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**SENATE BILL NO. 819**

Offered January 10, 2007

Prefiled January 5, 2007

*A BILL to amend and reenact § 2.2-3705.1 of the Code of Virginia, relating to the Freedom of Information Act; records containing social security numbers and other personal identifying information.*

Patrons—Cuccinelli, Deeds, DeVolites Davis and Ticer; Delegates: Albo, Bulova, Callahan, Dudley, Ebbin, Plum, Rust and Sickles

Referred to Committee on General Laws and Technology

**Be it enacted by the General Assembly of Virginia:****1. That § 2.2-3705.1 of the Code of Virginia is amended and reenacted as follows:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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58 limitations for the filing of a civil suit.

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

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

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

72 13. *Those portions of records containing personal information concerning an identifiable individual,*  
73 *including date of birth, social security number, driver's license number, bank account numbers, credit or*  
74 *debit card numbers, personal identification numbers, electronic identification codes, automated or*  
75 *electronic signatures, biometric data, or fingerprints; except that access shall not be denied to the*  
76 *person who is the subject thereof. Any person who is the subject of any such record and who is 18*  
77 *years of age or older may waive, in writing, the protections afforded by this subdivision. If the*  
78 *protections are so waived, the public body shall open such records for inspection and copying.*