

## VIRGINIA ACTS OF ASSEMBLY — CHAPTER

*An Act to amend and reenact §§ 2.2-3701, 2.2-3704, 2.2-3705.1 through 2.2-3705.7, 2.2-3711, and 2.2-3713 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 2.2-3704.01, relating to the Virginia Freedom of Information Act; record exclusions; rule of redaction; no weight accorded to public body's determination.*

[H 817]

Approved

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 2.2-3701, 2.2-3704, 2.2-3705.1 through 2.2-3705.7, 2.2-3711, and 2.2-3713 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 2.2-3704.01 as follows:**

**§ 2.2-3701. Definitions.**

As used in this chapter, unless the context requires a different meaning:

"Closed meeting" means a meeting from which the public is excluded.

"Electronic communication" means any audio or combined audio and visual communication method.

"Emergency" means an unforeseen circumstance rendering the notice required by this chapter impossible or impracticable and which circumstance requires immediate action.

"Information" as used in the exclusions established by §§ 2.2-3705.1 through 2.2-3705.7, means the content within a public record that references a specifically identified subject matter, and shall not be interpreted to require the production of information that is not embodied in a public record.

"Meeting" or "meetings" means the meetings including work sessions, when sitting physically, or through telephonic or video equipment pursuant to § 2.2-3708 or 2.2-3708.1, as a body or entity, or as an informal assemblage of (i) as many as three members or (ii) a quorum, if less than three, of the constituent membership, wherever held, with or without minutes being taken, whether or not votes are cast, of any public body. Neither the gathering of employees of a public body nor the gathering or attendance of two or more members of a public body (i) at any place or function where no part of the purpose of such gathering or attendance is the discussion or transaction of any public business, and such gathering or attendance was not called or prearranged with any purpose of discussing or transacting any business of the public body, or (ii) at a public forum, candidate appearance, or debate, the purpose of which is to inform the electorate and not to transact public business or to hold discussions relating to the transaction of public business, even though the performance of the members individually or collectively in the conduct of public business may be a topic of discussion or debate at such public meeting, shall be deemed a "meeting" subject to the provisions of this chapter.

"Open meeting" or "public meeting" means a meeting at which the public may be present.

"Public body" means any legislative body, authority, board, bureau, commission, district or agency of the Commonwealth or of any political subdivision of the Commonwealth, including cities, towns and counties, municipal councils, governing bodies of counties, school boards and planning commissions; boards of visitors of public institutions of higher education; and other organizations, corporations or agencies in the Commonwealth supported wholly or principally by public funds. It shall include (i) the Virginia Birth-Related Neurological Injury Compensation Program and its board of directors established pursuant to Chapter 50 (§ 38.2-5000 et seq.) of Title 38.2 and (ii) any committee, subcommittee, or other entity however designated, of the public body created to perform delegated functions of the public body or to advise the public body. It shall not exclude any such committee, subcommittee or entity because it has private sector or citizen members. Corporations organized by the Virginia Retirement System are "public bodies" for purposes of this chapter.

For the purposes of the provisions of this chapter applicable to access to public records, constitutional officers and private police departments as defined in § 9.1-101 shall be considered public bodies and, except as otherwise expressly provided by law, shall have the same obligations to disclose public records as other custodians of public records.

"Public records" means all writings and recordings that consist of letters, words or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photography, magnetic impulse, optical or magneto-optical form, mechanical or electronic recording or other form of data compilation, however stored, and regardless of physical form or characteristics, prepared or owned by, or in the possession of a public body or its officers, employees or agents in the transaction of public business. Records that are not prepared for or used in the transaction of public business are not public records.

"Regional public body" means a unit of government organized as provided by law within defined

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boundaries, as determined by the General Assembly, whose members are appointed by the participating local governing bodies, and such unit includes two or more counties or cities.

"Scholastic records" means those records containing information directly related to a student or an applicant for admission and maintained by a public body that is an educational agency or institution or by a person acting for such agency or institution.

**§ 2.2-3704. Public records to be open to inspection; procedure for requesting records and responding to request; charges; transfer of records for storage, etc.**

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, provide the requested records to the requester or make one of the following responses in writing:

1. The requested records are being 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 identify with reasonable particularity the volume and subject matter of withheld records, and cite, as to each category of withheld records, the specific Code section that authorizes the withholding of the records.

2. The requested records are being provided in part and are being 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 identify with reasonable particularity the subject matter of withheld portions, and 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.

3. The requested records could not be found or do not exist. However, if the public body that received the request knows that another public body has the requested records, the response shall include contact information for the other public body.

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 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 four 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 or requires an extraordinarily lengthy search, 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 subsection G, 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 a geographic information system at the request of anyone other than the owner of the land that is the subject of the request. However, such charges shall not exceed the actual cost to the public body in supplying such records, except that the public body may charge, on a pro rata per acre basis, for the cost of creating topographical maps developed by the public body, for such maps or portions thereof, which encompass a contiguous area greater than 50 acres. All charges for the supplying of requested records shall be

estimated in advance at the request of the citizen.

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

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

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

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

J. In the event a public body has transferred possession of public records to any entity, including but not limited to any other public body, for storage, maintenance, or archiving, the public body initiating the transfer of such records shall remain the custodian of such records for purposes of responding to requests for public records made pursuant to this chapter and shall be responsible for retrieving and supplying such public records to the requester. In the event a public body has transferred public records for storage, maintenance, or archiving and such transferring public body is no longer in existence, any public body that is a successor to the transferring public body shall be deemed the custodian of such records. In the event no successor entity exists, the entity in possession of the public records shall be deemed the custodian of the records for purposes of compliance with this chapter, and shall retrieve and supply such records to the requester. Nothing in this subsection shall be construed to apply to records transferred to the Library of Virginia for permanent archiving pursuant to the duties imposed by the Virginia Public Records Act (§ 42.1-76 et seq.). In accordance with § 42.1-79, the Library of Virginia shall be the custodian of such permanently archived records and shall be responsible for responding to requests for such records made pursuant to this chapter.

**§ 2.2-3704.01. Records containing both excluded and nonexcluded information; duty to redact.**

*No provision of this chapter is intended, nor shall it be construed or applied, to authorize a public body to withhold a public record in its entirety on the grounds that some portion of the public record is excluded from disclosure by this chapter or by any other provision of law. A public record may be withheld from disclosure in its entirety only to the extent that an exclusion from disclosure under this chapter or other provision of law applies to the entire content of the public record. Otherwise, only those portions of the public record containing information subject to an exclusion under this chapter or other provision of law may be withheld, and all portions of the public record that are not so excluded shall be disclosed.*

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

The following records are information contained in a public record is excluded from the mandatory disclosure provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law: *Redaction of information excluded under this section from a public record shall be conducted in accordance with § 2.2-3704.01.*

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 such information 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 such information shall be disclosed.

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~~ *information* 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~~ *public* records of a public body. For the purpose of this subdivision, "vendor proprietary *information* 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~~ *Information* 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~~ *authorize the withholding* of information taken from inactive reports upon expiration of the period of limitations for the filing of a civil suit.

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

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

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

13. ~~Those portions of records that contain account~~ *Account* numbers or routing information for any credit card, debit card, or other account with a financial institution of any person or public body. However, access shall not be denied to the person who is the subject of the ~~record~~ *information*. For the purposes of this subdivision, "financial institution" means any organization authorized to do business under state or federal laws relating to financial institutions, including, without limitation, banks and trust companies, savings banks, savings and loan companies or associations, and credit unions.

#### **§ 2.2-3705.2. Exclusions to application of chapter; records relating to public safety.**

The following ~~records~~ *are information contained in a public record* is excluded from the *mandatory disclosure* provisions of this chapter but may be disclosed by the custodian in his discretion, except

where such disclosure is prohibited by law. *Redaction of information excluded under this section from a public record shall be conducted in accordance with § 2.2-3704.01.*

1. Confidential ~~records~~ *information*, including victim identity, provided to or obtained by staff in a rape crisis center or a program for battered spouses.

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

~~Those portions of Information contained in~~ engineering and construction drawings and plans that reveal critical structural components, security equipment and systems, ventilation systems, fire protection equipment, mandatory building emergency equipment or systems, elevators, electrical systems, telecommunications equipment and systems, and other utility equipment and systems submitted for the purpose of complying with the Uniform Statewide Building Code (§ 36-97 et seq.) or the Statewide Fire Prevention Code (§ 27-94 et seq.); ~~the if disclosure of which such information would jeopardize the safety or security of any public or private commercial office, multifamily residential, or retail building or its occupants in the event of terrorism or other threat to public safety; to the extent that. In order for the information to be excluded from mandatory disclosure,~~ the owner or lessee of such property, equipment, or system in writing shall (i) ~~invokes invoke~~ the protections of this paragraph; (ii) ~~identifies identify~~ the drawings, plans, or other materials to be protected; and (iii) ~~states state~~ the reasons why protection is necessary.

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

3. ~~Documentation or other information~~ *Information* that describes the design, function, operation, or access control features of any security system, whether manual or automated, which is used to control access to or use of any automated data processing or telecommunications system.

4. ~~Plans and information to prevent or respond~~ *Information concerning the prevention or response to* terrorist activity or cyber attacks, ~~the disclosure of which would jeopardize the safety of any person;~~ including (i) critical infrastructure sector or structural components; (ii) vulnerability assessments, operational, procedural, transportation, and tactical planning or training manuals, and staff meeting minutes ~~or other records;~~ (iii) engineering or architectural ~~records plans or drawings, or records containing~~ information derived from such ~~records, to the extent plans or drawings; and (iv) information not lawfully available to the public regarding specific cybersecurity threats or vulnerabilities or security plans and measures of an entity, facility, building, structure, information technology system, or software program if disclosure of such records information would (a) reveal the location or operation of security equipment and systems, elevators, ventilation, fire protection, emergency, electrical, telecommunications or utility equipment and systems of any public building, structure or information storage facility, or telecommunications or utility equipment or systems; and (iv) information not lawfully available to the public regarding specific cybersecurity threats or vulnerabilities or security plans and measures of an entity, facility, building structure, information technology system, or software program or (b) jeopardize the safety of any person.~~

The same categories of ~~records of information concerning~~ any person or entity submitted to a public body for the purpose of antiterrorism response planning or cybersecurity planning or protection may be withheld from disclosure if such person or entity in writing (a) (1) invokes the protections of this subdivision, (b) (2) identifies with specificity the ~~records or portions thereof information~~ for which protection is sought, and (c) (3) states with reasonable particularity why the protection of such ~~records information~~ from public disclosure is necessary to meet the objective of antiterrorism or cybersecurity planning or protection. Such statement shall be a public record and shall be disclosed upon request.

Nothing in this subdivision shall be construed to ~~prohibit the disclosure~~ *authorize the withholding* of ~~records information~~ relating to the structural or environmental soundness of any building, nor shall it ~~prevent the disclosure~~ *authorize the withholding* of information relating to any building in connection with an inquiry into the performance of that building after it has been subjected to fire, explosion, natural disaster, or other catastrophic event.

5. 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.

6. ~~Engineering~~ *Information contained in engineering* and architectural drawings, operational,

procedural, tactical planning or training manuals, or staff meeting minutes or other records, the disclosure of which if disclosure of such information would (i) reveal surveillance techniques, personnel deployments, alarm or security systems or technologies, or operational and transportation plans or protocols, to the extent such disclosure would or (ii) jeopardize the security of any governmental facility, building, or structure or the safety of persons using such facility, building, or structure.

7. ~~Security~~ Information concerning security plans and specific assessment components of school safety audits, as provided in § 22.1-279.8.

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

8. ~~[Expired.]~~

9. ~~Records of the Commitment Review Committee~~ Information concerning the mental health assessment of an individual subject to commitment as a sexually violent predator under Chapter 9 (§ 37.2-900 et seq.) of Title 37.2 ~~held by the Commitment Review Committee~~; except that in no case shall records information identifying the victims of a sexually violent predator be disclosed.

10. 9. Subscriber data, ~~which for the purposes of this subdivision, means the name, address, telephone number, and any other information identifying a subscriber of a telecommunications carrier,~~ provided directly or indirectly by a telecommunications carrier to a public body that operates a 911 or E-911 emergency dispatch system or an emergency notification or reverse 911 system; if the data is in a form not made available by the telecommunications carrier to the public generally. Nothing in this subdivision shall ~~prevent the release~~ *authorize the withholding* of subscriber data generated in connection with specific calls to a 911 emergency system, where the requester is seeking to obtain public records about the use of the system in response to a specific crime, emergency or other event as to which a citizen has initiated a 911 call.

*For the purposes of this subdivision, "subscriber data" means the name, address, telephone number, and any other information identifying a subscriber of a telecommunications carrier.*

11. 10. Subscriber data, ~~which for the purposes of this subdivision, means the name, address, telephone number, and any other information identifying a subscriber of a telecommunications carrier,~~ collected by a local governing body in accordance with the Enhanced Public Safety Telephone Services Act (§ 56-484.12 et seq.); and other identifying information of a personal, medical, or financial nature provided to a local governing body in connection with a 911 or E-911 emergency dispatch system or an emergency notification or reverse 911 system; if such records are not otherwise publicly available.

Nothing in this subdivision shall ~~prevent the release~~ *authorize the withholding* of subscriber data generated in connection with specific calls to a 911 emergency system, where the requester is seeking to obtain public records about the use of the system in response to a specific crime, emergency or other event as to which a citizen has initiated a 911 call.

*For the purposes of this subdivision, "subscriber data" means the name, address, telephone number, and any other information identifying a subscriber of a telecommunications carrier.*

12. ~~Records of 11. Information held by the Virginia Military Advisory Council or any commission created by executive order for the purpose of studying and making recommendations regarding preventing closure or realignment of federal military and national security installations and facilities located in Virginia and relocation of such facilities to Virginia, or a local or regional military affairs organization appointed by a local governing body, to the extent such records (i) contain information relating to that would (i) reveal strategies under consideration or development by the Council or such commission or organizations to prevent the closure or realignment of federal military installations located in Virginia or the relocation of national security facilities located in Virginia, to limit the adverse economic effect of such realignment, closure, or relocation, or to seek additional tenant activity growth from the Department of Defense or federal government or (ii) disclose trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), provided to the Council or such commission or organizations in connection with their work.~~

In order to invoke the trade secret protection provided by clause (ii), the submitting entity shall, in writing and at the time of submission (a) invoke this exclusion, (b) identify with specificity the information for which such protection is sought, and (c) state the reason why such protection is necessary. Nothing in this subdivision shall be construed to authorize the withholding of all or part of any record, other than a trade secret that has been specifically identified as required by this subdivision, after the Department of Defense or federal agency has issued a final, unappealable decision, or in the event of litigation, a court of competent jurisdiction has entered a final, unappealable order concerning the closure, realignment, or expansion of the military installation or tenant activities, or the relocation of the national security facility, for which records are sought.

13. ~~Documentation or other information~~ 12. Information, as determined by the State Comptroller, that

describes the design, function, operation, or implementation of internal controls over the Commonwealth's financial processes and systems, and the assessment of risks and vulnerabilities of those controls, including the annual assessment of internal controls mandated by the State Comptroller, ~~the if~~ disclosure of ~~which such information~~ would jeopardize the security of the Commonwealth's financial assets. However, records relating to the investigation of and findings concerning the soundness of any fiscal process shall be disclosed in a form that does not compromise internal controls. Nothing in this subdivision shall be construed to prohibit the Auditor of Public Accounts or the Joint Legislative Audit and Review Commission from reporting internal control deficiencies discovered during the course of an audit.

~~14. Documentation or other information~~ 13. Information relating to the Statewide Agencies Radio System (STARS) or any other similar local or regional public safety communications system that (i) describes the design, function, programming, operation, or access control features of the overall system, components, structures, individual networks, and subsystems of the STARS or any other similar local or regional communications system or (ii) relates to radio frequencies assigned to or utilized by STARS or any other similar local or regional communications system, code plugs, circuit routing, addressing schemes, talk groups, fleet maps, encryption, programming maintained by or utilized by STARS or any other similar local or regional public safety communications system; those ~~portions of~~ engineering and construction drawings and plans that reveal critical structural components, interconnectivity, security equipment and systems, network monitoring, network operation center, master sites, ventilation systems, fire protection equipment, mandatory building emergency equipment, electrical systems, and other utility equipment and systems related to STARS or any other similar local or regional public safety communications system; and special event plans, operational plans, storm plans, or other pre-arranged programming, ~~the if~~ disclosure of ~~which such information~~ would (a) reveal surveillance techniques, personnel deployments, alarm or security systems or technologies, or operational and transportation plans or protocols; ~~to the extent such disclosure would or~~ (b) jeopardize the security of any governmental facility, building, or structure or the safety of any person.

~~15. Records of a~~ 14. Information concerning a salaried or volunteer Fire/EMS company or Fire/EMS department; ~~to the extent that the records disclose if disclosure of such information would reveal the~~ telephone numbers for cellular telephones, pagers, or comparable portable communication devices provided to its personnel for use in the performance of their official duties.

~~16. Records of hospitals and nursing homes regulated by the Board of Health pursuant to Chapter 5 (§ 32.1-123 et seq.) of Title 32.1 provided to the Department of Health; to the extent such records reveal~~ 15. Information concerning the disaster recovery plans or the evacuation plans ~~for such facilities in the event of fire, explosion, natural disaster, or other catastrophic event for hospitals and nursing homes regulated by the Board of Health pursuant to Chapter 5 (§ 32.1-123 et seq.) of Title 32.1 provided to the Department of Health.~~ Nothing in this subdivision shall be construed to ~~prohibit the disclosure authorize the withholding of records~~ information relating to the effectiveness of executed evacuation plans after the occurrence of fire, explosion, natural disaster, or other catastrophic event.

**§ 2.2-3705.3. Exclusions to application of chapter; records relating to administrative investigations.**

The following ~~records are~~ information contained in a public record is excluded from the mandatory disclosure provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law. *Redaction of information excluded under this section from a public record shall be conducted in accordance with § 2.2-3704.01.*

1. (Effective until July 1, 2018) ~~Confidential records of all~~ Information relating to investigations of applications applicants for licenses and permits, and of all licensees and permittees, made by or submitted to the Alcoholic Beverage Control Board, the Virginia Lottery, 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.

1. (Effective July 1, 2018) ~~Confidential records of all~~ Information relating to investigations of applications applicants for licenses and permits, and of all licensees and permittees, made by or submitted to the Virginia Alcoholic Beverage Control Authority, the Virginia Lottery, 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 pursuant to § 54.1-108.

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, 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 Information contained in inactive reports shall be disclosed~~ 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 Information contained in inactive reports shall be disclosed~~ in a form that does not reveal the identity of the parties involved or other persons supplying information.

6. ~~Records of Information relating to~~ studies and investigations by the Virginia Lottery 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 information has~~ 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) internal auditors appointed by the head of a state agency or 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 (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 an investigation of any officer, department, or program of such body. ~~Records of Information contained in~~ completed investigations shall be disclosed in a form that does not reveal the identity of the complainants or persons supplying information to investigators. Unless disclosure is ~~prohibited excluded~~ by this section ~~subdivision~~, the ~~records information~~ disclosed shall include, ~~but not be limited to~~, the agency involved, the identity of the person who is the subject of the complaint, the nature of the complaint, and the actions taken to resolve the complaint. If an investigation does not lead to corrective action, the identity of the person who is the subject of the complaint may be released only with the consent of the subject person. Local governing bodies shall adopt guidelines to govern the disclosure required by this subdivision.

8. Information furnished in confidence to the Department of Human Resource Management with respect to an investigation, consultation, or mediation under § 2.2-1202.1, 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 Information contained in inactive reports shall be disclosed~~ in a form that does not reveal the identity of the parties involved or other persons supplying information.

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

10. Records of active investigations being conducted by the Department of Criminal Justice Services 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.), and Article 12 (§ 9.1-186 et seq.) of Chapter 1 of Title 9.1.

11. ~~Records Information~~ furnished to or prepared by the Board of Education pursuant to subsection D of § 22.1-253.13:3 in connection with the review or investigation of any alleged breach in security, unauthorized alteration, or improper administration of tests by local school board employees responsible for the distribution or administration of the tests. However, this section shall not prohibit the disclosure of ~~records such information~~ to (i) a local school board or division superintendent for the purpose of permitting such board or superintendent to consider or to take personnel action with regard to an employee or (ii) any requester, after the conclusion of a review or investigation, in a form that (a) does



not reveal the identity of any person making a complaint or supplying information to the Board on a confidential basis and (b) does not compromise the security of any test mandated by the Board.

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

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

**§ 2.2-3705.4. Exclusions to application of chapter; educational records and certain records of educational institutions.**

The following ~~records are~~ *information contained in a public record* is excluded from the mandatory disclosure provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law: *Redaction of information excluded under this section from a public record shall be conducted in accordance with § 2.2-3704.01.*

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 such records~~ *shall open such records for inspection and copying be disclosed.*

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 Information held by~~ the Brown v. Board of Education Scholarship Awards Committee ~~relating to that would reveal~~ personally identifiable information, including scholarship applications, personal financial information, and confidential correspondence and letters of recommendation.

4. ~~Data, records or information~~ *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 Information held by~~ 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~~ However, information in a statistical or other form that does not identify individuals or provide personal information *shall be disclosed and may be published by the Board*. Individuals shall be provided access to their own personal information.

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

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

#### **§ 2.2-3705.5. Exclusions to application of chapter; health and social services records.**

The following ~~records are~~ *information contained in a public record* is excluded from the mandatory disclosure provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law: *Redaction of information excluded under this section from a public record shall be conducted in accordance with § 2.2-3704.01.*

1. Health records, except that such records may be personally reviewed by the individual who is the subject of such records, as provided in subsection F of § 32.1-127.1:03.

Where the person who is the subject of health 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 health 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. Health records shall only be reviewed and shall not be copied by such administrator or chief medical officer. The information in the health 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 health 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, a court of competent jurisdiction has restricted or denied such access, or a parent has been denied access to the health record in accordance with § 20-124.6. In instances where the person who is the subject thereof is an emancipated minor, a student in a public institution of higher education, or is a minor who has consented to his own treatment as authorized by § 16.1-338 or 54.1-2969, 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 abuse of individuals receiving services compiled by the Commissioner of Behavioral Health and Developmental Services shall be ~~open to inspection and copying as provided in § 2.2-3704~~ *disclosed*. No such summaries or data shall include any information that identifies specific individuals receiving

services.

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

3. Reports, documentary evidence and other information as specified in §§ 51.5-122, 51.5-141, and 63.2-104.

4. Investigative notes; proprietary information not published, copyrighted or patented; information obtained from employee personnel records; personally identifiable information regarding residents, clients or other recipients of services; other correspondence and information furnished in confidence to the Department of Social Services in connection with an active investigation of an applicant or licensee pursuant to Chapters 17 (§ 63.2-1700 et seq.) and 18 (§ 63.2-1800 et seq.) of Title 63.2; and records and information furnished to the Office of the Attorney General in connection with an investigation or litigation pursuant to Article 19.1 (§ 8.01-216.1 et seq.) of Chapter 3 of Title 8.01 and Chapter 9 (§ 32.1-310 et seq.) of Title 32.1. ~~However, nothing in this section shall prohibit disclosure of information~~ Information from the records of completed investigations *shall be disclosed* in a form that does not reveal the identity of complainants, persons supplying information, or other individuals involved in the investigation.

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

6. Reports and court documents relating to involuntary admission required to be kept confidential pursuant to § 37.2-818.

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

8. Information required to be provided to the Department of Health Professions by certain licensees pursuant to § 54.1-2506.1.

9. Information ~~and records~~ acquired (i) during a review of any child death conducted by the State Child Fatality Review team established pursuant to § 32.1-283.1 or by a local or regional child fatality review team to the extent *that such information is* made confidential by § 32.1-283.2; (ii) during a review of any death conducted by a family violence fatality review team to the extent *that such information is* made confidential by § 32.1-283.3; or (iii) during a review of any adult death conducted by the Adult Fatality Review Team to the extent made confidential by § 32.1-283.5 or by a local or regional adult fatality review team to the extent *that such information is* made confidential by § 32.1-283.6.

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

11. ~~Records of Information held by the Health Practitioners' Monitoring Program Committee within the Department of Health Professions; to the extent such records that may identify any practitioner who may be, or who is actually, impaired to the extent and disclosure of such information is prohibited by § 54.1-2517.~~

12. ~~Records submitted as Information relating to a grant application, or accompanying a grant application, submitted to the Commonwealth Neurotrauma Initiative Advisory Board pursuant to Article 12 (§ 51.5-178 et seq.) of Chapter 14 of Title 51.5; to the extent such records contain that would (i) reveal (a) medical or mental health records; or other data identifying individual patients or (ii) (b) 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 and (ii) be harmful to the competitive position of the applicant.~~

13. Any ~~record~~ information 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.

14. ~~Records, information~~ Information and statistical registries required to be kept confidential pursuant to §§ 63.2-102 and 63.2-104.

15. ~~All data, records, and reports~~ Information relating to the prescribing and dispensing of covered substances to recipients and any abstracts from such ~~data, records, and reports~~ information that are in the possession of the Prescription Monitoring Program pursuant to Chapter 25.2 (§ 54.1-2519 et seq.) of

Title 54.1 and any material relating to the operation or security of the Program.

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

17. ~~Records of Information held by~~ the State Health Commissioner relating to the health of any person or persons subject to an order of quarantine or an order of isolation pursuant to Article 3.02 (§ 32.1-48.05 et seq.) of Chapter 2 of Title 32.1; ~~this provision shall not, however, authorize the withholding of statistical summaries, abstracts, or other information in aggregate form.~~ *However, nothing in this subdivision shall be construed to prohibit the disclosure*

18. ~~Records containing the~~ The names and addresses or other contact information of persons receiving transportation services from a state or local public body or its designee under Title II of the Americans with Disabilities Act, (42 U.S.C. § 12131 et seq.) or funded by Temporary Assistance for Needy Families (TANF) created under § 63.2-600.

19. ~~Records of Information held by~~ certain health care committees and entities; ~~to the extent that they reveal information that may be withheld from discovery as privileged communications pursuant to § 8.01-581.17.~~

#### **§ 2.2-3705.6. Exclusions to application of chapter; proprietary records and trade secrets.**

The following ~~records are information contained in a public record~~ is excluded from the mandatory disclosure provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law. *Redaction of information excluded under this section from a public record shall be conducted in accordance with § 2.2-3704.01.*

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

2. Financial statements not publicly available filed with applications for industrial development financings in accordance with Chapter 49 (§ 15.2-4900 et seq.) of Title 15.2.

3. ~~Confidential proprietary records~~ *Proprietary information*, voluntarily provided by private business pursuant to a promise of confidentiality from a public body, used by the public body for business, trade, and tourism development or retention; and memoranda, working papers, or other ~~records information~~ related to businesses that are considering locating or expanding in Virginia, prepared by a public body, where competition or bargaining is involved and where, *if disclosure of such records are made public, information would adversely affect the financial interest of the public body would be adversely affected.*

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

5. Fisheries data that would permit identification of any person or vessel, except when required by court order as specified in § 28.2-204.

6. Confidential financial statements, balance sheets, trade secrets, and revenue and cost projections provided to the Department of Rail and Public Transportation, 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.

7. ~~Confidential proprietary records~~ *Proprietary information* 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.

8. 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.

9. 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 if disclosure of 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~~ *exclusion* provided by this subdivision shall not apply to any wholly owned subsidiary of a public body.

10. Confidential information designated as provided in subsection F of § 2.2-4342 as trade secrets or proprietary information by any person *in connection with a procurement transaction or 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.

11. a. Memoranda, staff evaluations, or other ~~records~~ *information* prepared by the responsible public entity, its staff, outside advisors, or consultants exclusively for the evaluation and negotiation of proposals filed under the Public-Private Transportation Act of 1995 (§ 33.2-1800 et seq.) or the ~~Public Private~~ *Public-Private* Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.); where (i) if such ~~records were~~ *information was* made public prior to or after the execution of an interim or a comprehensive agreement, § 33.2-1820 or 56-575.17 notwithstanding, the financial interest or bargaining position of the public entity would be adversely affected; and (ii) the basis for the determination required in clause (i) is documented in writing by the responsible public entity; and

b. ~~Records~~ *Information* provided by a private entity to a responsible public entity, affected jurisdiction, or affected local jurisdiction pursuant to the provisions of the Public-Private Transportation Act of 1995 (§ 33.2-1800 et seq.) or the Public-Private Education Facilities and Infrastructure Act of 2002; ~~to the extent that~~ (§ 56-575.1 et seq.) *if disclosure of such records contain information would reveal* (i) trade secrets of the private entity as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.); (ii) financial ~~records~~ *information* of the private entity, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise; or (iii) other information submitted by the private entity; where, if ~~the records were~~ *such information was* made public prior to the execution of an interim agreement or a comprehensive agreement, the financial interest or bargaining position of the public or private entity would be adversely affected. In order for the ~~records~~ *information* specified in clauses (i), (ii), and (iii) to be excluded from the provisions of this chapter, the private entity shall make a written request to the responsible public entity:

1. (1) Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;

2. (2) Identifying with specificity the data or other materials for which protection is sought; and

3. (3) Stating the reasons why protection is necessary.

The responsible public entity shall determine whether the requested exclusion from disclosure is necessary to protect the trade secrets or financial ~~records~~ *information* of the private entity. To protect other ~~records~~ *information* submitted by the private entity from disclosure, the responsible public entity shall determine whether public disclosure prior to the execution of an interim agreement or a comprehensive agreement would adversely affect the financial interest or bargaining position of the public or private entity. The responsible public entity shall make a written determination of the nature and scope of the protection to be afforded by the responsible public entity under this subdivision. Once a written determination is made by the responsible public entity, the ~~records~~ *information* afforded protection under this subdivision shall continue to be protected from disclosure when in the possession of any affected jurisdiction or affected local jurisdiction.

Except as specifically provided in subdivision 11 a, nothing in this subdivision shall be construed to authorize the withholding of (a) procurement records as required by § 33.2-1820 or 56-575.17; (b) information concerning the terms and conditions of any interim or comprehensive agreement, service contract, lease, partnership, or any agreement of any kind entered into by the responsible public entity and the private entity; (c) information concerning the terms and conditions of any financing arrangement that involves the use of any public funds; or (d) information concerning the performance of any private entity developing or operating a qualifying transportation facility or a qualifying project.

For the purposes of this subdivision, the terms "affected jurisdiction," "affected local jurisdiction," "comprehensive agreement," "interim agreement," "qualifying project," "qualifying transportation facility," "responsible public entity," and "private entity" shall mean the same as those terms are defined in the Public-Private Transportation Act of 1995 (§ 33.2-1800 et seq.) or in the Public-Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.).

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

13. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), or confidential proprietary ~~records~~ *information* that ~~are~~ *is* not generally available to the public through regulatory disclosure or otherwise, provided by a ~~(a)~~ (i) bidder or applicant for a franchise or ~~(b)~~ (ii) franchisee under Chapter 21 (§ 15.2-2100 et seq.) of Title 15.2 to the applicable franchising authority pursuant to a promise of confidentiality from the franchising authority, to the extent the ~~records relate~~ *information relates* to the bidder's, applicant's, or franchisee's financial capacity or provision of new services, adoption of new technologies or implementation of improvements, where such new services, technologies, or improvements have not been implemented by the franchisee on a nonexperimental scale in the franchise area, and where, if such ~~records~~ *information* were made public, the competitive

advantage or financial interests of the franchisee would be adversely affected.

In order for trade secrets or confidential proprietary information to be excluded from the provisions of this chapter, the bidder, applicant, or franchisee shall ~~(i)~~ (a) invoke such exclusion upon submission of the data or other materials for which protection from disclosure is sought, ~~(ii)~~ (b) identify the data or other materials for which protection is sought, and ~~(iii)~~ (c) state the reason why protection is necessary.

No bidder, applicant, or franchisee may invoke the exclusion provided by this subdivision if the bidder, applicant, or franchisee is owned or controlled by a public body or if any representative of the applicable franchising authority serves on the management board or as an officer of the bidder, applicant, or franchisee.

14. ~~Documents and other information~~ *Information* of a proprietary nature furnished by a supplier of charitable gaming supplies to the Department of Agriculture and Consumer Services pursuant to subsection E of § 18.2-340.34.

15. ~~Records and reports~~ *Information* related to Virginia apple producer sales provided to the Virginia State Apple Board pursuant to § 3.2-1215.

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

17. ~~Records submitted as~~ *Information relating to* a grant or loan application, or accompanying a grant or loan application, to the Innovation and Entrepreneurship Investment Authority pursuant to Article 3 (§ 2.2-2233.1 et seq.) of Chapter 22 of Title 2.2 or to the Commonwealth Health Research Board pursuant to Chapter 22 (§ 23-277 et seq.) of Title 23 ~~to the extent if disclosure of such records contain information would~~ (i) reveal 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, technological, or scholarly issues, when such information has not been publicly released, published, copyrighted, or patented, ~~if the disclosure of such information would and~~ (ii) be harmful to the competitive position of the applicant.

18. Confidential proprietary ~~records information~~ and trade secrets developed and held by a local public body (i) providing telecommunication services pursuant to § 56-265.4:4 and (ii) providing cable television services pursuant to Article 1.1 (§ 15.2-2108.2 et seq.) of Chapter 21 of Title 15.2, ~~to the extent that if disclosure of such records information would be harmful to the competitive position of the locality.~~

In order for confidential proprietary information or trade secrets to be excluded from the provisions of this chapter, the locality in writing shall (a) invoke the protections of this subdivision, (b) identify with specificity the ~~records or portions thereof~~ *information* for which protection is sought, and (c) state the reasons why protection is necessary.

19. Confidential proprietary ~~records information~~ and trade secrets developed by or for a local authority created in accordance with the Virginia Wireless Service Authorities Act (§ 15.2-5431.1 et seq.) to provide qualifying communications services as authorized by Article 5.1 (§ 56-484.7:1 et seq.) of Chapter 15 of Title 56, where disclosure of such information would be harmful to the competitive position of the authority, except that ~~records information~~ required to be maintained in accordance with § 15.2-2160 shall be released.

20. Trade secrets as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.) or financial ~~records information~~ of a business, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise, provided to the Department of Small Business and Supplier Diversity as part of an application for certification as a small, women-owned, or minority-owned business in accordance with Chapter 16.1 (§ 2.2-1603 et seq.). In order for such trade secrets or financial ~~records information~~ to be excluded from the provisions of this chapter, the business 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.

21. ~~Documents and other information~~ *Information* of a proprietary or confidential nature disclosed by a carrier to the State Health Commissioner pursuant to §§ 32.1-276.5:1 and 32.1-276.7:1.

22. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), including, but not limited to, financial ~~records information~~, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise, and revenue and cost projections supplied by a private or nongovernmental entity to the State Inspector General for the purpose of an audit, special investigation, or any study requested by the Office of the State Inspector General in accordance with law.

In order for the ~~records information~~ specified in this subdivision to be excluded from the provisions of this chapter, the private or nongovernmental entity shall make a written request to the State Inspector General:

1- *a.* Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;

2- *b.* Identifying with specificity the data or other materials for which protection is sought; and

3- *c.* Stating the reasons why protection is necessary.

The State Inspector General shall determine whether the requested exclusion from disclosure is necessary to protect the trade secrets or financial ~~records~~ *information* of the private entity. The State Inspector General shall make a written determination of the nature and scope of the protection to be afforded by it under this subdivision.

23. ~~Records submitted as~~ *Information relating to* a grant application, or accompanying a grant application, ~~submitted to the Tobacco Region Revitalization Commission to the extent such records contain that would~~ (i) *reveal* (a) trade secrets as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), (ii) (b) financial ~~records~~ *information* of a grant applicant that is not a public body, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise, or (iii) (c) 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, technological, or scholarly issues, when such information has not been publicly released, published, copyrighted, or patented, ~~if the disclosure of such information would~~ and (ii) be harmful to the competitive position of the applicant; and memoranda, staff evaluations, or other ~~records~~ *information* prepared by the Commission or its staff exclusively for the evaluation of grant applications. The exclusion provided by this subdivision shall apply to grants that are consistent with the powers of and in furtherance of the performance of the duties of the Commission pursuant to § 3.2-3103.

In order for the ~~records~~ *information* specified in this subdivision to be excluded from the provisions of this chapter, the applicant shall make a written request to the Commission:

1- *a.* Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;

2- *b.* Identifying with specificity the data, ~~records~~ *information* or other materials for which protection is sought; and

3- *c.* Stating the reasons why protection is necessary.

The Commission shall determine whether the requested exclusion from disclosure is necessary to protect the trade secrets, financial ~~records~~ *information*, or research-related information of the applicant. The Commission shall make a written determination of the nature and scope of the protection to be afforded by it under this subdivision.

24. *a.* ~~Records of~~ *Information held by* the Commercial Space Flight Authority relating to rate structures or charges for the use of projects of, the sale of products of, or services rendered by the Authority if ~~public disclosure of such information would adversely affect the financial interest or bargaining position of the Authority or a private entity providing~~ ~~records~~ *the information* to the Authority; or

*b.* ~~Records~~ *Information* provided by a private entity to the Commercial Space Flight Authority; ~~to the extent that if disclosure of such records contain information would~~ (i) *reveal* (a) trade secrets of the private entity as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.); (ii) (b) financial ~~records~~ *information* of the private entity, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise; or (iii) (c) other information submitted by the private entity; ~~where, if the records were made public, and~~ (ii) *adversely affect* the financial interest or bargaining position of the Authority or private entity ~~would be adversely affected~~.

In order for the ~~records~~ *information* specified in clauses (i) (a), (ii) (b), and (iii) (c) of subdivision 24 b to be excluded from the provisions of this chapter, the private entity shall make a written request to the Authority:

1- (1) Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;

2- (2) Identifying with specificity the data or other materials for which protection is sought; and

3- (3) Stating the reasons why protection is necessary.

The Authority shall determine whether the requested exclusion from disclosure is necessary to protect the trade secrets or financial ~~records~~ *information* of the private entity. To protect other ~~records~~ *information* submitted by the private entity from disclosure, the Authority shall determine whether public disclosure would adversely affect the financial interest or bargaining position of the Authority or private entity. The Authority shall make a written determination of the nature and scope of the protection to be afforded by it under this subdivision.

25. ~~Documents and other information~~ *Information* of a proprietary nature furnished by an agricultural landowner or operator to the Department of Conservation and Recreation, the Department of Environmental Quality, the Department of Agriculture and Consumer Services, or any political subdivision, agency, or board of the Commonwealth pursuant to §§ 10.1-104.7, 10.1-104.8, and

10.1-104.9, other than when required as part of a state or federal regulatory enforcement action.

26. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), provided to the Department of Environmental Quality pursuant to the provisions of § 10.1-1458. In order for such trade secrets to be excluded from the provisions of this chapter, the submitting party shall (i) invoke this exclusion upon submission of the data or materials for which protection from disclosure is sought, (ii) identify the data or materials for which protection is sought, and (iii) state the reasons why protection is necessary.

27. ~~Documents and other information~~ *Information* of a proprietary nature furnished by a licensed public-use airport to the Department of Aviation for funding from programs administered by the Department of Aviation or the Virginia Aviation Board, where if ~~the records were~~ *such information was* made public, the financial interest of the public-use airport would be adversely affected.

In order for the ~~records~~ *information* specified in this subdivision to be excluded from the provisions of this chapter, the public-use airport shall make a written request to the Department of Aviation:

1. Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;

2. Identifying with specificity the data or other materials for which protection is sought; and

3. Stating the reasons why protection is necessary.

**§ 2.2-3705.7. Exclusions to application of chapter; records of specific public bodies and certain other limited exclusions.**

The following ~~records~~ *are information contained in a public record* is excluded from the mandatory disclosure provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law. *Redaction of information excluded under this section from a public record shall be conducted in accordance with § 2.2-3704.01.*

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; ~~the~~ Lieutenant Governor; the Attorney General; the members of the General Assembly, the Division of Legislative Services, or the Clerks of the House of Delegates and the Senate of Virginia; 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 information that* is otherwise open to inspection under this chapter, shall be deemed ~~exempt~~ *excluded* by virtue of the fact that it has been attached to or incorporated within any working paper or correspondence.

As used in this subdivision:

"Members of the General Assembly" means each member of the Senate of Virginia and the House of Delegates and their legislative aides when working on behalf of such member.

"Office of the Governor" means the Governor; his chief of staff, counsel, director of policy, Cabinet Secretaries, and the Assistant to the Governor for Intergovernmental Affairs; 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~~ *Information contained in 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~~ *Information* 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~~ *Information* regarding the siting of hazardous waste facilities, except as provided in § 10.1-1441, if disclosure of ~~them~~ *such information* 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~~ *Information* on the ~~site specific~~ *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, disclosure of the information would jeopardize the continued existence or the integrity of the resource. This ~~exemption~~ *exclusion* shall not apply to requests from the owner of the land upon which the resource is located.

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

12. ~~Records of Information held by~~ the Virginia Retirement System, acting pursuant to § 51.1-124.30, or of a local retirement system, acting pursuant to § 51.1-803, or of the Rector and Visitors of the University of Virginia, acting pursuant to § 23-76.1, or of the Virginia College Savings Plan, acting pursuant to § 23-38.77, relating to the acquisition, holding, or disposition of a security or other ownership interest in an entity, where such security or ownership interest is not traded on a governmentally regulated securities exchange, ~~to the extent that: if disclosure of such information would~~ (i) ~~such records contain~~ *reveal* confidential analyses prepared for the Rector and Visitors of the University of Virginia, prepared by the retirement system or the Virginia College Savings Plan, or provided to the retirement system or the Virginia College Savings Plan 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, the Rector and Visitors of the University of Virginia, or the Virginia College Savings Plan. Nothing in this subdivision shall be construed to ~~prevent the disclosure of records~~ *authorize the withholding of information* relating to the identity of any investment held, the amount invested, or the present value of such investment.

13. 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.

14. 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.

15. ~~Records of Information held by~~ the Virginia Commonwealth University Health System Authority pertaining to any of the following: an individual's qualifications for or continued membership on its medical or teaching staffs; proprietary information gathered by or in the possession of the Authority from third parties pursuant to a promise of confidentiality; contract cost estimates prepared for confidential use in awarding contracts for construction or the purchase of goods or services; ~~data, records of~~ information of a proprietary nature produced or collected by or for the Authority or members of its medical or teaching staffs; financial statements not publicly available that may be filed with the Authority from third parties; the identity, accounts, or account status of any customer of the Authority; consulting or other reports paid for by the Authority to assist the Authority in connection with its strategic planning and goals; the determination of marketing and operational strategies where disclosure of such strategies would be harmful to the competitive position of the Authority; and ~~data, records of~~ information of a proprietary nature produced or collected by or for employees of the Authority, other than the Authority's 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 Authority alone or in conjunction with a governmental body or a private concern, when such ~~data, records of~~ information ~~have~~ *has* not been publicly released, published, copyrighted, or patented. This ~~exemption~~

exclusion shall also apply when such ~~records~~ *information* is in the possession of the Virginia Commonwealth University.

16. ~~Records of Information held by~~ the Department of Environmental Quality, the State Water Control Board, ~~the~~ 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 information~~ 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~~ *authorize the withholding* of ~~records information~~ related to inspection reports, notices of violation, and documents detailing the nature of any environmental contamination that may have occurred or similar documents.

17. ~~As it pertains to any person, records~~ *Information* related to the operation of toll facilities that ~~identify identifies~~ an individual, vehicle, or travel itinerary, including; ~~but not limited to,~~ vehicle identification data; ~~or~~ 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.

18. ~~Records of Information held by~~ the Virginia Lottery pertaining to (i) the social security number, tax identification number, state sales tax number, home address and telephone number, personal and lottery banking account and transit numbers of a retailer, and financial information regarding the nonlottery operations of specific retail locations; and (ii) individual lottery winners, except that a winner's name, hometown, and amount won shall be disclosed.

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

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

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

22. ~~Records of Information held by~~ state or local park and recreation departments and local and regional park authorities ~~to the extent such records contain information identifying a person concerning identifiable individuals~~ under the age of 18 years. However, nothing in this subdivision shall operate to ~~prohibit the disclosure~~ *authorize the withholding* of information defined as directory information under regulations implementing the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, unless the public body has undertaken the parental notification and opt-out requirements provided by such regulations. Access shall not be denied to the parent, including a noncustodial parent, or guardian of such person, unless the parent's parental rights have been terminated or a court of competent jurisdiction has restricted or denied such access. For ~~records such information~~ of such persons who are emancipated, the right of access may be asserted by the subject thereof. Any parent or emancipated person who is the subject of the ~~record information~~ may waive, in writing, the protections afforded by this subdivision. If the protections are so waived, the public body shall open such ~~records information~~ for inspection and copying.

23. ~~Records Information~~ submitted for inclusion in the Statewide Alert Network administered by the Department of Emergency Management; ~~to the extent that they that~~ reveal names, physical addresses, email addresses, computer or internet protocol information, telephone numbers, pager numbers, other wireless or portable communications device information, or operating schedules of individuals or agencies, where the release of such information would compromise the security of the Statewide Alert Network or individuals participating in the Statewide Alert Network.

24. ~~Records of Information held by~~ the Judicial Inquiry and Review Commission made confidential by § 17.1-913.

25. ~~Records of Information held by~~ the Virginia Retirement System acting pursuant to § 51.1-124.30, ~~of~~ a local retirement system acting pursuant to § 51.1-803 (hereinafter collectively referred to as the retirement system), or ~~of~~ the Virginia College Savings Plan, acting pursuant to § 23-38.77 relating to:

a. Internal deliberations of or decisions by the retirement system or the Virginia College Savings Plan on the pursuit of particular investment strategies, or the selection or termination of investment managers, prior to the execution of such investment strategies or the selection or termination of such managers, ~~to the extent that if~~ disclosure of such ~~records information~~ would have an adverse impact on the financial interest of the retirement system or the Virginia College Savings Plan; and

b. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), provided by a private entity to the retirement system or the Virginia College Savings Plan; ~~to the extent if~~ disclosure of such records would have an adverse impact on the financial interest of the retirement system or the Virginia College Savings Plan.

For the records specified in subdivision b to be excluded from the provisions of this chapter, the entity shall make a written request to the retirement system or the Virginia College Savings Plan:

(1) Invoking such exclusion prior to or upon submission of the data or other materials for which protection from disclosure is sought;

(2) Identifying with specificity the data or other materials for which protection is sought; and

(3) Stating the reasons why protection is necessary.

The retirement system or the Virginia College Savings Plan shall determine whether the requested exclusion from disclosure meets the requirements set forth in subdivision b.

Nothing in this subdivision shall be construed to authorize the withholding of the identity or amount of any investment held or the present value and performance of all asset classes and subclasses.

26. ~~Records of~~ *Information held by* the Department of Corrections made confidential by § 53.1-233.

27. ~~Records~~ *Information* maintained by the Department of the Treasury or participants in the Local Government Investment Pool (§ 2.2-4600 et seq.); ~~to the extent such records relate to information and~~ required to be provided by such participants to the Department to establish accounts in accordance with § 2.2-4602.

28. Personal information, as defined in § 2.2-3801, contained in the Veterans Care Center Resident Trust Funds concerning residents or patients of the Department of Veterans Services Care Centers, except that access shall not be denied to the person who is the subject of the ~~record~~ *information*.

29. ~~Records~~ *Information* maintained in connection with fundraising activities by the Veterans Services Foundation pursuant to § 2.2-2716 ~~to the extent that such records that~~ reveal the address, electronic mail address, facsimile or telephone number, social security number or other identification number appearing on a driver's license, or credit card or bank account data of identifiable donors, except that access shall not be denied to the person who is the subject of the ~~record~~ *information*. Nothing in this subdivision, however, shall be construed to authorize the withholding of ~~records~~ *information* relating to the amount, date, purpose, and terms of the pledge or donation or the identity of the donor, unless the donor has requested anonymity in connection with or as a condition of making a pledge or donation. The exclusion provided by this subdivision shall not apply to protect from disclosure (i) the identities of sponsors providing grants to or contracting with the foundation for the performance of services or other work or (ii) the terms and conditions of such grants or contracts.

30. Names, physical addresses, telephone numbers, and email addresses contained in correspondence between an individual and a member of the governing body, school board, or other public body of the locality in which the individual is a resident, unless the correspondence relates to the transaction of public business. However, no ~~record~~ *information* that 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 such correspondence.

31. ~~Records of the Commonwealth's Attorneys' Services Council, to the extent such records are~~ *Information* prepared for and utilized by the Commonwealth's Attorneys' Services Council in the training of state prosecutors or law-enforcement personnel, where such ~~records are~~ *information is* not otherwise available to the public and the ~~release~~ *disclosure* of such ~~records~~ *information* would reveal confidential strategies, methods, or procedures to be employed in law-enforcement activities; or materials created for the investigation and prosecution of a criminal case.

32. ~~Records~~ *Information* provided to the Department of Aviation by other entities of the Commonwealth in connection with the operation of aircraft, where the ~~records~~ *information* would not be subject to disclosure by the entity providing the ~~records~~ *information*. The entity providing the ~~records~~ *information* to the Department of Aviation shall identify the specific ~~portion of the records~~ *information* to be protected and the applicable provision of this chapter that ~~exempts the record or portions thereof~~ *excludes the information* from mandatory disclosure.

33. ~~Records~~ *Information* created or maintained by or on the behalf of the judicial performance evaluation program related to an evaluation of any individual justice or judge made confidential by § 17.1-100.

34. (Effective July 1, 2018) ~~Records of~~ *Information held by* the Virginia Alcoholic Beverage Control Authority ~~to the extent such records contain that contains~~ (i) information of a proprietary nature gathered by or in the possession of the Authority from a private entity pursuant to a promise of confidentiality; (ii) trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), of any private entity; (iii) financial ~~records~~ *information* of a private entity, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise; (iv) contract cost estimates prepared for the (a) confidential use in awarding contracts for

construction or (b) purchase of goods or services; or (v) the determination of marketing and operational strategies where disclosure of such strategies would be harmful to the competitive position of the Authority.

In order for the ~~records~~ *information* identified in clauses (i) ~~through~~, (ii), or (iii) to be excluded from the provisions of this chapter, the private entity shall make a written request to the Authority:

a. Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;

b. Identifying with specificity the data or other materials for which protection is sought; and

c. Stating the reasons why protection is necessary.

The Authority shall determine whether the requested exclusion from disclosure is necessary to protect such ~~records~~ *information* of the private entity. The Authority shall make a written determination of the nature and scope of the protection to be afforded by it under this subdivision.

**§ 2.2-3711. Closed meetings authorized for certain limited purposes.**

A. Public bodies may hold closed meetings only for the following purposes:

1. Discussion, consideration, or interviews of prospective candidates for employment; assignment, appointment, promotion, performance, demotion, salaries, disciplining, or resignation of specific public officers, appointees, or employees of any public body; and evaluation of performance of departments or schools of public institutions of higher education where such evaluation will necessarily involve discussion of the performance of specific individuals. Any teacher shall be permitted to be present during a closed meeting in which there is a discussion or consideration of a disciplinary matter that involves the teacher and some student and the student involved in the matter is present, provided the teacher makes a written request to be present to the presiding officer of the appropriate board.

2. Discussion or consideration of admission or disciplinary matters or any other matters that would involve the disclosure of information contained in a scholastic record concerning any student of any Virginia public institution of higher education or any state school system. However, any such student, legal counsel and, if the student is a minor, the student's parents or legal guardians shall be permitted to be present during the taking of testimony or presentation of evidence at a closed meeting, if such student, parents, or guardians so request in writing and such request is submitted to the presiding officer of the appropriate board.

3. Discussion or consideration of the acquisition of real property for a public purpose, or of the disposition of publicly held real property, where discussion in an open meeting would adversely affect the bargaining position or negotiating strategy of the public body.

4. The protection of the privacy of individuals in personal matters not related to public business.

5. Discussion concerning a prospective business or industry or the expansion of an existing business or industry where no previous announcement has been made of the business' or industry's interest in locating or expanding its facilities in the community.

6. Discussion or consideration of the investment of public funds where competition or bargaining is involved, where, if made public initially, the financial interest of the governmental unit would be adversely affected.

7. Consultation with legal counsel and briefings by staff members or consultants pertaining to actual or probable litigation, where such consultation or briefing in open meeting would adversely affect the negotiating or litigating posture of the public body; and consultation with legal counsel employed or retained by a public body regarding specific legal matters requiring the provision of legal advice by such counsel. For the purposes of this subdivision, "probable litigation" means litigation that has been specifically threatened or on which the public body or its legal counsel has a reasonable basis to believe will be commenced by or against a known party. Nothing in this subdivision shall be construed to permit the closure of a meeting merely because an attorney representing the public body is in attendance or is consulted on a matter.

8. In the case of boards of visitors of public institutions of higher education, discussion or consideration of matters relating to gifts, bequests and fund-raising activities, and grants and contracts for services or work to be performed by such institution. However, the terms and conditions of any such gifts, bequests, grants, and contracts made by a foreign government, a foreign legal entity, or a foreign person and accepted by a public institution of higher education in Virginia shall be subject to public disclosure upon written request to the appropriate board of visitors. For the purpose of this subdivision, (i) "foreign government" means any government other than the United States government or the government of a state or a political subdivision thereof; (ii) "foreign legal entity" means any legal entity created under the laws of the United States or of any state thereof if a majority of the ownership of the stock of such legal entity is owned by foreign governments or foreign persons or if a majority of the membership of any such entity is composed of foreign persons or foreign legal entities, or any legal entity created under the laws of a foreign government; and (iii) "foreign person" means any individual who is not a citizen or national of the United States or a trust territory or protectorate thereof.

9. In the case of the boards of trustees of the Virginia Museum of Fine Arts, the Virginia Museum of Natural History, the Jamestown-Yorktown Foundation, and The Science Museum of Virginia, discussion or consideration of matters relating to specific gifts, bequests, and grants.

10. Discussion or consideration of honorary degrees or special awards.

11. Discussion or consideration of tests, examinations, or other ~~records~~ *information* excluded from this chapter pursuant to subdivision 4 of § 2.2-3705.1.

12. Discussion, consideration, or review by the appropriate House or Senate committees of possible disciplinary action against a member arising out of the possible inadequacy of the disclosure statement filed by the member, provided the member may request in writing that the committee meeting not be conducted in a closed meeting.

13. Discussion of strategy with respect to the negotiation of a hazardous waste siting agreement or to consider the terms, conditions, and provisions of a hazardous waste siting agreement if the governing body in open meeting finds that an open meeting will have an adverse effect upon the negotiating position of the governing body or the establishment of the terms, conditions and provisions of the siting agreement, or both. All discussions with the applicant or its representatives may be conducted in a closed meeting.

14. Discussion by the Governor and any economic advisory board reviewing forecasts of economic activity and estimating general and nongeneral fund revenues.

15. Discussion or consideration of medical and mental health records excluded from this chapter pursuant to subdivision 1 of § 2.2-3705.5.

16. Deliberations of the Virginia Lottery Board in a licensing appeal action conducted pursuant to subsection D of § 58.1-4007 regarding the denial or revocation of a license of a lottery sales agent; and discussion, consideration or review of Virginia Lottery matters related to proprietary lottery game information and studies or investigations exempted from disclosure under subdivision 6 of § 2.2-3705.3 and subdivision 11 of § 2.2-3705.7.

17. Those portions of meetings by local government crime commissions where the identity of, or information tending to identify, individuals providing information about crimes or criminal activities under a promise of anonymity is discussed or disclosed.

18. Those portions of meetings in which the Board of Corrections discusses or discloses the identity of, or information tending to identify, any prisoner who (i) provides information about crimes or criminal activities, (ii) renders assistance in preventing the escape of another prisoner or in the apprehension of an escaped prisoner, or (iii) voluntarily or at the instance of a prison official renders other extraordinary services, the disclosure of which is likely to jeopardize the prisoner's life or safety.

19. Discussion of plans to protect public safety as it relates to terrorist activity or specific cybersecurity threats or vulnerabilities and briefings by staff members, legal counsel, or law-enforcement or emergency service officials concerning actions taken to respond to such matters or a related threat to public safety; discussion of ~~records~~ *information* excluded from this chapter pursuant to subdivision 3 or 4 of § 2.2-3705.2, where discussion in an open meeting would jeopardize the safety of any person or the security of any facility, building, structure, information technology system, or software program; or discussion of reports or plans related to the security of any governmental facility, building or structure, or the safety of persons using such facility, building or structure.

20. Discussion by the Board of the Virginia Retirement System, acting pursuant to § 51.1-124.30, or of any local retirement system, acting pursuant to § 51.1-803, or of the Rector and Visitors of the University of Virginia, acting pursuant to § 23-76.1, or by the Board of the Virginia College Savings Plan, acting pursuant to § 23-38.80, regarding the acquisition, holding or disposition of a security or other ownership interest in an entity, where such security or ownership interest is not traded on a governmentally regulated securities exchange, to the extent that such discussion (i) concerns confidential analyses prepared for the Rector and Visitors of the University of Virginia, prepared by the retirement system or by the Virginia College Savings Plan or provided to the retirement system or the Virginia College Savings Plan under a promise of confidentiality, of the future value of such ownership interest or the future financial performance of the entity, and (ii) would have an adverse effect on the value of the investment to be acquired, held or disposed of by the retirement system, the Rector and Visitors of the University of Virginia, or the Virginia College Savings Plan. Nothing in this subdivision shall be construed to prevent the disclosure of information relating to the identity of any investment held, the amount invested or the present value of such investment.

21. Those portions of meetings in which individual child death cases are discussed by the State Child Fatality Review team established pursuant to § 32.1-283.1, those portions of meetings in which individual child death cases are discussed by a regional or local child fatality review team established pursuant to § 32.1-283.2, those portions of meetings in which individual death cases are discussed by family violence fatality review teams established pursuant to § 32.1-283.3, those portions of meetings in which individual adult death cases are discussed by the state Adult Fatality Review Team established

pursuant to § 32.1-283.5, and those portions of meetings in which individual adult death cases are discussed by a local or regional adult fatality review team established pursuant to § 32.1-283.6.

22. Those portions of meetings of the University of Virginia Board of Visitors or the Eastern Virginia Medical School Board of Visitors, as the case may be, and those portions of meetings of any persons to whom management responsibilities for the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, have been delegated, in which there is discussed 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 adversely affect the competitive position of the Medical Center or Eastern Virginia Medical School, as the case may be.

23. In the case of the Virginia Commonwealth University Health System Authority, discussion or consideration of any of the following: the acquisition or disposition of real or personal property where disclosure would adversely affect the bargaining position or negotiating strategy of the Authority; operational plans that could affect the value of such property, real or personal, owned or desirable for ownership by the Authority; matters relating to gifts, bequests and fund-raising activities; grants and contracts for services or work to be performed by the Authority; marketing or operational strategies where disclosure of such strategies would adversely affect the competitive position of the Authority; members of its medical and teaching staffs and qualifications for appointments thereto; and qualifications or evaluations of other employees. This ~~exemption~~ *exclusion* shall also apply when the foregoing discussions occur at a meeting of the Virginia Commonwealth University Board of Visitors.

24. Those portions of the meetings of the Health Practitioners' Monitoring Program Committee within the Department of Health Professions to the extent such discussions identify any practitioner who may be, or who actually is, impaired pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of Title 54.1.

25. Meetings or portions of meetings of the Board of the Virginia College Savings Plan wherein personal information, as defined in § 2.2-3801, which has been provided to the Board 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 is discussed.

26. Discussion or consideration, by the Wireless Carrier E-911 Cost Recovery Subcommittee created pursuant to § 56-484.15, of trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), submitted by CMRS providers as defined in § 56-484.12, related to the provision of wireless E-911 service.

27. Those portions of disciplinary proceedings by any regulatory board within the Department of Professional and Occupational Regulation, Department of Health Professions, or the Board of Accountancy conducted pursuant to § 2.2-4019 or 2.2-4020 during which the board deliberates to reach a decision or meetings of health regulatory boards or conference committees of such boards to consider settlement proposals in pending disciplinary actions or modifications to previously issued board orders as requested by either of the parties.

28. Discussion or consideration of ~~records~~ *information* excluded from this chapter pursuant to subdivision 11 of § 2.2-3705.6 by a responsible public entity or an affected locality or public entity, as those terms are defined in § 33.2-1800, or any independent review panel appointed to review information and advise the responsible public entity concerning such records.

29. Discussion of the award of a public contract involving the expenditure of public funds, including interviews of bidders or offerors, and discussion of the terms or scope of such contract, where discussion in an open session would adversely affect the bargaining position or negotiating strategy of the public body.

30. Discussion or consideration of grant or loan application ~~records~~ *information* excluded from this chapter pursuant to subdivision 17 of § 2.2-3705.6 by (i) the Commonwealth Health Research Board or (ii) the Innovation and Entrepreneurship Investment Authority or the Research and Technology Investment Advisory Committee appointed to advise the Innovation and Entrepreneurship Investment Authority.

31. Discussion or consideration by the Commitment Review Committee of ~~records~~ *information* excluded from this chapter pursuant to subdivision 9 8 of § 2.2-3705.2 relating to individuals subject to commitment as sexually violent predators under Chapter 9 (§ 37.2-900 et seq.) of Title 37.2.

32. [Expired.]

33. Discussion or consideration of confidential proprietary ~~records~~ *information* and trade secrets excluded from this chapter pursuant to subdivision 18 of § 2.2-3705.6.

34. Discussion or consideration by a local authority created in accordance with the Virginia Wireless

Service Authorities Act (§ 15.2-5431.1 et seq.) of confidential proprietary ~~records~~ *information* and trade secrets excluded from this chapter pursuant to subdivision 19 of § 2.2-3705.6.

35. Discussion or consideration by the State Board of Elections or local electoral boards of voting security matters made confidential pursuant to § 24.2-625.1.

36. Discussion or consideration by the Forensic Science Board or the Scientific Advisory Committee created pursuant to Article 2 (§ 9.1-1109 et seq.) of Chapter 11 of Title 9.1 of records excluded from this chapter pursuant to subdivision A 2 a of § 2.2-3706.

37. Discussion or consideration by the Brown v. Board of Education Scholarship Program Awards Committee of ~~records~~ *information* or confidential matters excluded from this chapter pursuant to subdivision 3 of § 2.2-3705.4, and meetings of the Committee to deliberate concerning the annual maximum scholarship award, review and consider scholarship applications and requests for scholarship award renewal, and cancel, rescind, or recover scholarship awards.

38. Discussion or consideration by the Virginia Port Authority of ~~records~~ *information* excluded from this chapter pursuant to subdivision 1 of § 2.2-3705.6.

39. Discussion or consideration by the Board of Trustees of the Virginia Retirement System acting pursuant to § 51.1-124.30, by the Investment Advisory Committee appointed pursuant to § 51.1-124.26, by any local retirement system, acting pursuant to § 51.1-803, by the Board of the Virginia College Savings Plan acting pursuant to § 23-38.80, or by the Virginia College Savings Plan's Investment Advisory Committee appointed pursuant to § 23-38.79:1 of ~~records~~ *information* excluded from this chapter pursuant to subdivision 25 of § 2.2-3705.7.

40. Discussion or consideration of ~~records~~ *information* excluded from this chapter pursuant to subdivision 3 of § 2.2-3705.6.

41. Discussion or consideration by the Board of Education of ~~records~~ *information* relating to the denial, suspension, or revocation of teacher licenses excluded from this chapter pursuant to subdivision 12 of § 2.2-3705.3.

42. Those portions of meetings of the Virginia Military Advisory Council or any commission created by executive order for the purpose of studying and making recommendations regarding preventing closure or realignment of federal military and national security installations and facilities located in Virginia and relocation of such facilities to Virginia, or a local or regional military affairs organization appointed by a local governing body, during which there is discussion of ~~records~~ *information* excluded from this chapter pursuant to subdivision ~~42~~ 11 of § 2.2-3705.2.

43. Discussion or consideration by the Board of Trustees of the Veterans Services Foundation of ~~records~~ *information* excluded from this chapter pursuant to subdivision 29 of § 2.2-3705.7.

44. Discussion or consideration by the Virginia Tobacco Region Revitalization Commission of ~~records~~ *information* excluded from this chapter pursuant to subdivision 23 of § 2.2-3705.6.

45. Discussion or consideration by the board of directors of the Commercial Space Flight Authority of ~~records~~ *information* excluded from this chapter pursuant to subdivision 24 of § 2.2-3705.6.

46. Discussion or consideration of personal and proprietary information that are excluded from the provisions of this chapter pursuant to (i) subdivision 25 of § 2.2-3705.6 or (ii) subsection E of § 10.1-104.7. This ~~exemption~~ *exclusion* shall not apply to the discussion or consideration of records that contain information that has been certified for release by the person who is the subject of the information or transformed into a statistical or aggregate form that does not allow identification of the person who supplied, or is the subject of, the information.

47. (Effective July 1, 2018) Discussion or consideration by the Board of Directors of the Virginia Alcoholic Beverage Control Authority of ~~records~~ *information* excluded from this chapter pursuant to subdivision 1 of § 2.2-3705.3 or subdivision 34 of § 2.2-3705.7.

B. No resolution, ordinance, rule, contract, regulation or motion adopted, passed or agreed to in a closed meeting shall become effective unless the public body, following the meeting, reconvenes in open meeting and takes a vote of the membership on such resolution, ordinance, rule, contract, regulation, or motion that shall have its substance reasonably identified in the open meeting.

C. Public officers improperly selected due to the failure of the public body to comply with the other provisions of this section shall be de facto officers and, as such, their official actions are valid until they obtain notice of the legal defect in their election.

D. Nothing in this section shall be construed to prevent the holding of conferences between two or more public bodies, or their representatives, but these conferences shall be subject to the same procedures for holding closed meetings as are applicable to any other public body.

E. This section shall not be construed to (i) require the disclosure of any contract between the Department of Health Professions and an impaired practitioner entered into pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of Title 54.1 or (ii) require the board of directors of any authority created pursuant to the Industrial Development and Revenue Bond Act (§ 15.2-4900 et seq.), or any public body empowered to issue industrial revenue bonds by general or special law, to identify a business or industry

to which subdivision A 5 applies. However, such business or industry shall be identified as a matter of public record at least 30 days prior to the actual date of the board's authorization of the sale or issuance of such bonds.

**§ 2.2-3713. Proceedings for enforcement of chapter.**

A. Any person, including the attorney for the Commonwealth acting in his official or individual capacity, denied the rights and privileges conferred by this chapter may proceed to enforce such rights and privileges by filing a petition for mandamus or injunction, supported by an affidavit showing good cause. Such petition may be brought in the name of the person notwithstanding that a request for public records was made by the person's attorney in his representative capacity. Venue for the petition shall be addressed as follows:

1. In a case involving a local public body, to the general district court or circuit court of the county or city from which the public body has been elected or appointed to serve and in which such rights and privileges were so denied;

2. In a case involving a regional public body, to the general district or circuit court of the county or city where the principal business office of such body is located; and

3. In a case involving a board, bureau, commission, authority, district, institution, or agency of the state government, including a public institution of higher education, or a standing or other committee of the General Assembly, to the general district court or the circuit court of the residence of the aggrieved party or of the City of Richmond.

B. In any action brought before a general district court, a corporate petitioner may appear through its officer, director or managing agent without the assistance of counsel, notwithstanding any provision of law or Rule of the Supreme Court of Virginia to the contrary.

C. Notwithstanding the provisions of § 8.01-644, the petition for mandamus or injunction shall be heard within seven days of the date when the same is made, provided the party against whom the petition is brought has received a copy of the petition at least three working days prior to filing. The hearing on any petition made outside of the regular terms of the circuit court of a locality that is included in a judicial circuit with another locality or localities shall be given precedence on the docket of such court over all cases that are not otherwise given precedence by law.

D. The petition shall allege with reasonable specificity the circumstances of the denial of the rights and privileges conferred by this chapter. A single instance of denial of the rights and privileges conferred by this chapter shall be sufficient to invoke the remedies granted herein. If the court finds the denial to be in violation of the provisions of this chapter, the petitioner shall be entitled to recover reasonable costs, including costs and reasonable fees for expert witnesses, and attorneys' fees from the public body if the petitioner substantially prevails on the merits of the case, unless special circumstances would make an award unjust. In making this determination, a court may consider, among other things, the reliance of a public body on an opinion of the Attorney General or a decision of a court that substantially supports the public body's position.

E. In any action to enforce the provisions of this chapter, the public body shall bear the burden of proof to establish an ~~exemption~~ *exclusion* by a preponderance of the evidence. *No court shall be required to accord any weight to the determination of a public body as to whether an exclusion applies.* Any failure by a public body to follow the procedures established by this chapter shall be presumed to be a violation of this chapter.

F. Failure by any person to request and receive notice of the time and place of meetings as provided in § 2.2-3707 shall not preclude any person from enforcing his rights and privileges conferred by this chapter.

**2. That the provisions of this act are declaratory of the law as it existed prior to the September 17, 2015 decision of the Supreme Court of Virginia in the case of the *Department of Corrections v. Surovell*.**