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HOUSE BILL NO. 219

Offered January 8, 2014

Prefiled December 27, 2013

A BILL to amend and reenact § 2.2-3705.4 of the Code of Virginia, relating to the Virginia Freedom of Information Act; record exemption for certain letters of recommendation for promotion.

Patron—Albo

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:**1. That § 2.2-3705.4 of the Code of Virginia is amended and reenacted as follows:****§ 2.2-3705.4. Exclusions to application of chapter; educational records and certain records of educational institutions.**

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

The parent or legal guardian of a student may prohibit, by written request, the release of any individual information regarding that student until the student reaches the age of 18 years. For scholastic records of students under the age of 18 years, the right of access may be asserted only by his legal guardian or parent, including a noncustodial parent, unless such parent's parental rights have been terminated or a court of competent jurisdiction has restricted or denied such access. For scholastic records of students who are emancipated or attending a state-supported institution of higher education, the right of access may be asserted by the student.

Any person who is the subject of any scholastic record and who is 18 years of age or older may waive, in writing, the protections afforded by this subdivision. If the protections are so waived, the public body shall open such records for inspection and copying.

2. 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 promotion*, or (iii) receipt of an honor or honorary recognition.

3. Records of the Brown v. Board of Education Scholarship Awards Committee relating to personally identifiable information, including scholarship applications, personal financial information, and confidential correspondence and letters of recommendation.

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

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

6. 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.

7. Records maintained in connection with fundraising activities by or for a public institution of

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59 higher education to the extent that such records reveal (i) personal fundraising strategies relating to
60 identifiable donors or prospective donors or (ii) wealth assessments; estate, financial, or tax planning
61 information; health-related information; employment, familial, or marital status information; electronic
62 mail addresses, facsimile or telephone numbers; birth dates or social security numbers of identifiable
63 donors or prospective donors. Nothing in this subdivision, however, shall be construed to authorize the
64 withholding of records relating to the amount, date, purpose, and terms of the pledge or donation, or the
65 identity of the donor unless the donor has requested anonymity in connection with or as a condition of
66 making a pledge or donation. The exclusion provided by this subdivision shall not apply to protect from
67 disclosure (i) the identities of sponsors providing grants to or contracting with the institution for the
68 performance of research services or other work or (ii) the terms and conditions of such grants or
69 contracts.

70 8. Records of a threat assessment team established by a public institution of higher education
71 pursuant to § 23-9.2:10 relating to the assessment or intervention with a specific individual. However, in
72 the event an individual who has been under assessment commits an act, or is prosecuted for the
73 commission of an act that has caused the death of, or caused serious bodily injury, including any felony
74 sexual assault, to another person, the records of such threat assessment team concerning the individual
75 under assessment shall be made available as provided by this chapter, with the exception of any criminal
76 history records obtained pursuant to § 19.2-389 or 19.2-389.1, health records obtained pursuant to
77 § 32.1-127.1:03, or scholastic records as defined in § 22.1-289. The public body providing such records
78 shall remove information identifying any person who provided information to the threat assessment team
79 under a promise of confidentiality.