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SENATE BILL NO. 78

Offered January 8, 2014

Prefiled December 20, 2013

A BILL to amend and reenact § 2.2-3705.3 of the Code of Virginia, relating to the Virginia Freedom of Information Act; record exemption for certain administrative investigations by public institutions of higher education.

 Patron—Ruff

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:**1. That § 2.2-3705.3 of the Code of Virginia is amended and reenacted as follows:****§ 2.2-3705.3. Exclusions to application of chapter; records relating to administrative investigations.**

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. Confidential records of all investigations of applications for licenses and permits, and of all licensees and permittees, made by or submitted to the Alcoholic Beverage Control Board, the State Lottery Department, the Virginia Racing Commission, the Department of Agriculture and Consumer Services relating to investigations and applications pursuant to Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2, or the Private Security Services Unit of the Department of Criminal Justice Services.

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

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

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

5. Investigative notes and other correspondence and information furnished in confidence with respect to an investigation or conciliation process involving an alleged unlawful discriminatory practice under the Virginia Human Rights Act (§ 2.2-3900 et seq.) or under any local ordinance adopted in accordance with the authority specified in § 2.2-524, or adopted pursuant to § 15.2-965, or adopted prior to July 1, 1987, in accordance with applicable law, relating to local human rights or human relations commissions. 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.

6. Records of studies and investigations by the State Lottery Department of (i) lottery agents, (ii) lottery vendors, (iii) lottery crimes under §§ 58.1-4014 through 58.1-4018, (iv) defects in the law or regulations that cause abuses in the administration and operation of the lottery and any evasions of such provisions, or (v) the use of the lottery as a subterfuge for organized crime and illegal gambling where such official records have not been publicly released, published or copyrighted. All studies and investigations referred to under clauses (iii), (iv), and (v) shall be open to inspection and copying upon completion of the study or investigation.

7. Investigative notes, correspondence and information furnished in confidence, and records otherwise exempted by this chapter or any Virginia statute, provided to or produced by or for (i) the Auditor of Public Accounts; (ii) the Joint Legislative Audit and Review Commission; (iii) an appropriate authority as defined in § 2.2-3010 with respect to an allegation of wrongdoing or abuse under the Fraud and Abuse Whistle Blower Protection Act (§ 2.2-3009 et seq.); (iv) the Office of the State Inspector General with respect to an investigation initiated through the Fraud, Waste and Abuse Hotline or an investigation initiated pursuant to Chapter 3.2 (§ 2.2-307 et seq.); (v) *the auditors appointed by any public institution of higher education*; (vi) the committee or the auditor with respect to an investigation or audit conducted pursuant to § 15.2-825; or ~~(vi)~~ (vii) the auditors, appointed by the local governing body of any county, city, or town or a school board, who by charter, ordinance, or statute have responsibility for conducting

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59 an investigation of any officer, department, or program of such body. Records of completed
60 investigations shall be disclosed in a form that does not reveal the identity of the complainants or
61 persons supplying information to investigators. Unless disclosure is prohibited by this section, the
62 records disclosed shall include, but not be limited to, the agency involved, the identity of the person
63 who is the subject of the complaint, the nature of the complaint, and the actions taken to resolve the
64 complaint. If an investigation does not lead to corrective action, the identity of the person who is the
65 subject of the complaint may be released only with the consent of the subject person. Local governing
66 bodies shall adopt guidelines to govern the disclosure required by this subdivision.

67 8. Information furnished in confidence to the Department of Human Resource Management with
68 respect to an investigation, consultation, or mediation under § 2.2-1202.1, and memoranda,
69 correspondence and other records resulting from any such investigation, consultation or mediation.
70 However, nothing in this section shall prohibit the distribution of information taken from inactive reports
71 in a form that does not reveal the identity of the parties involved or other persons supplying
72 information.

73 9. The names, addresses and telephone numbers of complainants furnished in confidence with respect
74 to an investigation of individual zoning enforcement complaints or complaints relating to the Uniform
75 Statewide Building Code (§ 36-97 et seq.) or the Statewide Fire Prevention Code (§ 27-94 et seq.) made
76 to a local governing body.

77 10. Records of active investigations being conducted by the Department of Criminal Justice Services
78 pursuant to Article 4 (§ 9.1-138 et seq.), Article 4.1 (§ 9.1-150.1 et seq.), Article 11 (§ 9.1-185 et seq.),
79 and Article 12 (§ 9.1-186 et seq.) of Chapter 1 of Title 9.1.

80 11. Records furnished to or prepared by the Board of Education pursuant to subsection D of
81 § 22.1-253.13:3 in connection with the review or investigation of any alleged breach in security,
82 unauthorized alteration, or improper administration of tests by local school board employees responsible
83 for the distribution or administration of the tests. However, this section shall not prohibit the disclosure
84 of records to (i) a local school board or division superintendent for the purpose of permitting such board
85 or superintendent to consider or to take personnel action with regard to an employee or (ii) any
86 requester, after the conclusion of a review or investigation, in a form that (a) does not reveal the identity
87 of any person making a complaint or supplying information to the Board on a confidential basis and (b)
88 does not compromise the security of any test mandated by the Board.

89 12. Investigator notes, and other correspondence and information, furnished in confidence with
90 respect to an active investigation conducted by or for the Board of Education related to the denial,
91 suspension, or revocation of teacher licenses. However, this subdivision shall not prohibit the disclosure
92 of records to a local school board or division superintendent for the purpose of permitting such board or
93 superintendent to consider or to take personnel action with regard to an employee. Records of completed
94 investigations shall be disclosed in a form that does not reveal the identity of any complainant or person
95 supplying information to investigators. The records disclosed shall include information regarding the
96 school or facility involved, the identity of the person who was the subject of the complaint, the nature
97 of the complaint, and the actions taken to resolve the complaint. If an investigation fails to support a
98 complaint or does not lead to corrective action, the identity of the person who was the subject of the
99 complaint may be released only with the consent of the subject person. No personally identifiable
100 information in the records regarding a current or former student shall be released except as permitted by
101 state or federal law.

102 13. Records, notes and information provided in confidence and related to an investigation by the
103 Attorney General under Article 1 (§ 3.2-4200 et seq.) or Article 3 (§ 3.2-4204 et seq.) of Chapter 42 of
104 Title 3.2, Article 10 (§ 18.2-246.6 et seq.) of Chapter 6 or Chapter 13 (§ 18.2-512 et seq.) of Title 18.2,
105 or Article 1 (§ 58.1-1000) of Chapter 10 of Title 58.1. However, records related to an investigation that
106 has been inactive for more than six months shall, upon request, be disclosed provided such disclosure is
107 not otherwise prohibited by law and does not reveal the identity of charging parties, complainants,
108 persons supplying information, witnesses or other individuals involved in the investigation.