursuant to
200 § 2.2-3711. However, no record that is otherwise open to inspection under this chapter shall be deemed
201 exempt by virtue of the fact that it has been reviewed or discussed in a closed meeting.

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

203 16. Proprietary information gathered by or for the Virginia Port Authority as provided in
204 § 62.1-132.4 or § 62.1-134.1.

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

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

211 19. Financial statements not publicly available filed with applications for industrial development
212 financings.

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

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

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

230 23. Information that was filed as confidential under the Toxic Substances Information Act
231 (§ 32.1-239 et seq.), as such Act existed prior to July 1, 1992.

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

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

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

243 27. Fisheries data that would permit identification of any person or vessel, except when required by

244 court order as specified in § 28.2-204.

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

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

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

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

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

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

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

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

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

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

301 38. Records of studies and investigations by the State Lottery Department of (i) lottery agents, (ii)
302 lottery vendors, (iii) lottery crimes under §§ 58.1-4014 through 58.1-4018, (iv) defects in the law or
303 regulations that cause abuses in the administration and operation of the lottery and any evasions of such
304 provisions, or (v) the use of the lottery as a subterfuge for organized crime and illegal gambling where

305 such official records have not been publicly released, published or copyrighted. All studies and
306 investigations referred to under clauses (iii), (iv) and (v) shall be open to inspection and copying upon
307 completion of the study or investigation.

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

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

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

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

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

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

338 43. Investigative notes, correspondence and information furnished in confidence, and records
339 otherwise exempted by this chapter or any Virginia statute, provided to or produced by or for the (i)
340 Auditor of Public Accounts; (ii) Joint Legislative Audit and Review Commission; (iii) Department of the
341 State Internal Auditor with respect to an investigation initiated through the State Employee Fraud, Waste
342 and Abuse Hotline; or (iv) committee or the auditor with respect to an investigation or audit conducted
343 pursuant to § 15.2-825. Records of completed investigations shall be disclosed in a form that does not
344 reveal the identity of the complainants or persons supplying information to investigators. Unless
345 disclosure is prohibited by this section, the records disclosed shall include, but not be limited to, the
346 agency involved, the identity of the person who is the subject of the complaint, the nature of the
347 complaint, and the actions taken to resolve the complaint. If an investigation does not lead to corrective
348 action, the identity of the person who is the subject of the complaint may be released only with the
349 consent of the subject person.

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

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

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

362 47. Records of the Virginia Retirement System, acting pursuant to § 51.1-124.30, or of a local
363 retirement system, acting pursuant to § 51.1-803, or of the Rector and Visitors of the University of
364 Virginia, acting pursuant to § 23-76.1, relating to the acquisition, holding or disposition of a security or
365 other ownership interest in an entity, where such security or ownership interest is not traded on a
366 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 prequalification to bid on public construction projects in accordance with subsection B of § 2.2-4317.

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

55. 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.

56. Confidential proprietary records that are voluntarily provided 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 (§ 56-556 et seq.) or the Public-Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.), pursuant to a promise of confidentiality from the responsible public entity or affected local jurisdiction, used by the responsible public entity or affected local jurisdiction for purposes related to the development of a qualifying transportation facility or qualifying project; and memoranda, working papers or other records related to proposals filed under the Public-Private Transportation Act of 1995 or the Public-Private Education Facilities and Infrastructure Act of 2002, where, if such records were made public, the financial interest of the public or private entity involved with such proposal or the process of competition or bargaining would be adversely affected. In order for confidential proprietary information to be excluded from the provisions of this chapter, the private entity 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 reasons why protection is necessary. For the purposes of this subdivision, the terms "affected local jurisdiction", "public entity" and "private entity" shall be defined as they are defined in the Public-Private Transportation Act of 1995 or in the Public-Private Education Facilities and Infrastructure Act of 2002. However, nothing in this subdivision shall be construed to prohibit the release of procurement records as required by § 56-573.1 or § 56-575.16. Procurement records shall not be interpreted to include proprietary, commercial or financial information, balance sheets, financial statements, or trade secrets that may be provided by the private entity as evidence of its qualifications.

57. 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;

428 (ii) vulnerability assessments, operational, procedural, transportation, and tactical planning or training
429 manuals, and staff meeting minutes or other records; and (iii) engineering or architectural records, or
430 records containing information derived from such records, to the extent such records reveal the location
431 or operation of security equipment and systems, elevators, ventilation, fire protection, emergency,
432 electrical, telecommunications or utility equipment and systems of any public building, structure or
433 information storage facility. The same categories of records of any governmental or nongovernmental
434 person or entity submitted to a public body for the purpose of antiterrorism response planning may be
435 withheld from disclosure if such person or entity in writing (a) invokes the protections of this
436 subdivision, (b) identifies with specificity the records or portions thereof for which protection is sought,
437 and (c) states with reasonable particularity why the protection of such records from public disclosure is
438 necessary to meet the objective of antiterrorism planning or protection. Such statement shall be a public
439 record and shall be disclosed upon request. Nothing in this subdivision shall be construed to prohibit the
440 disclosure of records relating to the structural or environmental soundness of any building, nor shall it
441 prevent the disclosure of information relating to any building in connection with an inquiry into the
442 performance of that building after it has been subjected to fire, explosion, natural disaster or other
443 catastrophic event.

444 58. All records of the University of Virginia or the University of Virginia Medical Center or Eastern
445 Virginia Medical School, as the case may be, that contain proprietary, business-related information
446 pertaining to the operations of the University of Virginia Medical Center or Eastern Virginia Medical
447 School, as the case may be, including business development or marketing strategies and activities with
448 existing or future joint venturers, partners, or other parties with whom the University of Virginia
449 Medical Center or Eastern Virginia Medical School, as the case may be, has formed, or forms, any
450 arrangement for the delivery of health care, if disclosure of such information would be harmful to the
451 competitive position of the Medical Center or Eastern Virginia Medical School, as the case may be.

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

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

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

477 62. Confidential proprietary records that are provided by a franchisee under § 15.2-2108 to its
478 franchising authority pursuant to a promise of confidentiality from the franchising authority that relates
479 to the franchisee's potential provision of new services, adoption of new technologies or implementation
480 of improvements, where such new services, technologies or improvements have not been implemented
481 by the franchisee on a nonexperimental scale in the franchise area, and where, if such records were
482 made public, the competitive advantage or financial interests of the franchisee would be adversely
483 affected. In order for confidential proprietary information to be excluded from the provisions of this
484 chapter, the franchisee shall (i) invoke such exclusion upon submission of the data or other materials for
485 which protection from disclosure is sought, (ii) identify the data or other materials for which protection
486 is sought, and (iii) state the reason why protection is necessary.

487 63. Records of the Intervention Program Committee within the Department of Health Professions, to
488 the extent such records may identify any practitioner who may be, or who is actually, impaired to the
489 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.

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

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

559 77. Records, information and statistical registries required to be kept confidential pursuant to
560 §§ 63.2-102 and 63.2-104.

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

565 79. (For effective date, see note) All data, records, and reports relating to the prescribing and
566 dispensing of covered substances to recipients and any abstracts from such data, records, and reports that
567 are in the possession of the Prescription Monitoring Program pursuant to Chapter 25.2 (§ 54.1-2519 et
568 seq.) of Title 54.1 and any material relating to the operation or security of the Program.

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

571 81. The names, addresses and telephone numbers of complainants furnished in confidence with
572 respect to an investigation of individual zoning enforcement complaints made to a local governing body.

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

580 83. Records submitted as a grant application, or accompanying a grant application, to the
581 Commonwealth Health Research Board pursuant to Chapter 22 (§ 23-277 et seq.) of Title 23 to the
582 extent such records contain proprietary business or research-related information produced or collected by
583 the applicant in the conduct of or as a result of study or research on medical, rehabilitative, scientific,
584 technical or scholarly issues, when such information has not been publicly released, published,
585 copyrighted or patented, if the disclosure of such information would be harmful to the competitive
586 position of the applicant.

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

590 85. Security plans and specific vulnerability assessment components of school safety audits, as
591 provided in § 22.1-279.8.

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

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

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

602 88. *Those maps contained in a geographic information system that are developed from a combination*
603 *of high resolution technologies, including digital orthophotography, digital terrain models or related*
604 *ancillary proprietary data produced by any local governing body or by the Virginia Geographic*
605 *Information Network division of the Virginia Information Technologies Agency in accordance with*
606 *§ 2.2-2027. However, nothing in this subdivision shall be construed to prohibit the disclosure of base*
607 *line mapping or topography, including flat-line computer drawings contained in a geographic*
608 *information system from which the maps excluded by this subdivision may be developed.*

609 B. Neither any provision of this chapter nor any provision of Chapter 38 (§ 2.2-3800 et seq.) of this
610 title shall be construed as denying public access to (i) contracts between a public body and its officers
611 or employees, other than contracts settling public employee employment disputes held confidential as
612 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.