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## SENATE BILL NO. 202

Offered January 13, 2016

Prefiled January 5, 2016

A BILL to amend and reenact §§ 2.2-3705.1 and 2.2-3705.8 of the Code of Virginia, relating to the Virginia Freedom of Information Act; disclosure of salaries of public employees.

Patron—Stuart

Referred to Committee on General Laws and Technology

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

**1. That §§ 2.2-3705.1 and 2.2-3705.8 of the Code of Virginia are amended and reenacted as follows:**

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

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

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

*Neither any provision of this chapter nor any provision of Chapter 38 (§ 2.2-3800 et seq.) shall be construed as denying public access to (i) contracts between a public body and its officers or employees, other than contracts settling public employee employment disputes held confidential as personnel records under this subdivision; (ii) records of the position, job classification, official salary or rate of pay of, or records of the allowances or reimbursements for expenses paid to any officer, official, or employee of a public body; or (iii) the compensation or benefits paid by any corporation organized by the Virginia Retirement System or its officers or employees.*

*The provisions of this subdivision, however, shall not require public access to records of the official salaries or rates of pay of public employees whose annual rate of pay is the annual equivalent of twice the federal minimum wage or less. Publicly available databases of public employees' salaries shall not include the name of any public officer, appointee, or employee.*

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

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

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

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

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

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

6. Vendor proprietary information software that may be in the official records of a public body. For the purpose of this subdivision, "vendor proprietary software" means computer programs acquired from a

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59 vendor for purposes of processing data for agencies or political subdivisions of the Commonwealth.

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

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

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

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

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

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

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

90 **§ 2.2-3705.8. Limitation on record exclusions.**

91 A. Neither any provision of this chapter nor any provision of Chapter 38 (§ 2.2-3800 et seq.) of this  
92 title shall be construed as denying public access to (i) contracts between a public body and its officers  
93 or employees, other than contracts settling public employee employment disputes held confidential as  
94 personnel records under § 2.2-3705.1; (ii) records of the position, job classification, official salary or rate  
95 of pay of, and records of the allowances or reimbursements for expenses paid to any officer, official or  
96 employee of a public body; or (iii) the compensation or benefits paid by any corporation organized by  
97 the Virginia Retirement System or its officers or employees.

98 The provisions of this subsection, however, shall not require public access to records of the official  
99 salaries or rates of pay of public employees whose annual rate of pay is \$10,000 or less.

100 B. Nothing in this chapter shall be construed as denying public access to the nonexempt portions of  
101 a report of a consultant hired by or at the request of a local public body or the mayor or chief executive  
102 or administrative officer of such public body if (i) the contents of such report have been distributed or  
103 disclosed to members of the local public body or (ii) the local public body has scheduled any action on  
104 a matter that is the subject of the consultant's report.