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HOUSE BILL NO. 1539

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on General Laws
on February 2, 2017)

(Patron Prior to Substitute—Delegate LeMunyon)

A BILL to amend and reenact §§ 2.2-3701, 2.2-3704, 2.2-3704.1, 2.2-3704.2, 2.2-3705.1 through 2.2-3705.8, 2.2-3711, 2.2-3714, 2.2-3806, 22.1-253.13:3, 22.1-279.8, 23.1-2425, 32.1-48.08, 32.1-48.011, 32.1-48.015, 32.1-283.1, 32.1-283.2, 32.1-283.3, 32.1-283.5, 32.1-283.6, 44-146.18, 44-146.22, 54.1-2517, and 54.1-2523 of the Code of Virginia, relating to the Virginia Freedom of Information Act; public access to records of public bodies.

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-3701, 2.2-3704, 2.2-3704.1, 2.2-3704.2, 2.2-3705.1 through 2.2-3705.8, 2.2-3711, 2.2-3714, 2.2-3806, 22.1-253.13:3, 22.1-279.8, 23.1-2425, 32.1-48.08, 32.1-48.011, 32.1-48.015, 32.1-283.1, 32.1-283.2, 32.1-283.3, 32.1-283.5, 32.1-283.6, 44-146.18, 44-146.22, 54.1-2517, and 54.1-2523 of the Code of Virginia are amended and reenacted 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.

60 "Regional public body" means a unit of government organized as provided by law within defined
61 boundaries, as determined by the General Assembly, whose members are appointed by the participating
62 local governing bodies, and such unit includes two or more counties or cities.

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

66 **§ 2.2-3704. Public records to be open to inspection; procedure for requesting records and**
67 **responding to request; charges; transfer of records for storage, etc.**

68 A. Except as otherwise specifically provided by law, all public records shall be open to ~~inspection~~
69 ~~and copying by any~~ citizens of the Commonwealth, ~~representatives of newspapers and magazines with~~
70 ~~circulation in the Commonwealth, and representatives of radio and television stations broadcasting in or~~
71 ~~into the Commonwealth~~ during the regular office hours of the custodian of such records. Access to such
72 records shall ~~not be denied to citizens of the Commonwealth, representatives of newspapers and~~
73 ~~magazines with circulation in the Commonwealth, and representatives of radio and television stations~~
74 ~~broadcasting in or into the Commonwealth~~ be provided by the custodian in accordance with this chapter
75 by inspection or by providing copies of the requested records, at the option of the requester. The
76 custodian may require the requester to provide his name and legal address. The custodian of such
77 records shall take all necessary precautions for their preservation and safekeeping.

78 B. A request for public records shall identify the requested records with reasonable specificity. The
79 request need not make reference to this chapter in order to invoke the provisions of this chapter or to
80 impose the time limits for response by a public body. Any public body that is subject to this chapter
81 and that is the custodian of the requested records shall promptly, but in all cases within five working
82 days of receiving a request, provide the requested records to the requester or make one of the following
83 responses in writing:

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

87 2. The requested records are being provided in part and are being withheld in part. Such response
88 shall identify with reasonable particularity the subject matter of withheld portions, and cite, as to each
89 category of withheld records, the specific Code section that authorizes the withholding of the records.

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

93 4. It is not practically possible to provide the requested records or to determine whether they are
94 available within the five-work-day period. Such response shall specify the conditions that make a
95 response impossible. If the response is made within five working days, the public body shall have an
96 additional seven work days in which to provide one of the four preceding responses.

97 C. Any public body may petition the appropriate court for additional time to respond to a request for
98 records when the request is for an extraordinary volume of records or requires an extraordinarily lengthy
99 search, and a response by the public body within the time required by this chapter will prevent the
100 public body from meeting its operational responsibilities. Before proceeding with the petition, however,
101 the public body shall make reasonable efforts to reach an agreement with the requester concerning the
102 production of the records requested.

103 D. Subject to the provisions of subsection G, no public body shall be required to create a new record
104 if the record does not already exist. However, a public body may abstract or summarize information
105 under such terms and conditions as agreed between the requester and the public body.

106 E. Failure to respond to a request for records shall be deemed a denial of the request and shall
107 constitute a violation of this chapter.

108 F. A public body may make reasonable charges not to exceed its actual cost incurred in accessing,
109 duplicating, supplying, or searching for the requested records. No public body shall impose any
110 extraneous, intermediary, or surplus fees or expenses to recoup the general costs associated with creating
111 or maintaining records or transacting the general business of the public body. Any duplicating fee
112 charged by a public body shall not exceed the actual cost of duplication. The public body may also
113 make a reasonable charge for the cost incurred in supplying records produced from a geographic
114 information system at the request of anyone other than the owner of the land that is the subject of the
115 request. However, such charges shall not exceed the actual cost to the public body in supplying such
116 records, except that the public body may charge, on a pro rata per acre basis, for the cost of creating
117 topographical maps developed by the public body, for such maps or portions thereof, which encompass
118 a contiguous area greater than 50 acres. All charges for the supplying of requested records shall be
119 estimated in advance at the request of the citizen.

120 G. Public records maintained by a public body in an electronic data processing system, computer
121 database, or any other structured collection of data shall be made available to a requester at a reasonable

122 cost, not to exceed the actual cost in accordance with subsection F. When electronic or other databases
123 are combined or contain exempt and nonexempt records, the public body may provide access to the
124 exempt records if not otherwise prohibited by law, but shall provide access to the nonexempt records as
125 provided by this chapter.

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

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

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

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

159 **§ 2.2-3704.1. Posting of notice of rights and responsibilities by state and local public bodies;**
160 **assistance by the Freedom of Information Advisory Council.**

161 A. All state public bodies subject to the provisions of this chapter and, any county or city, and any
162 town with a population of more than 250, and any school board shall make available the following
163 information to the public upon request and shall post a link to such information on the homepage of
164 their respective official public government websites:

165 1. A plain English explanation of the rights of a requester under this chapter, the procedures to
166 obtain public records from the public body, and the responsibilities of the public body in complying
167 with this chapter. For purposes of this section, "plain English" means written in nontechnical, readily
168 understandable language using words of common everyday usage and avoiding legal terms and phrases
169 or other terms and words of art whose usage or special meaning primarily is limited to a particular field
170 or profession;

171 2. Contact information for the FOIA officer designated by the public body pursuant to § 2.2-3704.2
172 to (i) assist a requester in making a request for records or (ii) respond to requests for public records;

173 3. A general description, summary, list, or index of the types of public records maintained by such
174 state public body;

175 4. A general description, summary, list, or index of any exemptions in law that permit or require
176 such public records to be withheld from release;

177 5. Any policy the public body has concerning the type of public records it routinely withholds from
178 release as permitted by this chapter or other law; and

179 6. The following statement: "A public body may make reasonable charges not to exceed its actual
180 cost incurred in accessing, duplicating, supplying, or searching for the requested records. No public body
181 shall impose any extraneous, intermediary, or surplus fees or expenses to recoup the general costs
182 associated with creating or maintaining records or transacting the general business of the public body.

183 Any duplicating fee charged by a public body shall not exceed the actual cost of duplication. All
184 charges for the supplying of requested records shall be estimated in advance at the request of the citizen
185 as set forth in subsection F of § 2.2-3704 of the Code of Virginia."

186 B. The Freedom of Information Advisory Council, created pursuant to § 30-178, shall assist in the
187 development and implementation of the provisions of subsection A, upon request.

188 **§ 2.2-3704.2. Public bodies to designate FOIA officer.**

189 A. All state public bodies, including state authorities, that are subject to the provisions of this chapter
190 and all local public bodies that are subject to the provisions of this chapter, shall designate and publicly
191 identify one or more Freedom of Information Act officers (FOIA officer) whose responsibility is to
192 serve as a point of contact for members of the public in requesting public records and to coordinate the
193 public body's compliance with the provisions of this chapter.

194 B. For such state public bodies, the name and contact information of the public body's FOIA officer
195 to whom members of the public may direct requests for public records and who will oversee the public
196 body's compliance with the provisions of this chapter shall be made available to the public upon request
197 and be posted on the respective public body's *official public government* website at the time of
198 designation and maintained thereafter on such website for the duration of the designation.

199 C. For such local public bodies, the name and contact information of the public body's FOIA officer
200 to whom members of the public may direct requests for public records and who will oversee the public
201 body's compliance with the provisions of this chapter shall be made available in a way reasonably
202 calculated to provide notice to the public, including posting at the public body's place of business,
203 posting on its *official public government* website, or including such information in its publications.

204 D. For the purposes of this section, local public bodies shall include constitutional officers.

205 E. Any such FOIA officer shall possess specific knowledge of the provisions of this chapter and be
206 trained at least annually by legal counsel for the public body or the Virginia Freedom of Information
207 Advisory Council.

208 **§ 2.2-3705.1. Exclusions to application of chapter; exclusions of general application to public**
209 **bodies.**

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

214 1. Personnel information concerning identifiable individuals, except that access shall not be denied to
215 the person who is the subject thereof. Any person who is the subject of such information and who is 18
216 years of age or older may waive, in writing, the protections afforded by this subdivision. If the
217 protections are so waived, such information shall be disclosed. Nothing in this subdivision shall be
218 construed to authorize the withholding of any resumes or applications submitted by persons who are
219 appointed by the Governor pursuant to § 2.2-106 or 2.2-107.

220 *No provision of this chapter or any provision of Chapter 38 (§ 2.2-3800 et seq.) shall be construed*
221 *as denying public access to (i) contracts between a public body and its officers or employees, other than*
222 *contracts settling public employee employment disputes held confidential as personnel records under*
223 *§ 2.2-3705.1; (ii) records of the name, position, job classification, official salary, or rate of pay of, and*
224 *records of the allowances or reimbursements for expenses paid to, any officer, official, or employee of a*
225 *public body; or (iii) the compensation or benefits paid by any corporation organized by the Virginia*
226 *Retirement System or its officers or employees. The provisions of this subdivision, however, shall not*
227 *require public access to records of the official salaries or rates of pay of public employees whose*
228 *annual rate of pay is \$10,000 or less.*

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

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

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

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

244 When, in the reasonable opinion of such public body, any such test or examination no longer has any

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

250 5. Records recorded in or compiled exclusively for use in closed meetings lawfully held pursuant to
251 § 2.2-3711. However, no record that is otherwise open to inspection under this chapter shall be deemed
252 exempt by virtue of the fact that it has been reviewed or discussed in a closed meeting.

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

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

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

261 9. Information concerning reserves established in specific claims administered by the Department of
262 the Treasury through its Division of Risk Management as provided in Article 5 (§ 2.2-1832 et seq.) of
263 Chapter 18, or by any county, city, or town; and investigative notes, correspondence and information
264 furnished in confidence with respect to an investigation of a claim or a potential claim against a public
265 body's insurance policy or self-insurance plan. However, nothing in this subdivision shall ~~authorize the~~
266 ~~withholding~~ *prevent the disclosure* of information taken from inactive reports upon expiration of the
267 period of limitations for the filing of a civil suit.

268 10. Personal *contact* information; ~~as defined in § 2.2-3801, including electronic mail addresses,~~
269 furnished to a public body for the purpose of receiving electronic mail from the public body, provided
270 that the electronic mail recipient has requested that the public body not disclose such information.
271 However, access shall not be denied to the person who is the subject of the record. *As used in this*
272 *subdivision, "personal contact information" means the information provided to the public body for the*
273 *purpose of receiving electronic mail from the public body and includes home or business (i) address, (ii)*
274 *email address, or (iii) telephone number or comparable number assigned to any other electronic*
275 *communication device.*

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

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

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

291 **§ 2.2-3705.2. Exclusions to application of chapter; records relating to public safety.**

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

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

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

304 Information contained in engineering and construction drawings and plans that reveal critical
305 structural components, security equipment and systems, ventilation systems, fire protection equipment,

306 mandatory building emergency equipment or systems, elevators, electrical systems, telecommunications
307 equipment and systems, and other utility equipment and systems submitted for the purpose of complying
308 with the Uniform Statewide Building Code (§ 36-97 et seq.) or the Statewide Fire Prevention Code
309 (§ 27-94 et seq.) if disclosure of such information would jeopardize the safety or security of any public
310 or private commercial office, multifamily residential, or retail building or its occupants in the event of
311 terrorism or other threat to public safety. In order for the information to be excluded from mandatory
312 disclosure, the owner or lessee of such property, equipment, or system in writing shall (i) invoke the
313 protections of this paragraph; (ii) identify the drawings, plans, or other materials to be protected; and
314 (iii) state the reasons why protection is necessary.

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

318 3. Information that describes the design, function, operation, or access control features of any
319 security system, whether manual or automated, which is used to control access to or use of any
320 automated data processing or telecommunications system.

321 4. Information concerning the prevention or response to terrorist activity or cyber attacks, including
322 (i) critical infrastructure information; (ii) vulnerability assessments, operational, procedural,
323 transportation, and tactical planning or training manuals, and staff meeting minutes; (iii) engineering or
324 architectural plans or drawings, or information derived from such plans or drawings; and (iv)
325 information not lawfully available to the public regarding specific cybersecurity threats or vulnerabilities
326 or security plans and measures of an entity, facility, building, structure, information technology system,
327 or software program if disclosure of such information would (a) reveal the location or operation of
328 security equipment and systems, elevators, ventilation, fire protection, emergency, electrical,
329 telecommunications or utility equipment and systems of any public building, structure or information
330 storage facility, or telecommunications or utility equipment or systems or (b) jeopardize the safety of
331 any person.

332 The same categories of information concerning any person or entity submitted to a public body for
333 the purpose of antiterrorism response planning or cybersecurity planning or protection may be withheld
334 from disclosure if such person or entity in writing (1) invokes the protections of this subdivision, (2)
335 identifies with specificity the information for which protection is sought, and (3) states with reasonable
336 particularity why the protection of such information from public disclosure is necessary to meet the
337 objective of antiterrorism, cybersecurity planning or protection, or critical infrastructure information
338 security and resilience. Such statement shall be a public record and shall be disclosed upon request.

339 Any public body receiving a request for records excluded under this subdivision shall notify the
340 Secretary of Public Safety and Homeland Security or his designee of such request and the response
341 made by the public body in accordance with § 2.2-3704.

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

346 As used in this subdivision, "critical infrastructure information" means the same as that term is
347 defined in 6 U.S.C. § 131.

348 5. 3. Information that would disclose the security aspects of a system safety program plan adopted
349 pursuant to 49 C.F.R. Part 659 by the Commonwealth's designated Rail Fixed Guideway Systems Safety
350 Oversight agency; and information in the possession of such agency, the release of which would
351 jeopardize the success of an ongoing investigation of a rail accident or other incident threatening railway
352 safety.

353 6. Information contained in engineering and architectural drawings, operational, procedural, tactical
354 planning or training manuals, or staff meeting minutes if disclosure of such information would (i) reveal
355 surveillance techniques, personnel deployments, alarm or security systems or technologies, or operational
356 and transportation plans or protocols or (ii) jeopardize the security of any governmental facility,
357 building, or structure or the safety of persons using such facility, building, or structure.

358 7. 4. Information concerning security plans and specific assessment components of school safety
359 audits, as provided in § 22.1-279.8.

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

364 8. 5. Information concerning the mental health assessment of an individual subject to commitment as
365 a sexually violent predator under Chapter 9 (§ 37.2-900 et seq.) of Title 37.2 held by the Commitment
366 Review Committee; except that in no case shall information identifying the victims of a sexually violent
367 predator be disclosed.

368 9. 6. Subscriber data provided directly or indirectly by a ~~telecommunications carrier~~ *communications*
 369 *services provider* to a public body that operates a 911 or E-911 emergency dispatch system or an
 370 emergency notification or reverse 911 system if the data is in a form not made available by the
 371 ~~telecommunications carrier~~ *communications services provider* to the public generally. Nothing in this
 372 subdivision shall ~~authorize the withholding~~ *prevent the disclosure* of subscriber data generated in
 373 connection with specific calls to a 911 emergency system, where the requester is seeking to obtain
 374 public records about the use of the system in response to a specific crime, emergency or other event as
 375 to which a citizen has initiated a 911 call.

376 For the purposes of this subdivision, ~~"subscriber:~~

377 *"Communications services provider" means the same as that term is defined in § 58.1-647.*

378 *"Subscriber data" means the name, address, telephone number, and any other information identifying*
 379 *a subscriber of a telecommunications carrier communications services provider.*

380 ~~10.~~ 7. Subscriber data collected by a local governing body in accordance with the Enhanced Public
 381 Safety Telephone Services Act (§ 56-484.12 et seq.) and other identifying information of a personal,
 382 medical, or financial nature provided to a local governing body in connection with a 911 or E-911
 383 emergency dispatch system or an emergency notification or reverse 911 system if such records are not
 384 otherwise publicly available.

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

389 For the purposes of this subdivision, ~~"subscriber:~~

390 *Communications services provider" means the same as that term is defined in § 58.1-647.*

391 *"Subscriber data" means the name, address, telephone number, and any other information identifying*
 392 *a subscriber of a telecommunications carrier communications services provider.*

393 ~~11.~~ 8. Information held by the Virginia Military Advisory Council or any commission created by
 394 executive order for the purpose of studying and making recommendations regarding preventing closure
 395 or realignment of federal military and national security installations and facilities located in Virginia and
 396 relocation of such facilities to Virginia, or a local or regional military affairs organization appointed by a
 397 local governing body, that would (i) reveal strategies under consideration or development by the Council
 398 or such commission or organizations to prevent the closure or realignment of federal military
 399 installations located in Virginia or the relocation of national security facilities located in Virginia, to
 400 limit the adverse economic effect of such realignment, closure, or relocation, or to seek additional tenant
 401 activity growth from the Department of Defense or federal government or (ii) disclose trade secrets, as
 402 defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), provided to the Council or such
 403 commission or organizations in connection with their work.

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

413 ~~12.~~ 9. Information, as determined by the State Comptroller, that describes the design, function,
 414 operation, or implementation of internal controls over the Commonwealth's financial processes and
 415 systems, and the assessment of risks and vulnerabilities of those controls, including the annual
 416 assessment of internal controls mandated by the State Comptroller, if disclosure of such information
 417 would jeopardize the security of the Commonwealth's financial assets. However, records relating to the
 418 investigation of and findings concerning the soundness of any fiscal process shall be disclosed in a form
 419 that does not compromise internal controls. Nothing in this subdivision shall be construed to prohibit the
 420 Auditor of Public Accounts or the Joint Legislative Audit and Review Commission from reporting
 421 internal control deficiencies discovered during the course of an audit.

422 ~~13.~~ 10. Information relating to the Statewide Agencies Radio System (STARS) or any other similar
 423 local or regional public safety communications system that (i) describes the design, function,
 424 programming, operation, or access control features of the overall system, components, structures,
 425 individual networks, and subsystems of the STARS or any other similar local or regional
 426 communications system or (ii) relates to radio frequencies assigned to or utilized by STARS or any
 427 other similar local or regional communications system, code plugs, circuit routing, addressing schemes,
 428 talk groups, fleet maps, encryption, *or* programming maintained by or utilized by STARS or any other

429 similar local or regional public safety communications system; those engineering and construction
 430 drawings and plans that reveal critical structural components, interconnectivity, security equipment and
 431 systems, network monitoring, network operation center, master sites, ventilation systems, fire protection
 432 equipment, mandatory building emergency equipment, electrical systems, and other utility equipment and
 433 systems related to STARS or any other similar local or regional public safety communications system;
 434 and special event plans, operational plans, storm plans, or other pre-arranged programming, if disclosure
 435 of such information would (a) reveal surveillance techniques, personnel deployments, alarm or security
 436 systems or technologies, or operational and transportation plans or protocols or (b) jeopardize the
 437 security of any governmental facility, building, or structure or the safety of any person.

438 ~~14.~~ 11. Information concerning a salaried or volunteer Fire/EMS company or Fire/EMS department if
 439 disclosure of such information would reveal the telephone numbers for cellular telephones, pagers, or
 440 comparable portable communication devices provided to its personnel for use in the performance of their
 441 official duties.

442 ~~15.~~ 12. Information concerning the disaster recovery plans or the evacuation plans in the event of
 443 fire, explosion, natural disaster, or other catastrophic event for hospitals and nursing homes regulated by
 444 the Board of Health pursuant to Chapter 5 (§ 32.1-123 et seq.) of Title 32.1 provided to the Department
 445 of Health. Nothing in this subdivision shall be construed to ~~authorize the withholding prevent the~~
 446 *disclosure* of information relating to the effectiveness of executed evacuation plans after the occurrence
 447 of fire, explosion, natural disaster, or other catastrophic event.

448 ~~16.~~ 13. Records received by the Department of Criminal Justice Services pursuant to §§ 9.1-184,
 449 22.1-79.4, and 22.1-279.8 or for purposes of evaluating threat assessment teams established by a public
 450 institution of higher education pursuant to § 23.1-805 or by a private nonprofit institution of higher
 451 education, to the extent such records reveal security plans, walk-through checklists, or vulnerability and
 452 threat assessment components.

453 14. Information contained in (i) engineering, architectural, or construction drawings; (ii) operational,
 454 procedural, tactical planning, or training manuals; (iii) staff meeting minutes; or (iv) other records that
 455 reveal any of the following, the disclosure of which would jeopardize the safety or security of any
 456 person; governmental facility, building, or structure or persons using such facility, building, or
 457 structure; or public or private commercial office, multifamily residential, or retail building or its
 458 occupants:

459 a. Critical infrastructure information or the location or operation of security equipment and systems
 460 of any public building, structure, or information storage facility, including ventilation systems, fire
 461 protection equipment, mandatory building emergency equipment or systems, elevators, electrical systems,
 462 telecommunications equipment and systems, or utility equipment and systems;

463 b. Vulnerability assessments, information not lawfully available to the public regarding specific
 464 cybersecurity threats or vulnerabilities, or security plans and measures of an entity, facility, building
 465 structure, information technology system, or software program;

466 c. Surveillance techniques, personnel deployments, alarm or security systems or technologies, or
 467 operational or transportation plans or protocols; or

468 d. Interconnectivity, network monitoring, network operation centers, master sites, or systems related
 469 to the Statewide Agencies Radio System (STARS) or any other similar local or regional public safety
 470 communications system.

471 *The same categories of records of any person or entity submitted to a public body for the purpose of*
 472 *antiterrorism response planning or cybersecurity planning or protection may be withheld from disclosure*
 473 *if such person or entity in writing (a) invokes the protections of this subdivision, (b) identifies with*
 474 *specificity the records or portions thereof for which protection is sought, and (c) states with reasonable*
 475 *particularity why the protection of such records from public disclosure is necessary to meet the objective*
 476 *of antiterrorism, cybersecurity planning or protection, or critical infrastructure information security and*
 477 *resilience. Such statement shall be a public record and shall be disclosed upon request.*

478 *Any public body receiving a request for records excluded under clauses (a) and (b) of this*
 479 *subdivision 14 shall notify the Secretary of Public Safety and Homeland Security or his designee of such*
 480 *request and the response made by the public body in accordance with § 2.2-3704.*

481 *Nothing in this subdivision 14 shall prevent the disclosure of records relating to (1) the structural or*
 482 *environmental soundness of any such facility, building, or structure or (2) an inquiry into the*
 483 *performance of such facility, building, or structure after it has been subjected to fire, explosion, natural*
 484 *disaster, or other catastrophic event.*

485 *As used in this subdivision, "critical infrastructure information" means the same as that term is*
 486 *defined in 6 U.S.C. § 131.*

487 **§ 2.2-3705.3. Exclusions to application of chapter; records relating to administrative**
 488 **investigations.**

489 The following information contained in a public record is excluded from the mandatory disclosure
 490 provisions of this chapter but may be disclosed by the custodian in his discretion, except where such

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

493 1. (Effective until July 1, 2018) Information relating to investigations of applicants for licenses and
 494 permits, and of all licensees and permittees, made by or submitted to the Alcoholic Beverage Control
 495 Board, the Virginia Lottery, the Virginia Racing Commission, the Department of Agriculture and
 496 Consumer Services relating to investigations and applications pursuant to Article 1.1:1 (§ 18.2-340.15 et
 497 seq.) of Chapter 8 of Title 18.2, or the Private Security Services Unit of the Department of Criminal
 498 Justice Services.

499 1. (Effective July 1, 2018) Information relating to investigations of applicants for licenses and
 500 permits, and of all licensees and permittees, made by or submitted to the Virginia Alcoholic Beverage
 501 Control Authority, the Virginia Lottery, the Virginia Racing Commission, the Department of Agriculture
 502 and Consumer Services relating to investigations and applications pursuant to Article 1.1:1
 503 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2, or the Private Security Services Unit of the
 504 Department of Criminal Justice Services.

505 2. Records of active investigations being conducted by the Department of Health Professions or by
 506 any health regulatory board in the Commonwealth pursuant to § 54.1-108.

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

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

517 5. Investigative notes and other correspondence and information furnished in confidence with respect
 518 to an investigation or conciliation process involving an alleged unlawful discriminatory practice under
 519 the Virginia Human Rights Act (§ 2.2-3900 et seq.) or under any local ordinance adopted in accordance
 520 with the authority specified in § 2.2-524, or adopted pursuant to § 15.2-965, or adopted prior to July 1,
 521 1987, in accordance with applicable law, relating to local human rights or human relations commissions.
 522 ~~Information contained in~~ *However, nothing in this subdivision shall prevent the distribution of*
 523 *information taken from inactive reports shall be disclosed* in a form that does not reveal the identity of
 524 the parties involved or other persons supplying information.

525 6. Information relating to studies and investigations by the Virginia Lottery of (i) lottery agents, (ii)
 526 lottery vendors, (iii) lottery crimes under §§ 58.1-4014 through 58.1-4018, (iv) defects in the law or
 527 regulations that cause abuses in the administration and operation of the lottery and any evasions of such
 528 provisions, or (v) the use of the lottery as a subterfuge for organized crime and illegal gambling where
 529 such information has not been publicly released, published or copyrighted. All studies and investigations
 530 referred to under clauses (iii), (iv), and (v) shall be open to inspection and copying upon completion of
 531 the study or investigation.

532 7. Investigative notes, correspondence and information furnished in confidence, and records otherwise
 533 exempted by this chapter or any Virginia statute, provided to or produced by or for (i) the Auditor of
 534 Public Accounts; (ii) the Joint Legislative Audit and Review Commission; (iii) an appropriate authority
 535 as defined in § 2.2-3010 with respect to an allegation of wrongdoing or abuse under the Fraud and
 536 Abuse Whistle Blower Protection Act (§ 2.2-3009 et seq.); (iv) the Office of the State Inspector General
 537 with respect to an investigation initiated through the Fraud, Waste and Abuse Hotline or an investigation
 538 initiated pursuant to Chapter 3.2 (§ 2.2-307 et seq.); (v) internal auditors appointed by the head of a
 539 state agency or by any public institution of higher education; (vi) the committee or the auditor with
 540 respect to an investigation or audit conducted pursuant to § 15.2-825; or (vii) the auditors, appointed by
 541 the local governing body of any county, city, or town or a school board, who by charter, ordinance, or
 542 statute have responsibility for conducting an investigation of any officer, department, or program of such
 543 body. Information contained in completed investigations shall be disclosed in a form that does not reveal
 544 the identity of the complainants or persons supplying information to investigators. Unless disclosure is
 545 excluded by this subdivision, the information disclosed shall include the agency involved, the identity of
 546 the person who is the subject of the complaint, the nature of the complaint, and the actions taken to
 547 resolve the complaint. If an investigation does not lead to corrective action, the identity of the person
 548 who is the subject of the complaint may be released only with the consent of the subject person. Local
 549 governing bodies shall adopt guidelines to govern the disclosure required by this subdivision.

550 8. ~~Information furnished in confidence to the Department of Human Resource Management with~~
 551 ~~respect to an investigation, consultation, or mediation under § 2.2-1202.1, and memoranda,~~

552 correspondence and other records resulting from any such investigation, consultation or mediation.
 553 Information contained in inactive reports shall be disclosed in a form that does not reveal the identity of
 554 the parties involved or other persons supplying information.

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

559 ~~10.~~ 9. Records of active investigations being conducted by the Department of Criminal Justice
 560 Services pursuant to Article 4 (§ 9.1-138 et seq.), Article 4.1 (§ 9.1-150.1 et seq.), Article 11 (§ 9.1-185
 561 et seq.), and Article 12 (§ 9.1-186 et seq.) of Chapter 1 of Title 9.1.

562 ~~11.~~ 10. Information furnished to or prepared by the Board of Education pursuant to subsection D of
 563 § 22.1-253.13:3 in connection with the review or investigation of any alleged breach in security,
 564 unauthorized alteration, or improper administration of tests by local school board employees responsible
 565 for the distribution or administration of the tests. However, this section shall not prohibit the disclosure
 566 of such information to (i) a local school board or division superintendent for the purpose of permitting
 567 such board or superintendent to consider or to take personnel action with regard to an employee or (ii)
 568 any requester, after the conclusion of a review or investigation, in a form that (a) does not reveal the
 569 identity of any person making a complaint or supplying information to the Board on a confidential basis
 570 and (b) does not compromise the security of any test mandated by the Board.

571 ~~12.~~ 11. Information contained in (i) an application for licensure or renewal of a license for teachers
 572 and other school personnel, including transcripts or other documents submitted in support of an
 573 application, and (ii) an active investigation conducted by or for the Board of Education related to the
 574 denial, suspension, cancellation, revocation, or reinstatement of teacher and other school personnel
 575 licenses including investigator notes and other correspondence and information, furnished in confidence
 576 with respect to such investigation. However, this subdivision shall not prohibit the disclosure of such (a)
 577 application information to the applicant at his own expense or (b) investigation information to a local
 578 school board or division superintendent for the purpose of permitting such board or superintendent to
 579 consider or to take personnel action with regard to an employee. Information contained in completed
 580 investigations shall be disclosed in a form that does not reveal the identity of any complainant or person
 581 supplying information to investigators. The completed investigation information disclosed shall include
 582 information regarding the school or facility involved, the identity of the person who was the subject of
 583 the complaint, the nature of the complaint, and the actions taken to resolve the complaint. If an
 584 investigation fails to support a complaint or does not lead to corrective action, the identity of the person
 585 who was the subject of the complaint may be released only with the consent of the subject person. No
 586 personally identifiable information regarding a current or former student shall be released except as
 587 permitted by state or federal law.

588 ~~13.~~ 12. Information provided in confidence and related to an investigation by the Attorney General
 589 under Article 1 (§ 3.2-4200 et seq.) or Article 3 (§ 3.2-4204 et seq.) of Chapter 42 of Title 3.2, Article
 590 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
 591 (§ 58.1-1000) of Chapter 10 of Title 58.1. However, information related to an investigation that has been
 592 inactive for more than six months shall, upon request, be disclosed provided such disclosure is not
 593 otherwise prohibited by law and does not reveal the identity of charging parties, complainants, persons
 594 supplying information, witnesses, or other individuals involved in the investigation.

595 **§ 2.2-3705.4. Exclusions to application of chapter; educational records and certain records of**
 596 **educational institutions.**

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

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

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

614 Any person who is the subject of any scholastic record and who is 18 years of age or older may
615 waive, in writing, the protections afforded by this subdivision. If the protections are so waived, such
616 records shall be disclosed.

617 2. Confidential letters and statements of recommendation placed in the records of educational
618 agencies or institutions respecting (i) admission to any educational agency or institution, (ii) an
619 application for employment or promotion, or (iii) receipt of an honor or honorary recognition.

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

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

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

637 6. Personal information, as defined in § 2.2-3801, provided to the Board of the Virginia College
638 Savings Plan or its employees by or on behalf of individuals who have requested information about,
639 applied for, or entered into prepaid tuition contracts or savings trust account agreements pursuant to
640 Chapter 7 (§ 23.1-700 et seq.) of Title 23.1, *including personal information related to (i) qualified*
641 *beneficiaries as that term is defined in § 23.1-700, (ii) designated survivors, or (iii) authorized*
642 *individuals. However, Nothing in this subdivision shall be construed to prevent disclosure or publication*
643 *of information in a statistical or other form that does not identify individuals or provide personal*
644 *information shall be disclosed and may be published by the Board.* Individuals shall be provided access
645 to their own personal information.

646 *For purposes of this subdivision:*

647 *"Authorized individual" means an individual who may be named by the account owner to receive*
648 *information regarding the account but who does not have any control or authority over the account.*

649 *"Designated survivor" means the person who will assume account ownership in the event of the*
650 *account owner's death.*

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

663 8. Information held by a threat assessment team established by a local school board pursuant to
664 § 22.1-79.4 or by a public institution of higher education pursuant to § 23.1-805 relating to the
665 assessment or intervention with a specific individual. However, in the event an individual who has been
666 under assessment commits an act, or is prosecuted for the commission of an act that has caused the
667 death of, or caused serious bodily injury, including any felony sexual assault, to another person, such
668 information of the threat assessment team concerning the individual under assessment shall be made
669 available as provided by this chapter, with the exception of any criminal history records obtained
670 pursuant to § 19.2-389 or 19.2-389.1, health records obtained pursuant to § 32.1-127.1:03, or scholastic
671 records as defined in § 22.1-289. The public body providing such information shall remove personally
672 identifying information of any person who provided information to the threat assessment team under a
673 promise of confidentiality.

674 **§ 2.2-3705.5. Exclusions to application of chapter; health and social services records.**

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

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

681 Where the person who is the subject of health records is confined in a state or local correctional
 682 facility, the administrator or chief medical officer of such facility may assert such confined person's right
 683 of access to the health records if the administrator or chief medical officer has reasonable cause to
 684 believe that such confined person has an infectious disease or other medical condition from which other
 685 persons so confined need to be protected. Health records shall only be reviewed and shall not be copied
 686 by such administrator or chief medical officer. The information in the health records of a person so
 687 confined shall continue to be confidential and shall not be disclosed by the administrator or chief
 688 medical officer of the facility to any person except the subject or except as provided by law.

689 Where the person who is the subject of health records is under the age of 18, his right of access may
 690 be asserted only by his guardian or his parent, including a noncustodial parent, unless such parent's
 691 parental rights have been terminated, a court of competent jurisdiction has restricted or denied such
 692 access, or a parent has been denied access to the health record in accordance with § 20-124.6. In
 693 instances where the person who is the subject thereof is an emancipated minor, a student in a public
 694 institution of higher education, or is a minor who has consented to his own treatment as authorized by
 695 § 16.1-338 or 54.1-2969, the right of access may be asserted by the subject person.

696 For the purposes of this chapter, statistical summaries of incidents and statistical data concerning
 697 abuse of individuals receiving services compiled by the Commissioner of Behavioral Health and
 698 Developmental Services shall be disclosed. No such summaries or data shall include any information
 699 that identifies specific individuals receiving services.

700 2. Applications for admission to examinations or for licensure and scoring records maintained by the
 701 Department of Health Professions or any board in that department on individual licensees or applicants.
 702 However, such material may be made available during normal working hours for copying, at the
 703 requester's expense, by the individual who is the subject thereof, in the offices of the Department of
 704 Health Professions or in the offices of any health regulatory board, whichever may possess the material;
 705 *information required to be provided to the Department of Health Professions by certain licensees*
 706 *pursuant to § 54.1-2506.1; information held by the Health Practitioners' Monitoring Program Committee*
 707 *within the Department of Health Professions that identifies any practitioner who may be, or who is*
 708 *actually, impaired to the extent that disclosure is prohibited by § 54.1-2517; and information relating to*
 709 *the prescribing and dispensing of covered substances to recipients and any abstracts from such*
 710 *information that are in the possession of the Prescription Monitoring Program (Program) pursuant to*
 711 *Chapter 25.2 (§ 54.1-2519 et seq.) of Title 54.1 and any material relating to the operation or security of*
 712 *the Program.*

713 3. Reports, documentary evidence, and other information as specified in §§ 51.5-122, and 51.5-141,
 714 and ~~63.2-104~~ *Chapter 1 (§ 63.2-100 et seq.) of Title 63.2 and information and statistical registries*
 715 *required to be kept confidential pursuant to Chapter 1 (§ 63.2-100 et seq.) of Title 63.2.*

716 4. Investigative notes; proprietary information not published, copyrighted or patented; information
 717 obtained from employee personnel records; personally identifiable information regarding residents,
 718 clients or other recipients of services; other correspondence and information furnished in confidence to
 719 the Department of Social Services in connection with an active investigation of an applicant or licensee
 720 pursuant to Chapters 17 (§ 63.2-1700 et seq.) and 18 (§ 63.2-1800 et seq.) of Title 63.2; and information
 721 furnished to the Office of the Attorney General in connection with an investigation or litigation pursuant
 722 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
 723 Title 32.1. ~~Information~~ *However, nothing in this subdivision shall prevent the disclosure of information*
 724 *from the records of completed investigations shall be disclosed in a form that does not reveal the*
 725 *identity of complainants, persons supplying information, or other individuals involved in the*
 726 *investigation.*

727 5. Information collected for the designation and verification of trauma centers and other specialty
 728 care centers within the Statewide Emergency Medical Services System and Services pursuant to Article
 729 2.1 (§ 32.1-111.1 et seq.) of Chapter 4 of Title 32.1.

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

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

736 8. Information required to be provided to the Department of Health Professions by certain licensees

737 pursuant to § 54.1-2506.1.

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

745 ~~10.~~ 8. Patient level data collected by the Board of Health and not yet processed, verified, and
746 released, pursuant to § 32.1-276.9, to the Board by the nonprofit organization with which the
747 Commissioner of Health has contracted pursuant to § 32.1-276.4.

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

751 ~~12.~~ 9. Information relating to a grant application, or accompanying a grant application, submitted to
752 the Commonwealth Neurotrauma Initiative Advisory Board pursuant to Article 12 (§ 51.5-178 et seq.) of
753 Chapter 14 of Title 51.5 that would (i) reveal (a) medical or mental health records or other data
754 identifying individual patients or (b) proprietary business or research-related information produced or
755 collected by the applicant in the conduct of or as a result of study or research on medical, rehabilitative,
756 scientific, technical, or scholarly issues, when such information has not been publicly released,
757 published, copyrighted, or patented, and (ii) be harmful to the competitive position of the applicant.

758 ~~13.~~ 10. Any information copied, recorded, or received by the Commissioner of Health in the course
759 of an examination, investigation, or review of a managed care health insurance plan licensee pursuant to
760 §§ 32.1-137.4 and 32.1-137.5, including books, records, files, accounts, papers, documents, and any or
761 all computer or other recordings.

762 ~~14. Information and statistical registries required to be kept confidential pursuant to §§ 63.2-102 and~~
763 ~~63.2-104.~~

764 ~~15. Information relating to the prescribing and dispensing of covered substances to recipients and any~~
765 ~~abstracts from such information that are in the possession of the Prescription Monitoring Program~~
766 ~~pursuant to Chapter 25.2 (§ 54.1-2519 et seq.) of Title 54.1 and any material relating to the operation or~~
767 ~~security of the Program.~~

768 ~~16.~~ 11. Records of the Virginia Birth-Related Neurological Injury Compensation Program required to
769 be kept confidential pursuant to § 38.2-5002.2.

770 ~~17.~~ 12. Information held by the State Health Commissioner relating to the health of any person
771 subject to an order of quarantine or an order of isolation pursuant to Article 3.02 (§ 32.1-48.05 et seq.)
772 of Chapter 2 of Title 32.1. However, nothing in this subdivision shall be construed to ~~authorize the~~
773 ~~withholding prevent the disclosure~~ of statistical summaries, abstracts, or other information in aggregate
774 form.

775 ~~18.~~ 13. The names and addresses or other contact information of persons receiving transportation
776 services from a state or local public body or its designee under Title II of the Americans with
777 Disabilities Act, (42 U.S.C. § 12131 et seq.) or funded by Temporary Assistance for Needy Families
778 (TANF) created under § 63.2-600.

779 ~~19.~~ 14. Information held by certain health care committees and entities that may be withheld from
780 discovery as privileged communications pursuant to § 8.01-581.17.

781 **§ 2.2-3705.6. Exclusions to application of chapter; proprietary records and trade secrets.**

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

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

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

790 3. Proprietary information, voluntarily provided by private business pursuant to a promise of
791 confidentiality from a public body, used by the public body for business, trade, and tourism
792 development or retention; and memoranda, working papers, or other information related to businesses
793 that are considering locating or expanding in Virginia, prepared by a public body, where competition or
794 bargaining is involved and where disclosure of such information would adversely affect the financial
795 interest of the public body.

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

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

800 6. Confidential financial statements, balance sheets, trade secrets, and revenue and cost projections
801 provided to the Department of Rail and Public Transportation, provided such information is exempt
802 under the federal Freedom of Information Act or the federal Interstate Commerce Act or other laws
803 administered by the Surface Transportation Board or the Federal Railroad Administration with respect to
804 data provided in confidence to the Surface Transportation Board and the Federal Railroad
805 Administration.

806 7. Proprietary information related to inventory and sales, voluntarily provided by private energy
807 suppliers to the Department of Mines, Minerals and Energy, used by that Department for energy
808 contingency planning purposes or for developing consolidated statistical information on energy supplies.

809 8. Confidential proprietary information furnished to the Board of Medical Assistance Services or the
810 Medicaid Prior Authorization Advisory Committee pursuant to Article 4 (§ 32.1-331.12 et seq.) of
811 Chapter 10 of Title 32.1.

812 9. Proprietary, commercial or financial information, balance sheets, trade secrets, and revenue and
813 cost projections provided by a private transportation business to the Virginia Department of
814 Transportation and the Department of Rail and Public Transportation for the purpose of conducting
815 transportation studies needed to obtain grants or other financial assistance under the Transportation
816 Equity Act for the 21st Century (P.L. 105-178) for transportation projects if disclosure of such
817 information is exempt under the federal Freedom of Information Act or the federal Interstate Commerce
818 Act or other laws administered by the Surface Transportation Board or the Federal Railroad
819 Administration with respect to data provided in confidence to the Surface Transportation Board and the
820 Federal Railroad Administration. However, the exclusion provided by this subdivision shall not apply to
821 any wholly owned subsidiary of a public body.

822 10. Confidential information designated as provided in subsection F of § 2.2-4342 as trade secrets or
823 proprietary information by any person in connection with a procurement transaction or by any person
824 who has submitted to a public body an application for prequalification to bid on public construction
825 projects in accordance with subsection B of § 2.2-4317.

826 11. a. Memoranda, staff evaluations, or other information prepared by the responsible public entity,
827 its staff, outside advisors, or consultants exclusively for the evaluation and negotiation of proposals filed
828 under the Public-Private Transportation Act of 1995 (§ 33.2-1800 et seq.) or the Public-Private
829 Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.) where (i) if such information
830 was made public prior to or after the execution of an interim or a comprehensive agreement,
831 § 33.2-1820 or 56-575.17 notwithstanding, the financial interest or bargaining position of the public
832 entity would be adversely affected and (ii) the basis for the determination required in clause (i) is
833 documented in writing by the responsible public entity; and

834 b. Information provided by a private entity to a responsible public entity, affected jurisdiction, or
835 affected local jurisdiction pursuant to the provisions of the Public-Private Transportation Act of 1995
836 (§ 33.2-1800 et seq.) or the Public-Private Education Facilities and Infrastructure Act of 2002
837 (§ 56-575.1 et seq.) if disclosure of such information would reveal (i) trade secrets of the private entity
838 as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.); (ii) financial information of the private
839 entity, including balance sheets and financial statements, that are not generally available to the public
840 through regulatory disclosure or otherwise; or (iii) other information submitted by the private entity
841 where if such information was made public prior to the execution of an interim agreement or a
842 comprehensive agreement, the financial interest or bargaining position of the public or private entity
843 would be adversely affected. In order for the information specified in clauses (i), (ii), and (iii) to be
844 excluded from the provisions of this chapter, the private entity shall make a written request to the
845 responsible public entity:

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

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

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

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

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

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

872 12. Confidential proprietary information or trade secrets, not publicly available, provided by a private
873 person or entity pursuant to a promise of confidentiality to the Virginia Resources Authority or to a
874 fund administered in connection with financial assistance rendered or to be rendered by the Virginia
875 Resources Authority where, if such information were made public, the financial interest of the private
876 person or entity would be adversely affected.

877 13. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), or confidential
878 proprietary information that is not generally available to the public through regulatory disclosure or
879 otherwise, provided by a (i) bidder or applicant for a franchise or (ii) franchisee under Chapter 21
880 (§ 15.2-2100 et seq.) of Title 15.2 to the applicable franchising authority pursuant to a promise of
881 confidentiality from the franchising authority, to the extent the information relates to the bidder's,
882 applicant's, or franchisee's financial capacity or provision of new services, adoption of new technologies
883 or implementation of improvements, where such new services, technologies, or improvements have not
884 been implemented by the franchisee on a nonexperimental scale in the franchise area, and where, if such
885 information were made public, the competitive advantage or financial interests of the franchisee would
886 be adversely affected.

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

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

895 14. Information of a proprietary nature furnished by a supplier of charitable gaming supplies to the
896 Department of Agriculture and Consumer Services pursuant to subsection E of § 18.2-340.34.

897 15. Information related to Virginia apple producer sales provided to the Virginia State Apple Board
898 pursuant to § 3.2-1215.

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

902 17. Information relating to a grant or loan application, or accompanying a grant or loan application,
903 to the Innovation and Entrepreneurship Investment Authority pursuant to Article 3 (§ 2.2-2233.1 et seq.)
904 of Chapter 22 of Title 2.2 or to the Commonwealth Health Research Board pursuant to Chapter 5.3
905 (§ 32.1-162.23 et seq.) of Title 32.1 if disclosure of such information would (i) reveal proprietary
906 business or research-related information produced or collected by the applicant in the conduct of or as a
907 result of study or research on medical, rehabilitative, scientific, technical, technological, or scholarly
908 issues, when such information has not been publicly released, published, copyrighted, or patented, and
909 (ii) be harmful to the competitive position of the applicant.

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

914 In order for confidential proprietary information or trade secrets to be excluded from the provisions
915 of this chapter, the locality in writing shall (a) invoke the protections of this subdivision, (b) identify
916 with specificity the information for which protection is sought, and (c) state the reasons why protection
917 is necessary. However, the exemption provided by this subdivision shall not apply to any authority
918 created pursuant to the BVU Authority Act (§ 15.2-7200 et seq.).

919 19. Confidential proprietary information and trade secrets developed by or for a local authority
920 created in accordance with the Virginia Wireless Service Authorities Act (§ 15.2-5431.1 et seq.) to

921 provide qualifying communications services as authorized by Article 5.1 (§ 56-484.7:1 et seq.) of
 922 Chapter 15 of Title 56, where disclosure of such information would be harmful to the competitive
 923 position of the authority, except that information required to be maintained in accordance with
 924 § 15.2-2160 shall be released.

925 20. Trade secrets as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.) or financial
 926 information of a business, including balance sheets and financial statements, that are not generally
 927 available to the public through regulatory disclosure or otherwise, provided to the Department of Small
 928 Business and Supplier Diversity as part of an application for certification as a small, women-owned, or
 929 minority-owned business in accordance with Chapter 16.1 (§ 2.2-1603 et seq.). In order for such trade
 930 secrets or financial information to be excluded from the provisions of this chapter, the business shall (i)
 931 invoke such exclusion upon submission of the data or other materials for which protection from
 932 disclosure is sought, (ii) identify the data or other materials for which protection is sought, and (iii) state
 933 the reasons why protection is necessary.

934 21. Information of a proprietary or confidential nature disclosed by a carrier to the State Health
 935 Commissioner pursuant to §§ 32.1-276.5:1 and 32.1-276.7:1.

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

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

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

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

948 c. Stating the reasons why protection is necessary.

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

953 23. Information relating to a grant application, or accompanying a grant application, submitted to the
 954 Tobacco Region Revitalization Commission that would (i) reveal (a) trade secrets as defined in the
 955 Uniform Trade Secrets Act (§ 59.1-336 et seq.), (b) financial information of a grant applicant that is not
 956 a public body, including balance sheets and financial statements, that are not generally available to the
 957 public through regulatory disclosure or otherwise, or (c) research-related information produced or
 958 collected by the applicant in the conduct of or as a result of study or research on medical, rehabilitative,
 959 scientific, technical, technological, or scholarly issues, when such information has not been publicly
 960 released, published, copyrighted, or patented, and (ii) be harmful to the competitive position of the
 961 applicant; and memoranda, staff evaluations, or other information prepared by the Commission or its
 962 staff exclusively for the evaluation of grant applications. The exclusion provided by this subdivision
 963 shall apply to grants that are consistent with the powers of and in furtherance of the performance of the
 964 duties of the Commission pursuant to § 3.2-3103.

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

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

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

971 c. Stating the reasons why protection is necessary.

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

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

980 b. Information provided by a private entity to the Commercial Space Flight Authority if disclosure of
 981 such information would (i) reveal (a) trade secrets of the private entity as defined in the Uniform Trade
 982 Secrets Act (§ 59.1-336 et seq.); (b) financial information of the private entity, including balance sheets

983 and financial statements, that are not generally available to the public through regulatory disclosure or
984 otherwise; or (c) other information submitted by the private entity and (ii) adversely affect the financial
985 interest or bargaining position of the Authority or private entity.

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

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

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

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

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

998 25. Information of a proprietary nature furnished by an agricultural landowner or operator to the
999 Department of Conservation and Recreation, the Department of Environmental Quality, the Department
1000 of Agriculture and Consumer Services, or any political subdivision, agency, or board of the
1001 Commonwealth pursuant to §§ 10.1-104.7, 10.1-104.8, and 10.1-104.9, other than when required as part
1002 of a state or federal regulatory enforcement action.

1003 26. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), provided to the
1004 Department of Environmental Quality pursuant to the provisions of § 10.1-1458. In order for such trade
1005 secrets to be excluded from the provisions of this chapter, the submitting party shall (i) invoke this
1006 exclusion upon submission of the data or materials for which protection from disclosure is sought, (ii)
1007 identify the data or materials for which protection is sought, and (iii) state the reasons why protection is
1008 necessary.

1009 27. Information of a proprietary nature furnished by a licensed public-use airport to the Department
1010 of Aviation for funding from programs administered by the Department of Aviation or the Virginia
1011 Aviation Board, where if such information was made public, the financial interest of the public-use
1012 airport would be adversely affected.

1013 In order for the information specified in this subdivision to be excluded from the provisions of this
1014 chapter, the public-use airport shall make a written request to the Department of Aviation:

1015 a. Invoking such exclusion upon submission of the data or other materials for which protection from
1016 disclosure is sought;

1017 b. Identifying with specificity the data or other materials for which protection is sought; and

1018 c. Stating the reasons why protection is necessary.

1019 28. Records submitted as a grant or loan application, or accompanying a grant or loan application,
1020 for an award from the Virginia Research Investment Fund pursuant to Article 8 (§ 23.1-3130 et seq.) of
1021 Chapter 31 of Title 23.1, to the extent that such records contain proprietary business or research-related
1022 information produced or collected by the applicant in the conduct of or as a result of study or research
1023 on medical, rehabilitative, scientific, technical, technological, or scholarly issues, when such information
1024 has not been publicly released, published, copyrighted, or patented, if the disclosure of such information
1025 would be harmful to the competitive position of the applicant.

1026 29. *Information contained in engineering and construction drawings and plans submitted for the sole*
1027 *purpose of complying with the Building Code in obtaining a building permit if disclosure of such*
1028 *information would identify specific trade secrets or other information that would be harmful to the*
1029 *competitive position of the owner or lessee. However, such information shall be exempt only until the*
1030 *building is completed. Information relating to the safety or environmental soundness of any building*
1031 *shall not be exempt from disclosure.*

1032 **§ 2.2-3705.7. Exclusions to application of chapter; records of specific public bodies and certain**
1033 **other limited exclusions.**

1034 The following information contained in a public record is excluded from the mandatory disclosure
1035 provisions of this chapter but may be disclosed by the custodian in his discretion, except where such
1036 disclosure is prohibited by law. Redaction of information excluded under this section from a public
1037 record shall be conducted in accordance with § 2.2-3704.01.

1038 1. State income, business, and estate tax returns, personal property tax returns, and confidential
1039 records held pursuant to § 58.1-3.

1040 2. Working papers and correspondence of the Office of the Governor, the Lieutenant Governor, or
1041 the Attorney General; the members of the General Assembly, the Division of Legislative Services, or the
1042 Clerks of the House of Delegates and or the Senate of Virginia; the mayor or chief executive officer of
1043 any political subdivision of the Commonwealth; or the president or other chief executive officer of any

1044 public institution of higher education in Virginia. However, no information that is otherwise open to
1045 inspection under this chapter shall be deemed excluded by virtue of the fact that it has been attached to
1046 or incorporated within any working paper or correspondence. *Further, information publicly available or*
1047 *not otherwise subject to an exclusion under this chapter or other provision of law that has been*
1048 *aggregated, combined, or changed in format but does not contain a material revision to such*
1049 *information shall not be deemed working papers.* Nothing in this subdivision shall be construed to
1050 authorize the withholding of any resumes or applications submitted by persons who are appointed by the
1051 Governor pursuant to § 2.2-106 or 2.2-107.

1052 As used in this subdivision:

1053 "Members of the General Assembly" means each member of the Senate of Virginia and the House of
1054 Delegates and their legislative aides when working on behalf of such member.

1055 "Office of the Governor" means the Governor; ~~his~~ *the Governor's* chief of staff, counsel, director of
1056 policy, *and* Cabinet Secretaries, ~~and;~~ *the* Assistant to the Governor for Intergovernmental Affairs; and
1057 those individuals to whom the Governor has delegated his authority pursuant to § 2.2-104.

1058 "Working papers" means those records prepared by or for ~~an above-named~~ *a* public official *identified*
1059 *in this subdivision* for his personal or deliberative use.

1060 3. Information contained in library records that can be used to identify both (i) any library patron
1061 who has borrowed material from a library and (ii) the material such patron borrowed.

1062 4. Contract cost estimates prepared for the confidential use of the Department of Transportation in
1063 awarding contracts for construction or the purchase of goods or services, and records and automated
1064 systems prepared for the Department's Bid Analysis and Monitoring Program.

1065 5. Lists of registered owners of bonds issued by a political subdivision of the Commonwealth,
1066 whether the lists are maintained by the political subdivision itself or by a single fiduciary designated by
1067 the political subdivision.

1068 6. Information furnished by a member of the General Assembly to a meeting of a standing
1069 committee, special committee, or subcommittee of his house established solely for the purpose of
1070 reviewing members' annual disclosure statements and supporting materials filed under § 30-110 or of
1071 formulating advisory opinions to members on standards of conduct, or both.

1072 7. Customer account information of a public utility affiliated with a political subdivision of the
1073 Commonwealth, including the customer's name and service address, but excluding the amount of utility
1074 service provided and the amount of money *charged or* paid for such utility service.

1075 8. Personal information, as defined in § 2.2-3801, (i) filed with the Virginia Housing Development
1076 Authority concerning individuals who have applied for or received loans or other housing assistance or
1077 who have applied for occupancy of or have occupied housing financed, owned or otherwise assisted by
1078 the Virginia Housing Development Authority; (ii) concerning persons participating in or persons on the
1079 waiting list for federally funded rent-assistance programs; (iii) filed with any local redevelopment and
1080 housing authority created pursuant to § 36-4 concerning persons participating in or persons on the
1081 waiting list for housing assistance programs funded by local governments or by any such authority; or
1082 (iv) filed with any local redevelopment and housing authority created pursuant to § 36-4 or any other
1083 local government agency concerning persons who have applied for occupancy or who have occupied
1084 affordable dwelling units established pursuant to § 15.2-2304 or 15.2-2305. However, access to one's
1085 own information shall not be denied.

1086 9. Information regarding the siting of hazardous waste facilities, except as provided in § 10.1-1441, if
1087 disclosure of such information would have a detrimental effect upon the negotiating position of a
1088 governing body or on the establishment of the terms, conditions, and provisions of the siting agreement.

1089 10. Information on the site-specific location of rare, threatened, endangered, or otherwise imperiled
1090 plant and animal species, natural communities, caves, and significant historic and archaeological sites if,
1091 in the opinion of the public body that has the responsibility for such information, disclosure of the
1092 information would jeopardize the continued existence or the integrity of the resource. This exclusion
1093 shall not apply to requests from the owner of the land upon which the resource is located.

1094 11. Memoranda, graphics, video or audio tapes, production models, data, and information of a
1095 proprietary nature produced by or for or collected by or for the Virginia Lottery relating to matters of a
1096 specific lottery game design, development, production, operation, ticket price, prize structure, manner of
1097 selecting the winning ticket, manner of payment of prizes to holders of winning tickets, frequency of
1098 drawings or selections of winning tickets, odds of winning, advertising, or marketing, where such
1099 information not been publicly released, published, copyrighted, or patented. Whether released, published,
1100 or copyrighted, all game-related information shall be subject to public disclosure under this chapter upon
1101 the first day of sales for the specific lottery game to which it pertains.

1102 12. Information held by the Virginia Retirement System, acting pursuant to § 51.1-124.30, or a local
1103 retirement system, acting pursuant to § 51.1-803, *or by a local finance board or board of trustees of a*
1104 *trust established by one or more local public bodies to invest funds for post-retirement benefits other*
1105 *than pensions, acting pursuant to Article 8 (§ 15.2-1544 et seq.) of Chapter 15 of Title 15.2, or by the*

1106 Rector and Visitors of the University of Virginia, acting pursuant to § 23.1-2210, or by the Virginia
 1107 College Savings Plan, acting pursuant to § 23.1-704, relating to the acquisition, holding, or disposition
 1108 of a security or other ownership interest in an entity, where such security or ownership interest is not
 1109 traded on a governmentally regulated securities exchange, if disclosure of such information would (i)
 1110 reveal confidential analyses prepared for the Rector and Visitors of the University of Virginia, prepared
 1111 by the retirement system, *a local finance board or board of trustees*, or the Virginia College Savings
 1112 Plan, or provided to the retirement system, *a local finance board or board of trustees*, or the Virginia
 1113 College Savings Plan under a promise of confidentiality of the future value of such ownership interest or
 1114 the future financial performance of the entity and (ii) have an adverse effect on the value of the
 1115 investment to be acquired, held, or disposed of by the retirement system, *a local finance board or board*
 1116 *of trustees*, the Rector and Visitors of the University of Virginia, or the Virginia College Savings Plan.
 1117 Nothing in this subdivision shall be construed to ~~authorize the withholding~~ *prevent the disclosure* of
 1118 information relating to the identity of any investment held, the amount invested, or the present value of
 1119 such investment.

1120 ~~13. Names and addresses of subscribers to Virginia Wildlife magazine, published by the Department~~
 1121 ~~of Game and Inland Fisheries, provided the individual subscriber has requested in writing that the~~
 1122 ~~Department not release such information.~~

1123 ~~14. Financial, medical, rehabilitative, and other personal information concerning applicants for or~~
 1124 ~~recipients of loan funds submitted to or maintained by the Assistive Technology Loan Fund Authority~~
 1125 ~~under Chapter 11 (§ 51.5-53 et seq.) of Title 51.5.~~

1126 ~~15-~~ 14. Information held by the Virginia Commonwealth University Health System Authority
 1127 pertaining to any of the following: an individual's qualifications for or continued membership on its
 1128 medical or teaching staffs; proprietary information gathered by or in the possession of the Authority
 1129 from third parties pursuant to a promise of confidentiality; contract cost estimates prepared for
 1130 confidential use in awarding contracts for construction or the purchase of goods or services; information
 1131 of a proprietary nature produced or collected by or for the Authority or members of its medical or
 1132 teaching staffs; financial statements not publicly available that may be filed with the Authority from
 1133 third parties; the identity, accounts, or account status of any customer of the Authority; consulting or
 1134 other reports paid for by the Authority to assist the Authority in connection with its strategic planning
 1135 and goals; the determination of marketing and operational strategies where disclosure of such strategies
 1136 would be harmful to the competitive position of the Authority; and information of a proprietary nature
 1137 produced or collected by or for employees of the Authority, other than the Authority's financial or
 1138 administrative records, in the conduct of or as a result of study or research on medical, scientific,
 1139 technical, or scholarly issues, whether sponsored by the Authority alone or in conjunction with a
 1140 governmental body or a private concern, when such information has not been publicly released,
 1141 published, copyrighted, or patented. This exclusion shall also apply when such information is in the
 1142 possession of Virginia Commonwealth University.

1143 ~~16-~~ 15. Information held by the Department of Environmental Quality, the State Water Control
 1144 Board, the State Air Pollution Control Board, or the Virginia Waste Management Board relating to (i)
 1145 active federal environmental enforcement actions that are considered confidential under federal law and
 1146 (ii) enforcement strategies, including proposed sanctions for enforcement actions. Upon request, such
 1147 information shall be disclosed after a proposed sanction resulting from the investigation has been
 1148 proposed to the director of the agency. This subdivision shall not be construed to ~~authorize the~~
 1149 ~~withholding~~ *prevent the disclosure* of information related to inspection reports, notices of violation, and
 1150 documents detailing the nature of any environmental contamination that may have occurred or similar
 1151 documents.

1152 ~~17-~~ 16. Information related to the operation of toll facilities that identifies an individual, vehicle, or
 1153 travel itinerary, including vehicle identification data or vehicle enforcement system information; video or
 1154 photographic images; Social Security or other identification numbers appearing on driver's licenses;
 1155 credit card or bank account data; home addresses; phone numbers; or records of the date or time of toll
 1156 facility use.

1157 ~~18-~~ 17. Information held by the Virginia Lottery pertaining to (i) the social security number, tax
 1158 identification number, state sales tax number, home address and telephone number, personal and lottery
 1159 banking account and transit numbers of a retailer, and financial information regarding the nonlottery
 1160 operations of specific retail locations and (ii) individual lottery winners, except that a winner's name,
 1161 hometown, and amount won shall be disclosed.

1162 ~~19-~~ 18. Information held by the Board for Branch Pilots relating to the chemical or drug testing of a
 1163 person regulated by the Board, where such person has tested negative or has not been the subject of a
 1164 disciplinary action by the Board for a positive test result.

1165 ~~20-~~ 19. Information pertaining to the planning, scheduling, and performance of examinations of
 1166 holder records pursuant to the Uniform Disposition of Unclaimed Property Act (§ 55-210.1 et seq.)

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1167 prepared by or for the State Treasurer or his agents or employees or persons employed to perform an
 1168 audit or examination of holder records.

1169 ~~21.~~ 20. Information held by the Virginia Department of Emergency Management or a local governing
 1170 body relating to citizen emergency response teams established pursuant to an ordinance of a local
 1171 governing body that reveal the name, address, including e-mail address, telephone or pager numbers, or
 1172 operating schedule of an individual participant in the program.

1173 ~~22.~~ 21. Information held by state or local park and recreation departments and local and regional
 1174 park authorities concerning identifiable individuals under the age of 18 years. However, nothing in this
 1175 subdivision shall operate to ~~authorize the withholding~~ *prevent the disclosure* of information defined as
 1176 directory information under regulations implementing the Family Educational Rights and Privacy Act, 20
 1177 U.S.C. § 1232g, unless the public body has undertaken the parental notification and opt-out requirements
 1178 provided by such regulations. Access shall not be denied to the parent, including a noncustodial parent,
 1179 or guardian of such person, unless the parent's parental rights have been terminated or a court of
 1180 competent jurisdiction has restricted or denied such access. For such information of persons who are
 1181 emancipated, the right of access may be asserted by the subject thereof. Any parent or emancipated
 1182 person who is the subject of the information may waive, in writing, the protections afforded by this
 1183 subdivision. If the protections are so waived, the public body shall open such information for inspection
 1184 and copying.

1185 ~~23.~~ 22. Information submitted for inclusion in the Statewide Alert Network administered by the
 1186 Department of Emergency Management that reveal names, physical addresses, email addresses, computer
 1187 or internet protocol information, telephone numbers, pager numbers, other wireless or portable
 1188 communications device information, or operating schedules of individuals or agencies, where the release
 1189 of such information would compromise the security of the Statewide Alert Network or individuals
 1190 participating in the Statewide Alert Network.

1191 ~~24.~~ 23. Information held by the Judicial Inquiry and Review Commission made confidential by
 1192 § 17.1-913.

1193 ~~25.~~ 24. Information held by the Virginia Retirement System acting pursuant to § 51.1-124.30, a local
 1194 retirement system acting pursuant to § 51.1-803 (hereinafter collectively referred to as the retirement
 1195 system), or the Virginia College Savings Plan, acting pursuant to § 23.1-704 relating to:

1196 a. Internal deliberations of or decisions by the retirement system or the Virginia College Savings
 1197 Plan on the pursuit of particular investment strategies, or the selection or termination of investment
 1198 managers, prior to the execution of such investment strategies or the selection or termination of such
 1199 managers, if disclosure of such information would have an adverse impact on the financial interest of
 1200 the retirement system or the Virginia College Savings Plan; and

1201 b. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), provided by a
 1202 private entity to the retirement system or the Virginia College Savings Plan if disclosure of such records
 1203 would have an adverse impact on the financial interest of the retirement system or the Virginia College
 1204 Savings Plan.

1205 For the records specified in subdivision b to be excluded from the provisions of this chapter, the
 1206 entity shall make a written request to the retirement system or the Virginia College Savings Plan:

1207 (1) Invoking such exclusion prior to or upon submission of the data or other materials for which
 1208 protection from disclosure is sought;

1209 (2) Identifying with specificity the data or other materials for which protection is sought; and

1210 (3) Stating the reasons why protection is necessary.

1211 The retirement system or the Virginia College Savings Plan shall determine whether the requested
 1212 exclusion from disclosure meets the requirements set forth in subdivision b.

1213 Nothing in this subdivision shall be construed to ~~authorize the withholding~~ *prevent the disclosure* of
 1214 the identity or amount of any investment held or the present value and performance of all asset classes
 1215 and subclasses.

1216 ~~26.~~ 25. Information held by the Department of Corrections made confidential by § 53.1-233.

1217 ~~27.~~ 26. Information maintained by the Department of the Treasury or participants in the Local
 1218 Government Investment Pool (§ 2.2-4600 et seq.) and required to be provided by such participants to the
 1219 Department to establish accounts in accordance with § 2.2-4602.

1220 ~~28.~~ 27. Personal information, as defined in § 2.2-3801, contained in the Veterans Care Center
 1221 Resident Trust Funds concerning residents or patients of the Department of Veterans Services Care
 1222 Centers, except that access shall not be denied to the person who is the subject of the information.

1223 ~~29.~~ 28. Information maintained in connection with fundraising activities by the Veterans Services
 1224 Foundation pursuant to § 2.2-2716 that reveal the address, electronic mail address, facsimile or telephone
 1225 number, social security number or other identification number appearing on a driver's license, or credit
 1226 card or bank account data of identifiable donors, except that access shall not be denied to the person
 1227 who is the subject of the information. Nothing in this subdivision, however, shall be construed to
 1228 ~~authorize the withholding~~ *prevent the disclosure* of information relating to the amount, date, purpose,

1229 and terms of the pledge or donation or the identity of the donor, unless the donor has requested
 1230 anonymity in connection with or as a condition of making a pledge or donation. The exclusion provided
 1231 by this subdivision shall not apply to protect from disclosure (i) the identities of sponsors providing
 1232 grants to or contracting with the foundation for the performance of services or other work or (ii) the
 1233 terms and conditions of such grants or contracts.

1234 30. Names, physical addresses, telephone numbers, and email addresses contained in correspondence
 1235 between an individual and a member of the governing body, school board, or other public body of the
 1236 locality in which the individual is a resident, unless the correspondence relates to the transaction of
 1237 public business. However, no information that is otherwise open to inspection under this chapter shall be
 1238 deemed exempt by virtue of the fact that it has been attached to or incorporated within any such
 1239 correspondence.

1240 ~~31. 29.~~ Information prepared for and utilized by the Commonwealth's Attorneys' Services Council in
 1241 the training of state prosecutors or law-enforcement personnel, where such information is not otherwise
 1242 available to the public and the disclosure of such information would reveal confidential strategies,
 1243 methods, or procedures to be employed in law-enforcement activities or materials created for the
 1244 investigation and prosecution of a criminal case.

1245 ~~32. 30.~~ Information provided to the Department of Aviation by other entities of the Commonwealth
 1246 in connection with the operation of aircraft where the information would not be subject to disclosure by
 1247 the entity providing the information. The entity providing the information to the Department of Aviation
 1248 shall identify the specific information to be protected and the applicable provision of this chapter that
 1249 excludes the information from mandatory disclosure.

1250 ~~33. 31.~~ Information created or maintained by or on the behalf of the judicial performance evaluation
 1251 program related to an evaluation of any individual justice or judge made confidential by § 17.1-100.

1252 34. (Effective July 1, 2018) Information held by the Virginia Alcoholic Beverage Control Authority
 1253 that contains (i) information of a proprietary nature gathered by or in the possession of the Authority
 1254 from a private entity pursuant to a promise of confidentiality; (ii) trade secrets, as defined in the
 1255 Uniform Trade Secrets Act (§ 59.1-336 et seq.); of any private entity; (iii) financial information of a
 1256 private entity, including balance sheets and financial statements; that are not generally available to the
 1257 public through regulatory disclosure or otherwise; (iv) contract cost estimates prepared for the (a)
 1258 confidential use in awarding contracts for construction or (b) purchase of goods or services; or (v) the
 1259 determination of marketing and operational strategies where disclosure of such strategies would be
 1260 harmful to the competitive position of the Authority.

1261 In order for the information identified in clauses (i), (ii), or (iii) to be excluded from the provisions
 1262 of this chapter, the private entity shall make a written request to the Authority:

1263 a. Invoking such exclusion upon submission of the data or other materials for which protection from
 1264 disclosure is sought;

1265 b. Identifying with specificity the data or other materials for which protection is sought; and
 1266 c. Stating the reasons why protection is necessary.

1267 The Authority shall determine whether the requested exclusion from disclosure is necessary to protect
 1268 such information of the private entity. The Authority shall make a written determination of the nature
 1269 and scope of the protection to be afforded by it under this subdivision.

1270 ~~35. 32.~~ Information reflecting the substance of meetings in which individual sexual assault cases are
 1271 discussed by any sexual assault team established pursuant to § 15.2-1627.4. The findings of the team
 1272 may be disclosed or published in statistical or other aggregated form that does not disclose the identity
 1273 of specific individuals.

1274 **§ 2.2-3705.8. Limitation on record exclusions.**

1275 A. Neither any provision of this chapter nor any provision of Chapter 38 (§ 2.2-3800 et seq.) of this
 1276 title shall be construed as denying public access to (i) contracts between a public body and its officers
 1277 or employees, other than contracts settling public employee employment disputes held confidential as
 1278 personnel records under § 2.2-3705.1; (ii) records of the position, job classification, official salary or rate
 1279 of pay of, and records of the allowances or reimbursements for expenses paid to any officer, official or
 1280 employee of a public body; or (iii) the compensation or benefits paid by any corporation organized by
 1281 the Virginia Retirement System or its officers or employees.

1282 The provisions of this subsection, however, shall not require public access to records of the official
 1283 salaries or rates of pay of public employees whose annual rate of pay is \$10,000 or less.

1284 B. Nothing in this chapter shall be construed as denying public access to the nonexempt portions of
 1285 a report of a consultant hired by or at the request of a local public body or the mayor or chief executive
 1286 or administrative officer of such public body if (i) the contents of such report have been distributed or
 1287 disclosed to members of the local public body or (ii) the local public body has scheduled any action on
 1288 a matter that is the subject of the consultant's report.

1289 **§ 2.2-3711. Closed meetings authorized for certain limited purposes.**

- 1290 A. Public bodies may hold closed meetings only for the following purposes:
- 1291 1. Discussion, consideration, or interviews of prospective candidates for employment; assignment,
- 1292 appointment, promotion, performance, demotion, salaries, disciplining, or resignation of specific public
- 1293 officers, appointees, or employees of any public body; and evaluation of performance of departments or
- 1294 schools of public institutions of higher education where such evaluation will necessarily involve
- 1295 discussion of the performance of specific individuals. Any teacher shall be permitted to be present
- 1296 during a closed meeting in which there is a discussion or consideration of a disciplinary matter that
- 1297 involves the teacher and some student and the student involved in the matter is present, provided the
- 1298 teacher makes a written request to be present to the presiding officer of the appropriate board. Nothing
- 1299 in this subdivision, however, shall be construed to authorize a closed meeting by a local governing body
- 1300 or an elected school board to discuss compensation matters that affect the membership of such body or
- 1301 board collectively.
- 1302 2. Discussion or consideration of admission or disciplinary matters or any other matters that would
- 1303 involve the disclosure of information contained in a scholastic record concerning any student of any
- 1304 Virginia public institution of higher education or any state school system. However, any such student,
- 1305 legal counsel and, if the student is a minor, the student's parents or legal guardians shall be permitted to
- 1306 be present during the taking of testimony or presentation of evidence at a closed meeting, if such
- 1307 student, parents, or guardians so request in writing and such request is submitted to the presiding officer
- 1308 of the appropriate board.
- 1309 3. Discussion or consideration of the acquisition of real property for a public purpose, or of the
- 1310 disposition of publicly held real property, where discussion in an open meeting would adversely affect
- 1311 the bargaining position or negotiating strategy of the public body.
- 1312 4. The protection of the privacy of individuals in personal matters not related to public business.
- 1313 5. Discussion concerning a prospective business or industry or the expansion of an existing business
- 1314 or industry where no previous announcement has been made of the business' or industry's interest in
- 1315 locating or expanding its facilities in the community.
- 1316 6. Discussion or consideration of the investment of public funds where competition or bargaining is
- 1317 involved, where, if made public initially, the financial interest of the governmental unit would be
- 1318 adversely affected.
- 1319 7. Consultation with legal counsel and briefings by staff members or consultants pertaining to actual
- 1320 or probable litigation, where such consultation or briefing in open meeting would adversely affect the
- 1321 negotiating or litigating posture of the public body; and consultation with legal counsel employed or
- 1322 retained by a public body regarding specific legal matters requiring the provision of legal advice by such
- 1323 counsel. For the purposes of this subdivision, "probable litigation" means litigation that has been
- 1324 specifically threatened or on which the public body or its legal counsel has a reasonable basis to believe
- 1325 will be commenced by or against a known party. Nothing in this subdivision shall be construed to
- 1326 permit the closure of a meeting merely because an attorney representing the public body is in attendance
- 1327 or is consulted on a matter.
- 1328 8. In the case of boards of visitors of public institutions of higher education, discussion or
- 1329 consideration of matters relating to gifts, bequests and fund-raising activities, and grants and contracts
- 1330 for services or work to be performed by such institution. However, the terms and conditions of any such
- 1331 gifts, bequests, grants, and contracts made by a foreign government, a foreign legal entity, or a foreign
- 1332 person and accepted by a public institution of higher education in Virginia shall be subject to public
- 1333 disclosure upon written request to the appropriate board of visitors. For the purpose of this subdivision,
- 1334 (i) "foreign government" means any government other than the United States government or the
- 1335 government of a state or a political subdivision thereof; (ii) "foreign legal entity" means any legal entity
- 1336 created under the laws of the United States or of any state thereof if a majority of the ownership of the
- 1337 stock of such legal entity is owned by foreign governments or foreign persons or if a majority of the
- 1338 membership of any such entity is composed of foreign persons or foreign legal entities, or any legal
- 1339 entity created under the laws of a foreign government; and (iii) "foreign person" means any individual
- 1340 who is not a citizen or national of the United States or a trust territory or protectorate thereof.
- 1341 9. In the case of the boards of trustees of the Virginia Museum of Fine Arts, the Virginia Museum
- 1342 of Natural History, the Jamestown-Yorktown Foundation, and The Science Museum of Virginia,
- 1343 discussion or consideration of matters relating to specific gifts, bequests, and grants.
- 1344 10. Discussion or consideration of honorary degrees or special awards.
- 1345 11. Discussion or consideration of tests, examinations, or other information excluded from this
- 1346 chapter pursuant to subdivision 4 of § 2.2-3705.1.
- 1347 12. Discussion, consideration, or review by the appropriate House or Senate committees of possible
- 1348 disciplinary action against a member arising out of the possible inadequacy of the disclosure statement
- 1349 filed by the member, provided the member may request in writing that the committee meeting not be
- 1350 conducted in a closed meeting.
- 1351 13. Discussion of strategy with respect to the negotiation of a hazardous waste siting agreement or to

1352 consider the terms, conditions, and provisions of a hazardous waste siting agreement if the governing
1353 body in open meeting finds that an open meeting will have an adverse effect upon the negotiating
1354 position of the governing body or the establishment of the terms, conditions and provisions of the siting
1355 agreement, or both. All discussions with the applicant or its representatives may be conducted in a
1356 closed meeting.

1357 14. Discussion by the Governor and any economic advisory board reviewing forecasts of economic
1358 activity and estimating general and nongeneral fund revenues.

1359 15. Discussion or consideration of medical and mental health records excluded from this chapter
1360 pursuant to subdivision 1 of § 2.2-3705.5.

1361 16. Deliberations of the Virginia Lottery Board in a licensing appeal action conducted pursuant to
1362 subsection D of § 58.1-4007 regarding the denial or revocation of a license of a lottery sales agent; and
1363 discussion, consideration or review of Virginia Lottery matters related to proprietary lottery game
1364 information and studies or investigations exempted from disclosure under subdivision 6 of § 2.2-3705.3
1365 and subdivision 11 of § 2.2-3705.7.

1366 17. Those portions of meetings by local government crime commissions where the identity of, or
1367 information tending to identify, individuals providing information about crimes or criminal activities
1368 under a promise of anonymity is discussed or disclosed.

1369 18. Those portions of meetings in which the Board of Corrections discusses or discloses the identity
1370 of, or information tending to identify, any prisoner who (i) provides information about crimes or
1371 criminal activities, (ii) renders assistance in preventing the escape of another prisoner or in the
1372 apprehension of an escaped prisoner, or (iii) voluntarily or at the instance of a prison official renders
1373 other extraordinary services, the disclosure of which is likely to jeopardize the prisoner's life or safety.

1374 19. Discussion of plans to protect public safety as it relates to terrorist activity or specific
1375 cybersecurity threats or vulnerabilities and briefings by staff members, legal counsel, or law-enforcement
1376 or emergency service officials concerning actions taken to respond to such matters or a related threat to
1377 public safety; discussion of information excluded from this chapter pursuant to subdivision 3 of § 2 or
1378 14 of § 2.2-3705.2, where discussion in an open meeting would jeopardize the safety of any person or
1379 the security of any facility, building, structure, information technology system, or software program; or
1380 discussion of reports or plans related to the security of any governmental facility, building or structure,
1381 or the safety of persons using such facility, building or structure.

1382 20. Discussion by the Board of the Virginia Retirement System, acting pursuant to § 51.1-124.30, or
1383 of any local retirement system, acting pursuant to § 51.1-803, *or by a local finance board or board of*
1384 *trustees of a trust established by one or more local public bodies to invest funds for postemployment*
1385 *benefits other than pensions, acting pursuant to Article 8 (§ 15.2-1544 et seq.) of Chapter 15 of Title*
1386 *15.2, or by the Rector and Visitors of the University of Virginia, acting pursuant to § 23.1-2210, or by*
1387 *the Board of the Virginia College Savings Plan, acting pursuant to § 23.1-706, regarding the acquisition,*
1388 *holding or disposition of a security or other ownership interest in an entity, where such security or*
1389 *ownership interest is not traded on a governmentally regulated securities exchange, to the extent that*
1390 *such discussion (i) concerns confidential analyses prepared for the Rector and Visitors of the University*
1391 *of Virginia, prepared by the retirement system, or a local finance board or board of trustees, or by the*
1392 *Virginia College Savings Plan or provided to the retirement system, a local finance board or board of*
1393 *trustees, or the Virginia College Savings Plan under a promise of confidentiality, of the future value of*
1394 *such ownership interest or the future financial performance of the entity, and (ii) would have an adverse*
1395 *effect on the value of the investment to be acquired, held or disposed of by the retirement system, a*
1396 *local finance board or board of trustees, the Rector and Visitors of the University of Virginia, or the*
1397 *Virginia College Savings Plan. Nothing in this subdivision shall be construed to prevent the disclosure*
1398 *of information relating to the identity of any investment held, the amount invested or the present value*
1399 *of such investment.*

1400 21. Those portions of meetings in which individual child death cases are discussed by the State Child
1401 Fatality Review team established pursuant to § 32.1-283.1, those portions of meetings in which
1402 individual child death cases are discussed by a regional or local child fatality review team established
1403 pursuant to § 32.1-283.2, those portions of meetings in which individual death cases are discussed by
1404 family violence fatality review teams established pursuant to § 32.1-283.3, those portions of meetings in
1405 which individual adult death cases are discussed by the state Adult Fatality Review Team established
1406 pursuant to § 32.1-283.5, and those portions of meetings in which individual adult death cases are
1407 discussed by a local or regional adult fatality review team established pursuant to § 32.1-283.6.

1408 22. Those portions of meetings of the University of Virginia Board of Visitors or the Eastern
1409 Virginia Medical School Board of Visitors, as the case may be, and those portions of meetings of any
1410 persons to whom management responsibilities for the University of Virginia Medical Center or Eastern
1411 Virginia Medical School, as the case may be, have been delegated, in which there is discussed
1412 proprietary, business-related information pertaining to the operations of the University of Virginia

1413 Medical Center or Eastern Virginia Medical School, as the case may be, including business development
1414 or marketing strategies and activities with existing or future joint venturers, partners, or other parties
1415 with whom the University of Virginia Medical Center or Eastern Virginia Medical School, as the case
1416 may be, has formed, or forms, any arrangement for the delivery of health care, if disclosure of such
1417 information would adversely affect the competitive position of the Medical Center or Eastern Virginia
1418 Medical School, as the case may be.

1419 23. In the case of the Virginia Commonwealth University Health System Authority, discussion or
1420 consideration of any of the following: the acquisition or disposition of real or personal property where
1421 disclosure would adversely affect the bargaining position or negotiating strategy of the Authority;
1422 operational plans that could affect the value of such property, real or personal, owned or desirable for
1423 ownership by the Authority; matters relating to gifts, bequests and fund-raising activities; grants and
1424 contracts for services or work to be performed by the Authority; marketing or operational strategies
1425 where disclosure of such strategies would adversely affect the competitive position of the Authority;
1426 members of its medical and teaching staffs and qualifications for appointments thereto; and qualifications
1427 or evaluations of other employees. This exclusion shall also apply when the foregoing discussions occur
1428 at a meeting of the Virginia Commonwealth University Board of Visitors.

1429 24. Those portions of the meetings of the Health Practitioners' Monitoring Program Committee within
1430 the Department of Health Professions to the extent such discussions identify any practitioner who may
1431 be, or who actually is, impaired pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of Title 54.1.

1432 25. Meetings or portions of meetings of the Board of the Virginia College Savings Plan wherein
1433 personal information, as defined in § 2.2-3801, which has been provided to the Board or its employees
1434 by or on behalf of individuals who have requested information about, applied for, or entered into
1435 prepaid tuition contracts or savings trust account agreements pursuant to Chapter 7 (§ 23.1-700 et seq.)
1436 of Title 23.1 is discussed.

1437 26. Discussion or consideration, by the Wireless Carrier E-911 Cost Recovery Subcommittee created
1438 pursuant to § 56-484.15, of trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et
1439 seq.), submitted by CMRS providers as defined in § 56-484.12, related to the provision of wireless
1440 E-911 service.

1441 27. Those portions of disciplinary proceedings by any regulatory board within the Department of
1442 Professional and Occupational Regulation, Department of Health Professions, or the Board of
1443 Accountancy conducted pursuant to § 2.2-4019 or 2.2-4020 during which the board deliberates to reach
1444 a decision or meetings of health regulatory boards or conference committees of such boards to consider
1445 settlement proposals in pending disciplinary actions or modifications to previously issued board orders as
1446 requested by either of the parties.

1447 28. Discussion or consideration of information excluded from this chapter pursuant to subdivision 11
1448 of § 2.2-3705.6 by a responsible public entity or an affected locality or public entity, as those terms are
1449 defined in § 33.2-1800, or any independent review panel appointed to review information and advise the
1450 responsible public entity concerning such records.

1451 29. Discussion of the award of a public contract involving the expenditure of public funds, including
1452 interviews of bidders or offerors, and discussion of the terms or scope of such contract, where
1453 discussion in an open session would adversely affect the bargaining position or negotiating strategy of
1454 the public body.

1455 30. Discussion or consideration of grant or loan application information excluded from this chapter
1456 pursuant to subdivision 17 of § 2.2-3705.6 by (i) the Commonwealth Health Research Board or (ii) the
1457 Innovation and Entrepreneurship Investment Authority or the Research and Technology Investment
1458 Advisory Committee appointed to advise the Innovation and Entrepreneurship Investment Authority.

1459 31. Discussion or consideration by the Commitment Review Committee of information excluded from
1460 this chapter pursuant to subdivision 5 of § 2.2-3705.2 relating to individuals subject to commitment as
1461 sexually violent predators under Chapter 9 (§ 37.2-900 et seq.) of Title 37.2.

1462 32. [Expired.]

1463 33. Discussion or consideration of confidential proprietary information and trade secrets excluded
1464 from this chapter pursuant to subdivision 18 of § 2.2-3705.6. However, the exemption provided by this
1465 subdivision shall not apply to any authority created pursuant to the BVU Authority Act (§ 15.2-7200 et
1466 seq.).

1467 34. Discussion or consideration by a local authority created in accordance with the Virginia Wireless
1468 Service Authorities Act (§ 15.2-5431.1 et seq.) of confidential proprietary information and trade secrets
1469 excluded from this chapter pursuant to subdivision 19 of § 2.2-3705.6.

1470 35. Discussion or consideration by the State Board of Elections or local electoral boards of voting
1471 security matters made confidential pursuant to § 24.2-625.1.

1472 36. Discussion or consideration by the Forensic Science Board or the Scientific Advisory Committee
1473 created pursuant to Article 2 (§ 9.1-1109 et seq.) of Chapter 11 of Title 9.1 of records excluded from
1474 this chapter pursuant to subdivision A 2 a of § 2.2-3706.

1475 37. Discussion or consideration by the Brown v. Board of Education Scholarship Program Awards
1476 Committee of information or confidential matters excluded from this chapter pursuant to subdivision 3
1477 of § 2.2-3705.4, and meetings of the Committee to deliberate concerning the annual maximum
1478 scholarship award, review and consider scholarship applications and requests for scholarship award
1479 renewal, and cancel, rescind, or recover scholarship awards.

1480 38. Discussion or consideration by the Virginia Port Authority of information excluded from this
1481 chapter pursuant to subdivision 1 of § 2.2-3705.6.

1482 39. Discussion or consideration by the Board of Trustees of the Virginia Retirement System acting
1483 pursuant to § 51.1-124.30, by the Investment Advisory Committee appointed pursuant to § 51.1-124.26,
1484 by any local retirement system, acting pursuant to § 51.1-803, by the Board of the Virginia College
1485 Savings Plan acting pursuant to § 23.1-706, or by the Virginia College Savings Plan's Investment
1486 Advisory Committee appointed pursuant to § 23.1-702 of information excluded from this chapter
1487 pursuant to subdivision 25 24 of § 2.2-3705.7.

1488 40. Discussion or consideration of information excluded from this chapter pursuant to subdivision 3
1489 of § 2.2-3705.6.

1490 41. Discussion or consideration by the Board of Education of information relating to the denial,
1491 suspension, or revocation of teacher licenses excluded from this chapter pursuant to subdivision 12 11 of
1492 § 2.2-3705.3.

1493 42. Those portions of meetings of the Virginia Military Advisory Council or any commission created
1494 by executive order for the purpose of studying and making recommendations regarding preventing
1495 closure or realignment of federal military and national security installations and facilities located in
1496 Virginia and relocation of such facilities to Virginia, or a local or regional military affairs organization
1497 appointed by a local governing body, during which there is discussion of information excluded from this
1498 chapter pursuant to subdivision 44 8 of § 2.2-3705.2.

1499 43. Discussion or consideration by the Board of Trustees of the Veterans Services Foundation of
1500 information excluded from this chapter pursuant to subdivision 29 28 of § 2.2-3705.7.

1501 44. Discussion or consideration by the Virginia Tobacco Region Revitalization Commission of
1502 information excluded from this chapter pursuant to subdivision 23 of § 2.2-3705.6.

1503 45. Discussion or consideration by the board of directors of the Commercial Space Flight Authority
1504 of information excluded from this chapter pursuant to subdivision 24 of § 2.2-3705.6.

1505 46. Discussion or consideration of personal and proprietary information that are excluded from the
1506 provisions of this chapter pursuant to (i) subdivision 25 of § 2.2-3705.6 or (ii) subsection E of
1507 § 10.1-104.7. This exclusion shall not apply to the discussion or consideration of records that contain
1508 information that has been certified for release by the person who is the subject of the information or
1509 transformed into a statistical or aggregate form that does not allow identification of the person who
1510 supplied, or is the subject of, the information.

1511 47. (Effective July 1, 2018) Discussion or consideration by the Board of Directors of the Virginia
1512 Alcoholic Beverage Control Authority of information excluded from this chapter pursuant to subdivision
1513 1 of § 2.2-3705.3 or subdivision 34 of § 2.2-3705.7.

1514 48. Discussion or consideration of grant or loan application records excluded from this chapter
1515 pursuant to subdivision 28 of § 2.2-3705.6 related to the submission of an application for an award from
1516 the Virginia Research Investment Fund pursuant to Article 8 (§ 23.1-3130 et seq.) of Chapter 31 of Title
1517 23.1.

1518 49. Discussion or development of grant proposals by a regional council established pursuant to
1519 Article 26 (§ 2.2-2484 et seq.) of Chapter 24 to be submitted for consideration to the Virginia Growth
1520 and Opportunity Board.

1521 B. No resolution, ordinance, rule, contract, regulation or motion adopted, passed or agreed to in a
1522 closed meeting shall become effective unless the public body, following the meeting, reconvenes in open
1523 meeting and takes a vote of the membership on such resolution, ordinance, rule, contract, regulation, or
1524 motion that shall have its substance reasonably identified in the open meeting.

1525 C. Public officers improperly selected due to the failure of the public body to comply with the other
1526 provisions of this section shall be de facto officers and, as such, their official actions are valid until they
1527 obtain notice of the legal defect in their election.

1528 D. Nothing in this section shall be construed to prevent the holding of conferences between two or
1529 more public bodies, or their representatives, but these conferences shall be subject to the same
1530 procedures for holding closed meetings as are applicable to any other public body.

1531 E. This section shall not be construed to (i) require the disclosure of any contract between the
1532 Department of Health Professions and an impaired practitioner entered into pursuant to Chapter 25.1
1533 (§ 54.1-2515 et seq.) of Title 54.1 or (ii) require the board of directors of any authority created pursuant
1534 to the Industrial Development and Revenue Bond Act (§ 15.2-4900 et seq.), or any public body
1535 empowered to issue industrial revenue bonds by general or special law, to identify a business or industry

1536 to which subdivision A 5 applies. However, such business or industry shall be identified as a matter of
 1537 public record at least 30 days prior to the actual date of the board's authorization of the sale or issuance
 1538 of such bonds.

1539 **§ 2.2-3714. Violations and penalties.**

1540 In a proceeding commenced against any officer, employee, or member of a public body under
 1541 § 2.2-3713 for a violation of § 2.2-3704, 2.2-3705.1 through ~~2.2-3705.8~~ 2.2-3705.7, 2.2-3706, 2.2-3707,
 1542 2.2-3708, 2.2-3708.1, 2.2-3710, 2.2-3711 or 2.2-3712, the court, if it finds that a violation was willfully
 1543 and knowingly made, shall impose upon such officer, employee, or member in his individual capacity,
 1544 whether a writ of mandamus or injunctive relief is awarded or not, a civil penalty of not less than \$500
 1545 nor more than \$2,000, which amount shall be paid into the State Literary Fund. For a second or
 1546 subsequent violation, such civil penalty shall be not less than \$2,000 nor more than \$5,000.

1547 **§ 2.2-3806. Rights of data subjects.**

1548 A. Any agency maintaining personal information shall:

1549 1. Inform an individual who is asked to supply personal information about himself whether he is
 1550 legally required, or may refuse, to supply the information requested, and also of any specific
 1551 consequences that are known to the agency of providing or not providing the information.

1552 2. Give notice to a data subject of the possible dissemination of part or all of this information to
 1553 another agency, nongovernmental organization or system not having regular access authority, and
 1554 indicate the use for which it is intended, and the specific consequences for the individual, which are
 1555 known to the agency, of providing or not providing the information. However documented permission
 1556 for dissemination in the hands of the other agency or organization shall satisfy the requirement of this
 1557 subdivision. The notice may be given on applications or other data collection forms prepared by data
 1558 subjects.

1559 3. Upon request and proper identification of any data subject, or of his authorized agent, grant the
 1560 data subject or agent the right to inspect, in a form comprehensible to him:

1561 a. All personal information about that data subject except as provided in subdivision 1 of
 1562 § 2.2-3705.1, subdivision 1 of § 2.2-3705.4, and subdivision 1 of § 2.2-3705.5.

1563 b. The nature of the sources of the information.

1564 c. The names of recipients, other than those with regular access authority, of personal information
 1565 about the data subject including the identity of all persons and organizations involved and their
 1566 relationship to the system when not having regular access authority, except that if the recipient has
 1567 obtained the information as part of an ongoing criminal investigation such that disclosure of the
 1568 investigation would jeopardize law-enforcement action, then no disclosure of such access shall be made
 1569 to the data subject.

1570 4. Comply with the following minimum conditions of disclosure to data subjects:

1571 a. An agency shall make disclosures to data subjects required under this chapter, during normal
 1572 business hours, in accordance with the procedures set forth in subsections B and C of § 2.2-3704 for
 1573 responding to requests under the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) or within a
 1574 time period as may be mutually agreed upon by the agency and the data subject.

1575 b. The disclosures to data subjects required under this chapter shall be made (i) in person, if he
 1576 appears in person and furnishes proper identification, or (ii) by mail, if he has made a written request,
 1577 with proper identification. Copies of the documents containing the personal information sought by a data
 1578 subject shall be furnished to him or his representative at reasonable charges for document search and
 1579 duplication in accordance with subsection F of § 2.2-3704.

1580 c. The data subject shall be permitted to be accompanied by a person of his choosing, who shall
 1581 furnish reasonable identification. An agency may require the data subject to furnish a written statement
 1582 granting the agency permission to discuss the individual's file in such person's presence.

1583 5. If the data subject gives notice that he wishes to challenge, correct, or explain information about
 1584 him in the information system, the following minimum procedures shall be followed:

1585 a. The agency maintaining the information system shall investigate, and record the current status of
 1586 that personal information.

1587 b. If, after such investigation, the information is found to be incomplete, inaccurate, not pertinent, not
 1588 timely, or not necessary to be retained, it shall be promptly corrected or purged.

1589 c. If the investigation does not resolve the dispute, the data subject may file a statement of not more
 1590 than 200 words setting forth his position.

1591 d. Whenever a statement of dispute is filed, the agency maintaining the information system shall
 1592 supply any previous recipient with a copy of the statement and, in any subsequent dissemination or use
 1593 of the information in question, clearly note that it is disputed and supply the statement of the data
 1594 subject along with the information.

1595 e. The agency maintaining the information system shall clearly and conspicuously disclose to the data
 1596 subject his rights to make such a request.

1597 f. Following any correction or purging of personal information the agency shall furnish to past

1598 recipients notification that the item has been purged or corrected whose receipt shall be acknowledged.

1599 B. Nothing in this chapter shall be construed to require an agency to disseminate any
1600 recommendation or letter of reference from or to a third party that is a part of the personnel file of any
1601 data subject nor to disseminate any test or examination used, administered or prepared by any public
1602 body for purposes of evaluation of (i) any student or any student's performance, (ii) any seeker's
1603 qualifications or aptitude for employment, retention, or promotion, or (iii) qualifications for any license
1604 or certificate issued by any public body.

1605 As used in this subsection, "test or examination" includes (i) any scoring key for any such test or
1606 examination and (ii) any other document that would jeopardize the security of the test or examination.
1607 Nothing contained in this subsection shall prohibit the release of test scores or results as provided by
1608 law, or to limit access to individual records as provided by law; however, the subject of the employment
1609 tests shall be entitled to review and inspect all documents relative to his performance on those
1610 employment tests.

1611 When, in the reasonable opinion of the public body, any such test or examination no longer has any
1612 potential for future use, and the security of future tests or examinations will not be jeopardized, the test
1613 or examination shall be made available to the public. Minimum competency tests administered to public
1614 school children shall be made available to the public contemporaneously with statewide release of the
1615 scores of those taking such tests, but in no event shall such tests be made available to the public later
1616 than six months after the administration of such tests.

1617 C. Neither any provision of this chapter nor any provision of the Freedom of Information Act
1618 (§ 2.2-3700 et seq.) shall be construed to deny public access to records of the position, job classification,
1619 official salary or rate of pay of, and to records of the allowances or reimbursements for expenses paid to
1620 any public officer, official or employee at any level of state, local or regional government in the
1621 Commonwealth. The provisions of this subsection shall not apply to records of the official salaries or
1622 rates of pay of public employees whose annual rate of pay is \$10,000 or less.

1623 D. Nothing in this section or in this chapter shall be construed to require an agency to disseminate
1624 information derived from tax returns ~~in violation of §§ 2.2-3705.7 and prohibited from release pursuant~~
1625 ~~to § 58.1-3.~~

1626 **§ 22.1-253.13:3. Standard 3. Accreditation, other standards, assessments, and releases from state**
1627 **regulations.**

1628 A. The Board of Education shall promulgate regulations establishing standards for accreditation
1629 pursuant to the Administrative Process Act (§ 2.2-4000 et seq.), which shall include, but not be limited
1630 to, student outcome measures, requirements and guidelines for instructional programs and for the
1631 integration of educational technology into such instructional programs, administrative and instructional
1632 staffing levels and positions, including staff positions for supporting educational technology, student
1633 services, auxiliary education programs such as library and media services, requirements for graduation
1634 from high school, community relations, and the philosophy, goals, and objectives of public education in
1635 Virginia.

1636 The Board of Education shall promulgate regulations establishing standards for accreditation of
1637 public virtual schools under the authority of the local school board that enroll students full time.

1638 The Board shall review annually the accreditation status of all schools in the Commonwealth. The
1639 Board shall review the accreditation status of a school once every three years if the school has been
1640 fully accredited for three consecutive years. Upon such triennial review, the Board shall review the
1641 accreditation status of the school for each individual year within that triennial review period. If the
1642 Board finds that the school would have been accredited every year of that triennial review period the
1643 Board shall accredit the school for another three years. The Board may review the accreditation status of
1644 any other school once every two years or once every three years, provided that any school that receives
1645 a multiyear accreditation status other than full accreditation shall be covered by a Board-approved
1646 multiyear corrective action plan for the duration of the period of accreditation. Such multiyear corrective
1647 action plan shall include annual written progress updates to the Board. A multiyear accreditation status
1648 shall not relieve any school or division of annual reporting requirements.

1649 Each local school board shall maintain schools that are fully accredited pursuant to the standards for
1650 accreditation as prescribed by the Board of Education. Each local school board shall report the
1651 accreditation status of all schools in the local school division annually in public session. Within the time
1652 specified by the Board of Education, each school board shall submit corrective action plans for any
1653 schools within its school division that have been designated as not meeting the standards as approved by
1654 the Board.

1655 When the Board of Education determines through the school academic review process that the failure
1656 of schools within a division to achieve full accreditation status is related to division-level failure to
1657 implement the Standards of Quality or other division-level action or inaction, the Board may require a
1658 division-level academic review. After the conduct of such review and within the time specified by the

1659 Board of Education, each school board shall submit to the Board for approval a corrective action plan,
1660 consistent with criteria established by the Board setting forth specific actions and a schedule designed to
1661 ensure that schools within its school division achieve full accreditation status. If the Board determines
1662 that the proposed corrective action plan is not sufficient to enable all schools within the division to
1663 achieve full accreditation, the Board may return the plan to the local school board with directions to
1664 submit an amended plan pursuant to Board guidance. Such corrective action plans shall be part of the
1665 relevant school division's comprehensive plan pursuant to § 22.1-253.13:6.

1666 With such funds as are appropriated or otherwise received for this purpose, the Board shall adopt and
1667 implement an academic review process, to be conducted by the Department of Education, to assist
1668 schools that are accredited with warning. The Department shall forward a report of each academic
1669 review to the relevant local school board, and such school board shall report the results of such
1670 academic review and the required annual progress reports in public session. The local school board shall
1671 implement any actions identified through the academic review and utilize them for improvement
1672 planning.

1673 B. The Superintendent of Public Instruction shall develop and the Board of Education shall approve
1674 criteria for determining and recognizing educational performance in the Commonwealth's public school
1675 divisions and schools. Such criteria, when approved, shall become an integral part of the accreditation
1676 process and shall include student outcome measurements. The Superintendent of Public Instruction shall
1677 annually report to the Board on the accreditation status of all school divisions and schools. Such report
1678 shall include an analysis of the strengths and weaknesses of public education programs in the various
1679 school divisions in Virginia and recommendations to the General Assembly for further enhancing student
1680 learning uniformly across the Commonwealth. In recognizing educational performance in the school
1681 divisions, the Board shall include consideration of special school division accomplishments, such as
1682 numbers of dual enrollments and students in Advanced Placement and International Baccalaureate
1683 courses, and participation in academic year Governor's Schools.

1684 The Superintendent of Public Instruction shall assist local school boards in the implementation of
1685 action plans for increasing educational performance in those school divisions and schools that are
1686 identified as not meeting the approved criteria. The Superintendent of Public Instruction shall monitor
1687 the implementation of and report to the Board of Education on the effectiveness of the corrective actions
1688 taken to improve the educational performance in such school divisions and schools.

1689 C. With such funds as are available for this purpose, the Board of Education shall prescribe
1690 assessment methods to determine the level of achievement of the Standards of Learning objectives by all
1691 students. Such assessments shall evaluate knowledge, application of knowledge, critical thinking, and
1692 skills related to the Standards of Learning being assessed. The Board shall, with the assistance of
1693 independent testing experts, conduct a regular analysis and validation process for these assessments. The
1694 Department of Education shall make available to school divisions Standards of Learning assessments
1695 typically administered by the middle and high schools by December 1 of the school year in which such
1696 assessments are to be administered or when newly developed assessments are available, whichever is
1697 later.

1698 The Board shall also provide the option of industry certification and state licensure examinations as a
1699 student-selected credit.

1700 The Board of Education shall make publicly available such assessments in a timely manner and as
1701 soon as practicable following the administration of such tests, so long as the release of such assessments
1702 does not compromise test security or deplete the bank of assessment questions necessary to construct
1703 subsequent tests, or limit the ability to test students on demand and provide immediate results in the
1704 web-based assessment system.

1705 The Board shall include in the student outcome measures that are required by the Standards for
1706 Accreditation end-of-course or end-of-grade assessments for various grade levels and classes, including
1707 the completion of the alternative assessments implemented by each local school board, in accordance
1708 with the Standards of Learning. These assessments shall include end-of-course or end-of-grade tests for
1709 English, mathematics, science, and history and social science and may be integrated to include multiple
1710 subject areas.

1711 The Board shall prescribe alternative methods of Standards of Learning assessment administration for
1712 children with disabilities, as that term is defined in § 22.1-213, who meet criteria established by the
1713 Board to demonstrate achievement of the Standards of Learning. An eligible student's Individual
1714 Education Program team shall make the final determination as to whether an alternative method of
1715 administration is appropriate for the student.

1716 The Standards of Learning assessments administered to students in grades three through eight shall
1717 not exceed (a) reading and mathematics in grades three and four; (b) reading, mathematics, and science
1718 in grade five; (c) reading and mathematics in grades six and seven; (d) reading, writing, and
1719 mathematics in grade eight; (e) science after the student receives instruction in the grade six science, life
1720 science, and physical science Standards of Learning and before the student completes grade eight; and

1721 (f) Virginia Studies and Civics and Economics once each at the grade levels deemed appropriate by each
1722 local school board.

1723 Each school board shall annually certify that it has provided instruction and administered an
1724 alternative assessment, consistent with Board guidelines, to students in grades three through eight in
1725 each Standards of Learning subject area in which a Standards of Learning assessment was not
1726 administered during the school year. Such guidelines shall (1) incorporate options for age-appropriate,
1727 authentic performance assessments and portfolios with rubrics and other methodologies designed to
1728 ensure that students are making adequate academic progress in the subject area and that the Standards of
1729 Learning content is being taught; (2) permit and encourage integrated assessments that include multiple
1730 subject areas; and (3) emphasize collaboration between teachers to administer and substantiate the
1731 assessments and the professional development of teachers to enable them to make the best use of
1732 alternative assessments.

1733 Local school divisions shall provide targeted mathematics remediation and intervention to students in
1734 grades six through eight who show computational deficiencies as demonstrated by their individual
1735 performance on any diagnostic test or grade-level Standards of Learning mathematics test that measures
1736 non-calculator computational skills.

1737 The Department of Education shall award recovery credit to any student in grades three through eight
1738 who fails a Standards of Learning assessment in English reading or mathematics, receives remediation,
1739 and subsequently retakes and passes such an assessment, including any such student who subsequently
1740 retakes such an assessment on an expedited basis.

1741 In addition, to assess the educational progress of students, the Board of Education shall (A) develop
1742 appropriate assessments, which may include criterion-referenced tests and other assessment instruments
1743 that may be used by classroom teachers; (B) select appropriate industry certification and state licensure
1744 examinations; and (C) prescribe and provide measures, which may include nationally normed tests to be
1745 used to identify students who score in the bottom quartile at selected grade levels. An annual
1746 justification that includes evidence that the student meets the participation criteria defined by the
1747 Virginia Department of Education shall be provided for each student considered for the Virginia Grade
1748 Level Alternative. Each Individual Education Program team shall review such justification and make the
1749 final determination as to whether or not the Virginia Grade Level Alternative is appropriate for the
1750 student. The superintendent and the school board chairman shall certify to the Board of Education, as a
1751 part of certifying compliance with the Standards of Quality, that there is a justification in the Individual
1752 Education Program for every student who takes the Virginia Grade Level Alternative. Compliance with
1753 this requirement shall be monitored as a part of the special education monitoring process conducted by
1754 the Department of Education. The Board shall report to the Governor and General Assembly in its
1755 annual reports pursuant to § 22.1-18 any school division that is not in compliance with this requirement.

1756 The Standards of Learning requirements, including all related assessments, shall be waived for any
1757 student awarded a scholarship under the Brown v. Board of Education Scholarship Program, pursuant to
1758 § 30-231.2, who is enrolled in a preparation program for a high school equivalency examination
1759 approved by the Board of Education or in an adult basic education program or an adult secondary
1760 education program to obtain the high school diploma or a high school equivalency certificate.

1761 The Department of Education shall develop processes for informing school divisions of changes in
1762 the Standards of Learning.

1763 The Board of Education may adopt special provisions related to the administration and use of any
1764 Standards of Learning test or tests in a content area as applied to accreditation ratings for any period
1765 during which the Standards of Learning content or assessments in that area are being revised and phased
1766 in. Prior to statewide administration of such tests, the Board of Education shall provide notice to local
1767 school boards regarding such special provisions.

1768 The Board of Education shall not include in its calculation of the passage rate of a Standards of
1769 Learning assessment for the purposes of state accountability any student whose parent has decided to not
1770 have his child take such Standards of Learning assessment, unless such exclusions would result in the
1771 school's not meeting any required state or federal participation rate.

1772 D. The Board of Education may pursue all available civil remedies pursuant to § 22.1-19.1 or
1773 administrative action pursuant to § 22.1-292.1 for breaches in test security and unauthorized alteration of
1774 test materials or test results.

1775 The Board may initiate or cause to be initiated a review or investigation of any alleged breach in
1776 security, unauthorized alteration, or improper administration of tests, including the exclusion of students
1777 from testing who are required to be assessed, by local school board employees responsible for the
1778 distribution or administration of the tests.

1779 Records and other information furnished to or prepared by the Board during the conduct of a review
1780 or investigation may be withheld pursuant to subdivision 44 10 of § 2.2-3705.3. However, this section
1781 shall not prohibit the disclosure of records to (i) a local school board or division superintendent for the

1782 purpose of permitting such board or superintendent to consider or to take personnel action with regard to
1783 an employee or (ii) any requester, after the conclusion of a review or investigation, in a form that (a)
1784 does not reveal the identity of any person making a complaint or supplying information to the Board on
1785 a confidential basis and (b) does not compromise the security of any test mandated by the Board. Any
1786 local school board or division superintendent receiving such records or other information shall, upon
1787 taking personnel action against a relevant employee, place copies of such records or information relating
1788 to the specific employee in such person's personnel file.

1789 Notwithstanding any other provision of state law, no test or examination authorized by this section,
1790 including the Standards of Learning assessments, shall be released or required to be released as
1791 minimum competency tests, if, in the judgment of the Board, such release would breach the security of
1792 such test or examination or deplete the bank of questions necessary to construct future secure tests.

1793 E. With such funds as may be appropriated, the Board of Education may provide, through an
1794 agreement with vendors having the technical capacity and expertise to provide computerized tests and
1795 assessments, and test construction, analysis, and security, for (i) web-based computerized tests and
1796 assessments, including computer-adaptive Standards of Learning assessments, for the evaluation of
1797 student progress during and after remediation and (ii) the development of a remediation item bank
1798 directly related to the Standards of Learning.

1799 F. To assess the educational progress of students as individuals and as groups, each local school
1800 board shall require the use of Standards of Learning assessments, alternative assessments, and other
1801 relevant data, such as industry certification and state licensure examinations, to evaluate student progress
1802 and to determine educational performance. Each local school shall require the administration of
1803 appropriate assessments to students, which may include criterion-referenced tests and teacher-made tests
1804 and shall include the Standards of Learning assessments, the local school board's alternative assessments,
1805 and the National Assessment of Educational Progress state-by-state assessment. Each school board shall
1806 analyze and report annually, in compliance with any criteria that may be established by the Board of
1807 Education, the results from the Stanford Achievement Test Series, Ninth Edition (Stanford Nine)
1808 assessment, if administered, industry certification examinations, and the Standards of Learning
1809 Assessments to the public.

1810 The Board of Education shall not require administration of the Stanford Achievement Test Series,
1811 Ninth Edition (Stanford Nine) assessment, except as may be selected to facilitate compliance with the
1812 requirements for home instruction pursuant to § 22.1-254.1.

1813 The Board shall include requirements for the reporting of the Standards of Learning assessment
1814 scores and averages for each year, regardless of accreditation frequency, as part of the Board's
1815 requirements relating to the School Performance Report Card. Such scores shall be disaggregated for
1816 each school by student subgroups on the Virginia assessment program as appropriate and shall be
1817 reported to the public within three months of their receipt. These reports (i) shall be posted on the
1818 portion of the Department of Education's website relating to the School Performance Report Card, in a
1819 format and in a manner that allows year-to-year comparisons, and (ii) may include the National
1820 Assessment of Educational Progress state-by-state assessment.

1821 G. Each local school division superintendent shall regularly review the division's submission of data
1822 and reports required by state and federal law and regulations to ensure that all information is accurate
1823 and submitted in a timely fashion. The Superintendent of Public Instruction shall provide a list of the
1824 required reports and data to division superintendents annually. The status of compliance with this
1825 requirement shall be included in the Board of Education's annual report to the Governor and the General
1826 Assembly as required by § 22.1-18.

1827 H. Any school board may request the Board of Education for release from state regulations or, on
1828 behalf of one or more of its schools, for approval of an Individual School Accreditation Plan for the
1829 evaluation of the performance of one or more of its schools as authorized for certain other schools by
1830 the Standards of Accreditation pursuant to 8VAC20-131-280 C of the Virginia Administrative Code.
1831 Waivers of regulatory requirements may be granted by the Board of Education based on submission of a
1832 request from the division superintendent and chairman of the local school board. The Board of
1833 Education may grant, for a period up to five years, a waiver of regulatory requirements that are not (i)
1834 mandated by state or federal law or (ii) designed to promote health or safety. The school board shall
1835 provide in its waiver request a description of how the releases from state regulations are designed to
1836 increase the quality of instruction and improve the achievement of students in the affected school or
1837 schools. The Department of Education shall provide (a) guidance to any local school division that
1838 requests releases from state regulations and (b) information about opportunities to form partnerships with
1839 other agencies or entities to any local school division in which the school or schools granted releases
1840 from state regulations have demonstrated improvement in the quality of instruction and the achievement
1841 of students.

1842 The Board of Education may also grant local school boards waivers of specific requirements in
1843 § 22.1-253.13:2, based on submission of a request from the division superintendent and chairman of the

1844 local school board, permitting the local school board to assign instructional personnel to the schools with
1845 the greatest needs, so long as the school division employs a sufficient number of personnel divisionwide
1846 to meet the total number required by § 22.1-253.13:2 and all pupil/teacher ratios and class size
1847 maximums set forth in subsection C of § 22.1-253.13:2 are met. The school board shall provide in its
1848 request a description of how the waivers from specific Standards of Quality staffing standards are
1849 designed to increase the quality of instruction and improve the achievement of students in the affected
1850 school or schools. The waivers may be renewed in up to five-year increments, or revoked, based on
1851 student achievement results in the affected school or schools.

1852 **§ 22.1-279.8. School safety audits and school crisis, emergency management, and medical**
1853 **emergency response plans required.**

1854 A. For the purposes of this section, unless the context requires otherwise:

1855 "School crisis, emergency management, and medical emergency response plan" means the essential
1856 procedures, operations, and assignments required to prevent, manage, and respond to a critical event or
1857 emergency, including natural disasters involving fire, flood, tornadoes, or other severe weather; loss or
1858 disruption of power, water, communications or shelter; bus or other accidents; medical emergencies,
1859 including cardiac arrest and other life-threatening medical emergencies; student or staff member deaths;
1860 explosions; bomb threats; gun, knife or other weapons threats; spills or exposures to hazardous
1861 substances; the presence of unauthorized persons or trespassers; the loss, disappearance or kidnapping of
1862 a student; hostage situations; violence on school property or at school activities; incidents involving acts
1863 of terrorism; and other incidents posing a serious threat of harm to students, personnel, or facilities. The
1864 plan shall include a provision that the Department of Criminal Justice Services and the Virginia Criminal
1865 Injuries Compensation Fund shall be contacted immediately to deploy assistance in the event of an
1866 emergency as defined in the emergency response plan when there are victims as defined in § 19.2-11.01.
1867 The Department of Criminal Justice Services and the Virginia Criminal Injuries Compensation Fund
1868 shall be the lead coordinating agencies for those individuals determined to be victims, and the plan shall
1869 also contain current contact information for both agencies.

1870 "School safety audit" means a written assessment of the safety conditions in each public school to (i)
1871 identify and, if necessary, develop solutions for physical safety concerns, including building security
1872 issues and (ii) identify and evaluate any patterns of student safety concerns occurring on school property
1873 or at school-sponsored events. Solutions and responses shall include recommendations for structural
1874 adjustments, changes in school safety procedures, and revisions to the school board's standards for
1875 student conduct.

1876 B. The Virginia Center for School and Campus Safety, in consultation with the Department of
1877 Education, shall develop a list of items to be reviewed and evaluated in the school safety audits required
1878 by this section. Such items shall include those incidents reported to school authorities pursuant to
1879 § 22.1-279.3:1 and shall include a school inspection walk-through using a standardized checklist
1880 provided by the Virginia Center for School and Campus Safety, which shall incorporate crime
1881 prevention through environmental design principles.

1882 The Virginia Center for School and Campus Safety shall prescribe a standardized report format for
1883 school safety audits, additional reporting criteria, and procedures for report submission, which may
1884 include instructions for electronic submission.

1885 Each local school board shall require all schools under its supervisory control to annually conduct
1886 school safety audits as defined in this section and consistent with such list.

1887 The results of such school safety audits shall be made public within 90 days of completion. The
1888 local school board shall retain authority to withhold or limit the release of any security plans,
1889 walk-through checklists, and specific vulnerability assessment components as provided in subdivision 7 4
1890 of § 2.2-3705.2. The completed walk-through checklist shall be made available upon request to the chief
1891 law-enforcement officer of the locality or his designee. Each school shall maintain a copy of the school
1892 safety audit, which may exclude such security plans, walk-through checklists, and vulnerability
1893 assessment components, within the office of the school principal and shall make a copy of such report
1894 available for review upon written request.

1895 Each school shall submit a copy of its school safety audit to the relevant school division
1896 superintendent. The division superintendent shall collate and submit all such school safety audits, in the
1897 prescribed format and manner of submission, to the Virginia Center for School and Campus Safety and
1898 shall make available upon request to the chief law-enforcement officer of the locality the results of such
1899 audits.

1900 C. The division superintendent shall establish a school safety audit committee to include, if available,
1901 representatives of parents, teachers, local law-enforcement, emergency services agencies, local
1902 community services boards, and judicial and public safety personnel. The school safety audit committee
1903 shall review the completed school safety audits and submit any plans, as needed, for improving school
1904 safety to the division superintendent for submission to the local school board.

1905 D. Each school board shall ensure that every school that it supervises shall develop a written school
 1906 crisis, emergency management, and medical emergency response plan, consistent with the definition
 1907 provided in this section, and shall provide copies of such plans to the chief law-enforcement officer, the
 1908 fire chief, the chief of the emergency medical services agency, and the emergency management official
 1909 of the locality. Each school division shall designate an emergency manager. The Department of
 1910 Education and the Virginia Center for School and Campus Safety shall provide technical assistance to
 1911 the school divisions of the Commonwealth in the development of the school crisis, emergency
 1912 management, and medical emergency response plans that describe the components of a medical
 1913 emergency response plan developed in coordination with local emergency medical services providers, the
 1914 training of school personnel and students to respond to a life-threatening emergency, and the equipment
 1915 required for this emergency response. The local school board shall annually review the written school
 1916 crisis, emergency management, and medical emergency response plans. The local school board shall
 1917 have the authority to withhold or limit the review of any security plans and specific vulnerability
 1918 assessment components as provided in subdivision ~~7 4~~ of § 2.2-3705.2. The local school division
 1919 superintendent shall certify this review in writing to the Virginia Center for School and Campus Safety
 1920 no later than August 31 of each year.

1921 Upon consultation with local school boards, division superintendents, the Virginia Center for School
 1922 and Campus Safety, and the Coordinator of Emergency Management, the Board of Education shall
 1923 develop, and may revise as it deems necessary, a model school crisis, emergency management, and
 1924 medical emergency response plan for the purpose of assisting the public schools in Virginia in
 1925 developing viable, effective crisis, emergency management, and medical emergency response plans. Such
 1926 model shall set forth recommended effective procedures and means by which parents can contact the
 1927 relevant school or school division regarding the location and safety of their school children and by
 1928 which school officials may contact parents, with parental approval, during a critical event or emergency.

1929 **§ 23.1-2425. Confidential and public information.**

1930 A. The Authority is subject to the provisions of the Freedom of Information Act (§ 2.2-3700 et seq.),
 1931 including the exclusions set forth in subdivision ~~15 14~~ of § 2.2-3705.7 and subdivision A 23 of
 1932 § 2.2-3711.

1933 B. For purposes of the Freedom of Information Act (§ 2.2-3700 et seq.), meetings of the board are
 1934 not considered meetings of the board of visitors of the University. Meetings of the board may be
 1935 conducted through telephonic or video means as provided in § 2.2-3708.

1936 **§ 32.1-48.08. Declaration of quarantine.**

1937 A. The State Health Commissioner may declare a quarantine of any person or persons or any
 1938 affected area after he finds that the quarantine is the necessary means to contain a communicable disease
 1939 of public health threat as defined in § 32.1-48.06 to which such person or persons or the people of an
 1940 affected area have been or may have been exposed and thus may become infected.

1941 B. The State Health Commissioner shall record his findings and any information on which he has
 1942 relied in making the finding required for quarantine pursuant to subsection A. The State Health
 1943 Commissioner's record of findings concerning any communicable disease of public health threat shall be
 1944 confidential and shall not be disclosed in accordance with subdivision ~~17 12~~ of § 2.2-3705.5.

1945 C. The State Health Commissioner may order the quarantined person or persons to remain in their
 1946 residences, to remain in another place where they are present, or to report to a place or places
 1947 designated by the State Health Commissioner for the duration of their quarantine. An electronic device
 1948 may be used to enforce any such quarantine. The Commissioner's order of quarantine shall be for a
 1949 duration consistent with the known incubation period for such disease or, if the incubation period is
 1950 unknown, for a period anticipated as being consistent with the incubation period for other similar
 1951 infectious agents.

1952 **§ 32.1-48.011. Isolation may be ordered under certain exceptional circumstances; Commissioner**
 1953 **authorized to require hospitalization or other health care.**

1954 A. Whenever the State Health Commissioner makes a determination of exceptional circumstances
 1955 pursuant to § 32.1-48.05 and that the isolation procedures set forth in Article 3.01 (§ 32.1-48.01 et seq.)
 1956 of this chapter are insufficient control measures to contain a communicable disease of public health
 1957 threat, the isolation procedures herein may be invoked.

1958 B. The State Health Commissioner may order the isolation of a person or persons upon a finding that
 1959 (i) such person or persons are infected with or may reasonably be suspected to be infected with a
 1960 communicable disease of public health threat and (ii) isolation is necessary to protect the public health,
 1961 to ensure such isolated person or persons receive appropriate medical treatment, and to protect health
 1962 care providers and others who may come into contact with such infected person or persons.

1963 C. The State Health Commissioner shall record his findings and any information on which he has
 1964 relied in making the finding required for isolation pursuant to this section. The State Health
 1965 Commissioner's record of findings concerning any communicable disease of public health threat that is
 1966 involved in an order of isolation shall be confidential and shall not be disclosed in accordance with

1967 subdivision 17 12 of § 2.2-3705.5.

1968 D. The Commissioner may order the isolated person or persons to remain in their places of
1969 residence, to remain in another place where they are present, or to report to a place or facility
1970 designated by the Commissioner for the duration of their isolation. An electronic device may be used to
1971 enforce any such isolation. The Commissioner's order of isolation shall be for a duration consistent with
1972 the known course of such communicable disease of public health threat or, if the course of the disease is
1973 unknown or uncertain, for a period consistent with the probable course of the communicable disease of
1974 public health threat.

1975 E. To the extent that persons subject to an order of isolation pursuant to this article require
1976 hospitalization or other health care services, the State Health Commissioner shall be authorized to
1977 require that such services be provided.

1978 F. The State Health Commissioner shall also have the authority to monitor the medical condition of
1979 any person or persons subject to an order of isolation pursuant to this article through regular visits by
1980 public health nurses or such other means as the Commissioner shall determine to be necessary.

1981 **§ 32.1-48.015. Authorization to disclose health records.**

1982 A. The provisions of this article are hereby declared to be necessary to prevent serious harm and
1983 serious threats to the health and safety of individuals and the public in Virginia for purposes of
1984 authorizing the State Health Commissioner or his designee to examine and review any health records of
1985 any person or persons subject to any order of quarantine or order of isolation pursuant to this article and
1986 the regulations of the Department of Health and Human Services promulgated in compliance with the
1987 Health Insurance Portability and Accountability Act of 1996, as amended. The State Health
1988 Commissioner shall authorize any designee in writing to so examine and review any health records of
1989 any person or persons subject to any order of quarantine or order of isolation pursuant to this article.

1990 B. Pursuant to the regulations concerning patient privacy promulgated by the federal Department of
1991 Health and Human Services, covered entities may disclose protected health information to the State
1992 Health Commissioner or his designee without obtaining consent or authorization for such disclosure
1993 from the person who is the subject of the records. Such protected health information shall be used to
1994 facilitate the health care of any person or persons who are subject to an order of quarantine or an order
1995 of isolation. The State Health Commissioner or his designee shall only redisclose such protected health
1996 information in compliance with the aforementioned federal regulations. Further, the protected health
1997 information disclosed to the State Health Commissioner or his designee shall be held confidential and
1998 shall not be disclosed pursuant to the provisions of subdivision 17 12 of § 2.2-3705.5.

1999 C. Pursuant to subsection G of § 32.1-116.3, any person requesting or requiring any employee of a
2000 public safety agency as defined in subsection J of § 32.1-45.2 to arrest, transfer, or otherwise exercise
2001 custodial supervision over an individual known to the requesting person (i) to be infected with any
2002 communicable disease or (ii) to be subject to an order of quarantine or an order of isolation pursuant to
2003 Article 3.02 (§ 32.1-48.05 et seq.) of Chapter 2 shall inform such employee of a public safety agency of
2004 the potential risk of exposure to a communicable disease.

2005 **§ 32.1-283.1. State Child Fatality Review Team; membership; access to and maintenance of**
2006 **records; confidentiality; etc.**

2007 A. There is hereby created the State Child Fatality Review Team, referred to in this section as "the
2008 Team," which shall develop and implement procedures to ensure that child deaths occurring in Virginia
2009 are analyzed in a systematic way. The Team shall review (i) violent and unnatural child deaths, (ii)
2010 sudden child deaths occurring within the first 18 months of life, and (iii) those fatalities for which the
2011 cause or manner of death was not determined with reasonable medical certainty. No child death review
2012 shall be initiated by the Team until conclusion of any law-enforcement investigation or criminal
2013 prosecution. The Team shall (i) develop and revise as necessary operating procedures for the review of
2014 child deaths, including identification of cases to be reviewed and procedures for coordination among the
2015 agencies and professionals involved, (ii) improve the identification, data collection, and record keeping
2016 of the causes of child death, (iii) recommend components for prevention and education programs, (iv)
2017 recommend training to improve the investigation of child deaths, and (v) provide technical assistance,
2018 upon request, to any local child fatality teams that may be established. The operating procedures for the
2019 review of child deaths shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq.)
2020 pursuant to subdivision B 17 of § 2.2-4002.

2021 B. The 16-member Team shall be chaired by the Chief Medical Examiner and shall be composed of
2022 the following persons or their designees: the Commissioner of Behavioral Health and Developmental
2023 Services; the Director of Child Protective Services within the Department of Social Services; the
2024 Superintendent of Public Instruction; the State Registrar of Vital Records; and the Director of the
2025 Department of Criminal Justice Services. In addition, one representative from each of the following
2026 entities shall be appointed by the Governor to serve for a term of three years: local law-enforcement
2027 agencies, local fire departments, local departments of social services, the Medical Society of Virginia,

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2028 the Virginia College of Emergency Physicians, the Virginia Pediatric Society, local emergency medical
2029 services personnel, attorneys for the Commonwealth, and community services boards.

2030 C. Upon the request of the Chief Medical Examiner in his capacity as chair of the Team, made after
2031 the conclusion of any law-enforcement investigation or prosecution, information and records regarding a
2032 child whose death is being reviewed by the Team may be inspected and copied by the Chief Medical
2033 Examiner or his designee, including, but not limited to, any report of the circumstances of the event
2034 maintained by any state or local law-enforcement agency or medical examiner, and information or
2035 records maintained on such child by any school, social services agency or court. Information, records, or
2036 reports maintained by any attorney for the Commonwealth shall be made available for inspection and
2037 copying by the Chief Medical Examiner pursuant to procedures which shall be developed by the Chief
2038 Medical Examiner and the Commonwealth's Attorneys' Services Council established by § 2.2-2617. Any
2039 presentence report prepared pursuant to § 19.2-299 for any person convicted of a crime that led to the
2040 death of the child shall be made available for inspection and copying by the Office of the Chief Medical
2041 Examiner pursuant to procedures which shall be developed by the Chief Medical Examiner. In addition,
2042 the Office of the Chief Medical Examiner may inspect and copy from any Virginia health care provider,
2043 on behalf of the Team, (i) without obtaining consent, the health and mental health records of the child
2044 and those perinatal medical records of the child's mother that related to such child and (ii) upon
2045 obtaining consent from each adult regarding his personal records, or from a parent regarding the records
2046 of a minor child, the health and mental health records of the child's family. All such information and
2047 records shall be confidential and shall be excluded from the Virginia Freedom of Information Act
2048 (§ 2.2-3700 et seq.) pursuant to subdivision 9 7 of § 2.2-3705.5. Upon the conclusion of the child death
2049 review, all information and records concerning the child and the child's family shall be shredded or
2050 otherwise destroyed by the Office of the Chief Medical Examiner in order to ensure confidentiality.
2051 Such information or records shall not be subject to subpoena or discovery or be admissible in any
2052 criminal or civil proceeding. If available from other sources, however, such information and records
2053 shall not be immune from subpoena, discovery, or introduction into evidence when obtained through
2054 such other sources solely because the information and records were presented to the Team during a child
2055 death review. Further, the findings of the Team may be disclosed or published in statistical or other
2056 form which shall not identify individuals. The portions of meetings in which individual child death cases
2057 are discussed by the Team shall be closed pursuant to subdivision A 21 of § 2.2-3711. In addition to the
2058 requirements of § 2.2-3712, all team members, persons attending closed team meetings, and persons
2059 presenting information and records on specific child deaths to the Team during closed meetings shall
2060 execute a sworn statement to honor the confidentiality of the information, records, discussions, and
2061 opinions disclosed during any closed meeting to review a specific child death. Violations of this
2062 subsection are punishable as a Class 3 misdemeanor.

2063 D. Upon notification of a child death, any state or local government agency maintaining records on
2064 such child or such child's family which are periodically purged shall retain such records for the longer
2065 of 12 months or until such time as the State Child Fatality Review Team has completed its child death
2066 review of the specific case.

2067 E. The Team shall compile annual data which shall be made available to the Governor and the
2068 General Assembly as requested. These statistical data compilations shall not contain any personally
2069 identifying information and shall be public records.

2070 **§ 32.1-283.2. Local and regional child fatality review teams established; membership; authority;**
2071 **confidentiality; immunity.**

2072 A. Upon the initiative of any local or regional law-enforcement agency, fire department, department
2073 of social services, emergency medical services agency, attorney for the Commonwealth's office, or
2074 community services board, local or regional child fatality teams may be established for the purpose of
2075 conducting contemporaneous reviews of local child deaths in order to develop interventions and
2076 strategies for prevention specific to the locality or region. Each team shall establish rules and procedures
2077 to govern the review process. Agencies may share information but shall be bound by confidentiality and
2078 execute a sworn statement to honor the confidentiality of the information they share. Violations are
2079 punishable as a Class 3 misdemeanor. The State Child Fatality Review Team shall provide technical
2080 assistance and direction as provided for in subsection A of § 32.1-283.1.

2081 B. Local and regional teams may be composed of the following persons from the localities
2082 represented on a particular board or their designees: a medical examiner appointed pursuant to
2083 § 32.1-282, a local social services official in charge of child protective services, a director of the
2084 relevant local or district health department, a chief law-enforcement officer, a local fire marshal, a local
2085 emergency medical services agency chief, the attorney for the Commonwealth, an executive director of
2086 the local community services board or other local mental health agency, and such additional persons, not
2087 to exceed four, as may be appointed to serve by the chairperson of the local or regional team. The
2088 chairperson shall be elected from among the designated membership. The additional members appointed
2089 by the chairperson may include, but are not restricted to, representatives of local human services

2090 agencies; local public education agencies; local pediatricians, psychiatrists and psychologists; and local
2091 child advocacy organizations.

2092 C. Each team shall establish local rules and procedures to govern the review process prior to
2093 conducting the first child fatality review. The review of a death shall be delayed until any criminal
2094 investigations connected with the death are completed or the Commonwealth consents to the
2095 commencement of such review prior to the completion of the criminal investigation.

2096 D. All information and records obtained or created regarding the review of a fatality shall be
2097 confidential and shall be excluded from the Virginia Freedom of Information Act (§ 2.2-3700 et seq.)
2098 pursuant to subdivision 9 7 of § 2.2-3705.5. All such information and records shall be used by the team
2099 only in the exercise of its proper purpose and function and shall not be disclosed. Such information or
2100 records shall not be subject to subpoena, subpoena duces tecum, or discovery or be admissible in any
2101 criminal or civil proceeding. If available from other sources, however, such information and records
2102 shall not be immune from subpoena, subpoena duces tecum, discovery or introduction into evidence
2103 when obtained through such other sources solely because the information and records were presented to
2104 the team during a fatality review. No person who participated in the reviews nor any member of the
2105 team shall be required to make any statement as to what transpired during the review or what
2106 information was collected during the review. Upon the conclusion of the fatality review, all information
2107 and records concerning the victim and the family shall be returned to the originating agency or
2108 destroyed. However, the findings of the team may be disclosed or published in statistical or other form
2109 which shall not identify individuals. The portions of meetings in which individual cases are discussed by
2110 the team shall be closed pursuant to subdivision A 21 of § 2.2-3711. All team members, persons
2111 attending closed team meetings, and persons presenting information and records on specific fatalities to
2112 the team during closed meetings shall execute a sworn statement to honor the confidentiality of the
2113 information, records, discussions, and opinions disclosed during any closed meeting to review a specific
2114 death. Violations of this subsection are punishable as a Class 3 misdemeanor.

2115 E. Members of teams, as well as their agents and employees, shall be immune from civil liability for
2116 any act or omission made in connection with participation in a child fatality review team review, unless
2117 such act or omission was the result of gross negligence or willful misconduct. Any organization,
2118 institution, or person furnishing information, data, testimony, reports or records to review teams as part
2119 of such review, shall be immune from civil liability for any act or omission in furnishing such
2120 information, unless such act or omission was the result of gross negligence or willful misconduct.

2121 **§ 32.1-283.3. Family violence fatality review teams established; model protocol and data**
2122 **management; membership; authority; confidentiality, etc.**

2123 A. The Office of the Chief Medical Examiner shall develop a model protocol for the development
2124 and implementation of local family violence fatality review teams (teams) and such model protocol shall
2125 include relevant procedures for conducting reviews of fatal family violence incidents. A "fatal family
2126 violence incident" means any fatality that occurred or that is suspected of having occurred in the context
2127 of abuse between family members or intimate partners. The Office of the Chief Medical Examiner shall
2128 provide technical assistance to the local teams and serve as a clearinghouse for information.

2129 B. Subject to available funding, the Office of the Chief Medical Examiner shall provide ongoing
2130 surveillance of fatal family violence occurrences and promulgate an annual report based on accumulated
2131 data.

2132 C. Any county or city, or combination of counties, cities, or counties and cities, may establish a
2133 family violence fatality review team to examine fatal family violence incidents and to create a body of
2134 information to help prevent future family violence fatalities. The team shall have the authority to review
2135 the facts and circumstances of all fatal family violence incidents that occur within its designated
2136 geographic area.

2137 D. Membership in the team may include, but shall not be limited to, health care professionals,
2138 representatives from the local bar, attorneys for the Commonwealth, judges, law-enforcement officials,
2139 criminologists, medical examiners appointed pursuant to § 32.1-282, other experts in forensic medicine
2140 and pathology, family violence victim advocates, health department professionals, probation and parole
2141 professionals, adult and child protective services professionals, and representatives of family violence
2142 local coordinating councils.

2143 E. Each team shall establish local rules and procedures to govern the review process prior to the first
2144 fatal family violence incident review conducted. The review of a death shall be delayed until any
2145 criminal investigations or prosecutions connected with the death are completed.

2146 F. All information and records obtained or created regarding the review of a fatality shall be
2147 confidential and shall be excluded from the Virginia Freedom of Information Act (§ 2.2-3700 et seq.)
2148 pursuant to subdivision 9 7 of § 2.2-3705.5. All such information and records shall be used by the team
2149 only in the exercise of its proper purpose and function and shall not be disclosed. Such information or
2150 records shall not be subject to subpoena, subpoena duces tecum or discovery or be admissible in any

2151 criminal or civil proceeding. If available from other sources, however, such information and records
2152 shall not be immune from subpoena, subpoena duces tecum, discovery or introduction into evidence
2153 when obtained through such other sources solely because the information and records were presented to
2154 the team during a fatality review. No person who participated in the review nor any member of the team
2155 shall be required to make any statement as to what transpired during the review or what information was
2156 collected during the review. Upon the conclusion of the fatality review, all information and records
2157 concerning the victim and the family shall be returned to the originating agency or destroyed. However,
2158 the findings of the team may be disclosed or published in statistical or other form which shall not
2159 identify individuals. The portions of meetings in which individual cases are discussed by the team shall
2160 be closed pursuant to subdivision A 21 of § 2.2-3711. All team members, persons attending closed team
2161 meetings, and persons presenting information and records on specific fatalities to the team during closed
2162 meetings shall execute a sworn statement to honor the confidentiality of the information, records,
2163 discussions, and opinions disclosed during any closed meeting to review a specific death. Violations of
2164 this subsection are punishable as a Class 3 misdemeanor.

2165 G. Members of teams, as well as their agents and employees, shall be immune from civil liability for
2166 any act or omission made in connection with participation in a family violence fatality review, unless
2167 such act or omission was the result of gross negligence or willful misconduct. Any organization,
2168 institution, or person furnishing information, data, testimony, reports or records to review teams as part
2169 of such review, shall be immune from civil liability for any act or omission in furnishing such
2170 information, unless such act or omission was the result of gross negligence or willful misconduct.

2171 **§ 32.1-283.5. Adult Fatality Review Team; duties; membership; confidentiality; penalties;**
2172 **report; etc.**

2173 A. There is hereby created the Adult Fatality Review Team, referred to in this section as "the Team,"
2174 which shall develop and implement procedures to ensure that adult deaths occurring in the
2175 Commonwealth are analyzed in a systematic way. The Team shall review the death of any person age
2176 60 years or older, or any adult age 18 years or older who is incapacitated, who resides in the
2177 Commonwealth, or who does not reside in the Commonwealth but who is temporarily in the
2178 Commonwealth and who is in need of temporary or emergency protective services (i) who was the
2179 subject of an adult protective services or law-enforcement investigation; (ii) whose death was due to
2180 abuse, neglect, or exploitation or acts suggesting abuse, neglect, or exploitation; or (iii) whose death
2181 came under the jurisdiction of or was investigated by the Office of the Chief Medical Examiner pursuant
2182 to § 32.1-283. The Team shall not initiate an adult death review until the conclusion of any
2183 law-enforcement investigation or criminal prosecution. The operating procedures for the review of adult
2184 deaths shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq.) pursuant to subdivision
2185 B 17 of § 2.2-4002.

2186 B. The 16-member team shall consist of the following persons or their designees: the Chief Medical
2187 Examiner, the Commissioner of Behavioral Health and Developmental Services, the Commissioner for
2188 Aging and Rehabilitative Services, the Director of the Office of Licensure and Certification of the
2189 Department of Health, and the State Long-Term Care Ombudsman. In addition, the Governor shall
2190 appoint one representative from each of the following entities: a licensed funeral services provider, the
2191 Medical Society of Virginia, and local departments of social services, emergency medical services,
2192 attorneys for the Commonwealth, law-enforcement agencies, nurses specializing in geriatric care,
2193 psychiatrists specializing in geriatric care, and long-term care providers. The Team further shall include
2194 two members appointed by the Governor who are advocates for elderly or disabled populations in
2195 Virginia. The Chief Medical Examiner shall serve as chair of the Team.

2196 After the initial staggering of terms, members appointed by the Governor shall be appointed for a
2197 term of four years. Appointments to fill vacancies, other than by expiration of a term, shall be for the
2198 unexpired terms. Vacancies shall be filled in the same manner as the original appointments. All
2199 members may be reappointed. The Chief Medical Examiner and other ex officio members of the Team
2200 shall serve terms coincident with their terms of office.

2201 C. Upon the request of the chair of the Team, made after the conclusion of any law-enforcement
2202 investigation or prosecution, information and records regarding an adult whose death is being reviewed
2203 by the Team shall be inspected and copied by the chair or his designee, including but not limited to any
2204 report of the circumstances of the event maintained by any state or local law-enforcement agency or the
2205 Office of the Chief Medical Examiner and information or records on the adult maintained by any facility
2206 that provided services to the adult, by any social services agency, or by any court. Information, records,
2207 or reports maintained by any attorney for the Commonwealth shall be made available for inspection and
2208 copying by the chair or his designee pursuant to procedures that shall be developed by the Chief
2209 Medical Examiner and the Commonwealth Attorneys Services Council established by § 2.2-2617. In
2210 addition, a health care provider shall provide the Team, upon request, with access to the health and
2211 mental health records of (i) the adult whose death is subject to review, without authorization; (ii) any
2212 adult relative of the deceased, with authorization; and (iii) any minor child of the deceased, with the

2213 authorization of the minor's parent or guardian. The chair of the Team also may copy and inspect the
 2214 presentence report, prepared pursuant to § 19.2-299, of any person convicted of a crime that led to the
 2215 death of the adult who is the subject of review by the Team.

2216 D. All information obtained or generated by the Team regarding a review shall be confidential and
 2217 excluded from the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) pursuant to subdivision 9 7
 2218 of § 2.2-3705.5. Such information shall not be subject to subpoena or discovery or be admissible in any
 2219 civil or criminal proceeding. If available from other sources, however, such information and records
 2220 shall not be immune from subpoena, discovery, or introduction into evidence when obtained through
 2221 such other sources solely because the information and records were presented to the Team during an
 2222 adult death review. The Team shall compile all information collected during a review. The findings of
 2223 the Team may be disclosed or published in statistical or other form, but shall not identify any
 2224 individuals. The portions of meetings in which individual adult death cases are discussed by the Team
 2225 shall be closed pursuant to subdivision A 21 of § 2.2-3711.

2226 E. All Team members and other persons attending closed Team meetings, including any persons
 2227 presenting information or records on specific fatalities, shall execute a sworn statement to honor the
 2228 confidentiality of the information, records, discussions, and opinions disclosed during meetings at which
 2229 the Team reviews a specific death. No Team member or other person who participates in a review shall
 2230 be required to make any statement regarding the review or any information collected during the review.
 2231 Upon conclusion of a review, all information and records concerning the victim and the family shall be
 2232 shredded or otherwise destroyed in order to ensure confidentiality. Violations of this subsection are
 2233 punishable as a Class 3 misdemeanor.

2234 F. Upon notification of an adult death, any state or local government agency or facility that provided
 2235 services to the adult or maintained records on the adult or the adult's family shall retain the records for
 2236 the longer of 12 months or until such time as the Team has completed its review of the case.

2237 G. The Team shall compile an annual report by October 1 of each year that shall be made available
 2238 to the Governor and the General Assembly. The annual report shall include any policy, regulatory, or
 2239 budgetary recommendations developed by the Team. Any statistical compilations prepared by the Team
 2240 shall be public record and shall not contain any personally identifying information.

2241 **§ 32.1-283.6. Local and regional adult fatality review teams established; membership; authority;**
 2242 **confidentiality; immunity.**

2243 A. Upon the initiative of any local or regional law-enforcement agency, department of social
 2244 services, emergency medical services agency, attorney for the Commonwealth's office, community
 2245 services board, or official with the Adult Protective Services Unit established pursuant to § 51.5-148,
 2246 local or regional adult fatality review teams may be established for the purpose of conducting
 2247 contemporaneous reviews of local adult deaths in order to develop interventions and strategies for
 2248 prevention specific to the locality or region. For the purposes of this section, the team may review the
 2249 death of any person age 60 years or older, or any adult age 18 years or older who is incapacitated, who
 2250 resides in the Commonwealth and who is in need of temporary or emergency protective services (i) who
 2251 was the subject of an adult protective services or law-enforcement investigation; (ii) whose death was
 2252 due to abuse, neglect, or exploitation or acts suggesting abuse, neglect, or exploitation; or (iii) whose
 2253 death came under the jurisdiction of or was investigated by the Office of the Chief Medical Examiner as
 2254 occurring in any suspicious, unusual, or unnatural manner, pursuant to § 32.1-283. Each team shall
 2255 establish rules and procedures to govern the review process. Agencies may share information but shall
 2256 be bound by confidentiality and execute a sworn statement to honor the confidentiality of the
 2257 information they share. A violation of this subsection is punishable as a Class 3 misdemeanor. The
 2258 Office of the Chief Medical Examiner shall develop a model protocol for the development and
 2259 implementation of local or regional adult fatality review teams and such model protocol shall include
 2260 relevant procedures for conducting reviews of adult fatalities.

2261 B. Local and regional teams may be composed of the following persons from the localities
 2262 represented on a particular board or their designees: a medical examiner appointed pursuant to
 2263 § 32.1-282, a local adult protective services official, a local social services official, a director of the
 2264 relevant local or district health department, an executive director of the local area agency on aging or
 2265 other department representing the interests of the elderly or disabled, a chief law-enforcement officer,
 2266 the attorney for the Commonwealth, an executive director of the local community services board or
 2267 other local mental health agency, a local judge, and such additional persons as may be appointed to
 2268 serve by the chair of the local or regional team. The chair shall be elected from among the designated
 2269 membership. The additional members appointed by the chair may include, but are not restricted to,
 2270 representatives of local human services agencies, local health care professionals specializing in geriatric
 2271 care or care of incapacitated adults, local emergency medical services personnel, local long-term care
 2272 providers, representatives of local advocacy or service organizations for elderly or disabled populations,
 2273 experts in forensic medicine and pathology, local funeral services providers, local centers for

2274 independent living, local long-term care ombudsmen, and representatives of the local bar.

2275 C. Each local or regional team shall establish operating procedures to govern the review process prior
2276 to conducting the first adult fatality review. The review of a death shall be delayed until any criminal
2277 investigations connected with the death are completed or the Commonwealth consents to the
2278 commencement of such review prior to the completion of the criminal investigation.

2279 D. All information and records obtained or created regarding a review of a fatality shall be
2280 confidential and shall be excluded from the Virginia Freedom of Information Act (§ 2.2-3700 et seq.)
2281 pursuant to subdivision 9 7 of § 2.2-3705.5. All such information and records shall be used by the team
2282 only in the exercise of its proper purpose and function and shall not be disclosed. Such information and
2283 records shall not be subject to subpoena, subpoena duces tecum, discovery, or introduction into evidence
2284 when obtained through such other sources solely because the information and records were presented to
2285 the team during the fatality review. No person who participated in the review and no member of the
2286 team shall be required to make any statement as to what transpired during the review or what
2287 information was collected during the review. Upon the conclusion of the fatality review, all information
2288 and records concerning the victim and family shall be returned to the originating agency or destroyed.
2289 However, the findings of the team may be disclosed or published in statistical or other form that does
2290 not identify any individuals. The portions of meetings in which individual cases are discussed by the
2291 team shall be closed pursuant to subdivision A 21 of § 2.2-3711. All team members, persons attending
2292 closed team meetings, and persons presenting information and records on specific fatalities to the team
2293 during closed meetings shall execute a sworn statement to honor the confidentiality of the information,
2294 records, discussions, and opinions disclosed during any closed meeting to review a specific death. A
2295 violation of this subsection is punishable as a Class 3 misdemeanor.

2296 E. Members of teams, as well as their agents and employees, shall be immune from civil liability for
2297 any act or omission made in connection with participation in an adult fatality review team review, unless
2298 such act or omission was the result of gross negligence or willful misconduct. Any organization,
2299 institution, or person furnishing information, data, testimony, reports, or records to review teams as part
2300 of such review shall be immune from civil liability for any act or omission in furnishing such
2301 information, unless such act or omission was the result of gross negligence or willful misconduct.

2302 **§ 44-146.18. Department of Emergency Services continued as Department of Emergency**
2303 **Management; administration and operational control; coordinator and other personnel; powers**
2304 **and duties.**

2305 A. The State Office of Emergency Services is continued and shall hereafter be known as the
2306 Department of Emergency Management. Wherever the words "State Department of Emergency Services"
2307 are used in any law of the Commonwealth, they shall mean the Department of Emergency Management.
2308 During a declared emergency this Department shall revert to the operational control of the Governor.
2309 The Department shall have a coordinator who shall be appointed by and serve at the pleasure of the
2310 Governor and also serve as State Emergency Planning Director. The Department shall employ the
2311 professional, technical, secretarial, and clerical employees necessary for the performance of its functions.

2312 B. The Department of Emergency Management shall in the administration of emergency services and
2313 disaster preparedness programs:

2314 1. In coordination with political subdivisions and state agencies, ensure that the Commonwealth has
2315 up-to-date assessments and preparedness plans to prevent, respond to and recover from all disasters
2316 including acts of terrorism;

2317 2. Conduct a statewide emergency management assessment in cooperation with political subdivisions,
2318 private industry and other public and private entities deemed vital to preparedness, public safety and
2319 security. The assessment shall include a review of emergency response plans, which include the variety
2320 of hazards, natural and man-made. The assessment shall be updated annually;

2321 3. Submit to the Governor and to the General Assembly, no later than the first day of each regular
2322 session of the General Assembly, an annual executive summary and report on the status of emergency
2323 management response plans throughout the Commonwealth and other measures taken or recommended
2324 to prevent, respond to and recover from disasters, including acts of terrorism. This report shall be made
2325 available to the Division of Legislative Automated Systems for the processing of legislative documents
2326 and reports. Information submitted in accordance with the procedures set forth in subdivision 4 14 of
2327 § 2.2-3705.2 shall not be disclosed unless:

2328 a. It is requested by law-enforcement authorities in furtherance of an official investigation or the
2329 prosecution of a criminal act;

2330 b. The agency holding the record is served with a proper judicial order; or

2331 c. The agency holding the record has obtained written consent to release the information from the
2332 Department of Emergency Management;

2333 4. Promulgate plans and programs that are conducive to adequate disaster mitigation preparedness,
2334 response and recovery programs;

2335 5. Prepare and maintain a State Emergency Operations Plan for disaster response and recovery

- 2336 operations that assigns primary and support responsibilities for basic emergency services functions to
 2337 state agencies, organizations and personnel as appropriate;
- 2338 6. Coordinate and administer disaster mitigation, preparedness, response and recovery plans and
 2339 programs with the proponent federal, state and local government agencies and related groups;
- 2340 7. Provide guidance and assistance to state agencies and units of local government in developing and
 2341 maintaining emergency management and continuity of operations (COOP) programs, plans and systems;
- 2342 8. Make necessary recommendations to agencies of the federal, state, or local governments on
 2343 preventive and preparedness measures designed to eliminate or reduce disasters and their impact;
- 2344 9. Determine requirements of the Commonwealth and its political subdivisions for those necessities
 2345 needed in the event of a declared emergency which are not otherwise readily available;
- 2346 10. Assist state agencies and political subdivisions in establishing and operating training programs
 2347 and programs of public information and education regarding emergency services and disaster
 2348 preparedness activities;
- 2349 11. Consult with the Board of Education regarding the development and revision of a model school
 2350 crisis and emergency management plan for the purpose of assisting public schools in establishing,
 2351 operating, and maintaining emergency services and disaster preparedness activities;
- 2352 12. Consult with the State Council of Higher Education in the development and revision of a model
 2353 institutional crisis and emergency management plan for the purpose of assisting public and private
 2354 two-year and four-year institutions of higher education in establishing, operating, and maintaining
 2355 emergency services and disaster preparedness activities and, as needed, in developing an institutional
 2356 crisis and emergency management plan pursuant to § 23.1-804;
- 2357 13. Develop standards, provide guidance and encourage the maintenance of local and state agency
 2358 emergency operations plans, which shall include the requirement for a provision that the Department of
 2359 Criminal Justice Services and the Virginia Criminal Injuries Compensation Fund be contacted
 2360 immediately to deploy assistance in the event of an emergency as defined in the emergency response
 2361 plan when there are victims as defined in § 19.2-11.01. The Department of Criminal Justice Services and
 2362 the Virginia Criminal Injuries Compensation Fund shall be the lead coordinating agencies for those
 2363 individuals determined to be victims, and the plan shall also contain current contact information for both
 2364 agencies;
- 2365 14. Prepare, maintain, coordinate or implement emergency resource management plans and programs
 2366 with federal, state and local government agencies and related groups, and make such surveys of
 2367 industries, resources, and facilities within the Commonwealth, both public and private, as are necessary
 2368 to carry out the purposes of this chapter;
- 2369 15. Coordinate with the federal government and any public or private agency or entity in achieving
 2370 any purpose of this chapter and in implementing programs for disaster prevention, mitigation,
 2371 preparation, response, and recovery;
- 2372 16. Establish guidelines pursuant to § 44-146.28, and administer payments to eligible applicants as
 2373 authorized by the Governor;
- 2374 17. Coordinate and be responsible for the receipt, evaluation, and dissemination of emergency
 2375 services intelligence pertaining to all probable hazards affecting the Commonwealth;
- 2376 18. Coordinate intelligence activities relating to terrorism with the Department of State Police; and
- 2377 19. Develop an emergency response plan to address the needs of individuals with household pets and
 2378 service animals in the event of a disaster and assist and coordinate with local agencies in developing an
 2379 emergency response plan for household pets and service animals.
- 2380 The Department of Emergency Management shall ensure that all such plans, assessments, and
 2381 programs required by this subsection include specific preparedness for, and response to, disasters
 2382 resulting from electromagnetic pulses and geomagnetic disturbances.
- 2383 C. The Department of Emergency Management shall during a period of impending emergency or
 2384 declared emergency be responsible for:
- 2385 1. The receipt, evaluation, and dissemination of intelligence pertaining to an impending or actual
 2386 disaster;
- 2387 2. Providing facilities from which state agencies and supporting organizations may conduct
 2388 emergency operations;
- 2389 3. Providing an adequate communications and warning system capable of notifying all political
 2390 subdivisions in the Commonwealth of an impending disaster within a reasonable time;
- 2391 4. Establishing and maintaining liaison with affected political subdivisions;
- 2392 5. Determining requirements for disaster relief and recovery assistance;
- 2393 6. Coordinating disaster response actions of federal, state and volunteer relief agencies;
- 2394 7. Coordinating and providing guidance and assistance to affected political subdivisions to ensure
 2395 orderly and timely response to and recovery from disaster effects.
- 2396 D. The Department of Emergency Management shall be provided the necessary facilities and

2397 equipment needed to perform its normal day-to-day activities and coordinate disaster-related activities of
 2398 the various federal, state, and other agencies during a state of emergency declaration by the Governor or
 2399 following a major disaster declaration by the President.

2400 E. The Department of Emergency Management is authorized to enter into all contracts and
 2401 agreements necessary or incidental to performance of any of its duties stated in this section or otherwise
 2402 assigned to it by law, including contracts with the United States, other states, agencies and government
 2403 subdivisions of the Commonwealth, and other appropriate public and private entities.

2404 F. The Department of Emergency Management shall encourage private industries whose goods and
 2405 services are deemed vital to the public good to provide annually updated preparedness assessments to
 2406 the local coordinator of emergency management on or before April 1 of each year, to facilitate overall
 2407 Commonwealth preparedness. For the purposes of this section, "private industry" means companies,
 2408 private hospitals, and other businesses or organizations deemed by the State Coordinator of Emergency
 2409 Management to be essential to the public safety and well-being of the citizens of the Commonwealth.

2410 G. The Department of Emergency Management shall establish a Coordinator of Search and Rescue.
 2411 Powers and duties of the Coordinator shall include:

- 2412 1. Coordinating the search and rescue function of the Department of Emergency Management;
- 2413 2. Coordinating with local, state, and federal agencies involved in search and rescue;
- 2414 3. Coordinating the activities of search and rescue organizations involved in search and rescue;
- 2415 4. Maintaining a register of search and rescue certifications, training, and responses;
- 2416 5. Establishing a memorandum of understanding with the Virginia Search and Rescue Council and its
 2417 respective member agencies regarding search and rescue efforts;
- 2418 6. Providing on-scene search and rescue coordination when requested by an authorized person;
- 2419 7. Providing specialized search and rescue training to police, fire-rescue, EMS, emergency managers,
 2420 volunteer search and rescue responders, and others who might have a duty to respond to a search and
 2421 rescue emergency;
- 2422 8. Gathering and maintaining statistics on search and rescue in the Commonwealth;
- 2423 9. Compiling, maintaining, and making available an inventory of search and rescue resources
 2424 available in the Commonwealth;
- 2425 10. Periodically reviewing search and rescue cases and developing best professional practices; and
- 2426 11. Providing an annual report to the Secretary of Public Safety and Homeland Security on the
 2427 current readiness of Virginia's search and rescue efforts.

2428 Nothing in this chapter shall be construed as authorizing the Department of Emergency Management
 2429 to take direct operational responsibilities from local, state, or federal law enforcement in the course of
 2430 search and rescue or missing person cases.

2431 **§ 44-146.22. Development of measures to prevent or reduce harmful consequences of disasters;**
 2432 **disclosure of information.**

2433 A. In addition to disaster prevention measures included in state, local and interjurisdictional
 2434 emergency operations plans, the Governor shall consider, on a continuing basis, hazard mitigation or
 2435 other measures that could be taken to prevent or reduce the harmful consequences of disasters. At his
 2436 direction, and pursuant to any other authority, state agencies, including, but not limited to, those charged
 2437 with responsibilities in connection with floodplain management, stream encroachment and flow
 2438 regulation, weather modification, fire prevention and control, air quality, public works, critical
 2439 infrastructure protection, land use and land-use planning, and construction standards, shall make studies
 2440 of disaster prevention. The Governor, from time to time, shall make recommendations to the General
 2441 Assembly, local governments, and other appropriate public and private entities as may facilitate
 2442 measures for prevention or reduction of the harmful consequences of disasters.

2443 B. The Governor or agencies acting on his behalf may receive information, voluntarily submitted
 2444 from both public and nonpublic entities, related to the protection of the nation's critical infrastructure
 2445 sectors and components that are located in Virginia or affect the health, safety, and welfare of the
 2446 citizens of Virginia. Information submitted by any public or nonpublic entity in accordance with the
 2447 procedures set forth in subdivision 4 14 of § 2.2-3705.2 shall not be disclosed unless:

- 2448 1. It is requested by law-enforcement authorities in furtherance of an official investigation or the
 2449 prosecution of a criminal act;
- 2450 2. The agency holding the record is served with a proper judicial order; or
- 2451 3. The agency holding the record has obtained the written consent to release the information from the
 2452 entity voluntarily submitting it.

2453 **§ 54.1-2517. Health Practitioners' Monitoring Program Committee; certain meetings, decisions**
 2454 **to be exempted from the Freedom of Information Act; confidentiality of records; immunity from**
 2455 **liability.**

2456 A. The Health Practitioners' Monitoring Program Committee shall consist of nine persons appointed
 2457 by the Director to advise and assist in the operation of the Program, of whom eight shall be licensed,
 2458 certified, or registered practitioners and one shall be a citizen member. Of the members who are

2459 licensed, certified, or registered practitioners, at least one shall be licensed to practice medicine or
 2460 osteopathy in Virginia and engaged in active clinical practice, at least one shall be a registered nurse
 2461 engaged in active practice, and all shall be knowledgeable about impairment and rehabilitation,
 2462 particularly as related to the monitoring of health care practitioners. The Committee shall have the
 2463 following powers and duties:

- 2464 1. To determine, in accordance with the regulations, eligibility to enter into the Program;
- 2465 2. To determine, in accordance with the regulations, those Program participants who are eligible for
 2466 stayed disciplinary action;
- 2467 3. To enter into written contracts with practitioners which may include, among other terms and
 2468 conditions, withdrawal from practice or limitations on the scope of the practice for a period of time;
- 2469 4. To report to the Director and the health regulatory boards as necessary on the status of applicants
 2470 for and participants in the Program;
- 2471 5. To report to the Director, at least annually, on the performance of the Program; and
 2472 6. To assist the Director in carrying out the provisions of this chapter.

2473 B. Records of the Program, to the extent such records identify individual practitioners in the
 2474 Program, shall be privileged and confidential, and shall not be disclosed consistent with the Virginia
 2475 Freedom of Information Act (§ 2.2-3700 et seq.). Such records shall be used only in the exercise of the
 2476 proper functions as set forth in this chapter and shall not be public records nor shall such records be
 2477 subject to court order, except as provided in subdivision C 4, or be subject to discovery or introduction
 2478 as evidence in any civil, criminal, or administrative proceedings except those conducted by a health
 2479 regulatory board.

2480 C. Notwithstanding the provisions of subsection B and of subdivision ~~H~~ 2 of § 2.2-3705.5, the
 2481 Committee may disclose such records relative to an impaired practitioner only:

- 2482 1. When disclosure of the information is essential to the monitoring needs of the impaired
 2483 practitioner;
- 2484 2. When release of the information has been authorized in writing by the impaired practitioner;
- 2485 3. To a health regulatory board within the Department of Health Professions; or
- 2486 4. When an order by a court of competent jurisdiction has been granted, upon a showing of good
 2487 cause therefor, including the need to avert a substantial risk of death or serious bodily harm. In
 2488 assessing good cause, the court shall weigh the public interest and the need for disclosure against the
 2489 injury to the patient, to the physician-patient relationship, and to the treatment services. Upon the
 2490 granting of such order, the court, in determining the extent to which any disclosure of all or any part of
 2491 any record is necessary, shall impose appropriate protections against unauthorized disclosures.

2492 D. Pursuant to subdivision A 24 of § 2.2-3711, the proceedings of the Committee which in any way
 2493 pertain or refer to a specific practitioner who may be, or who is actually, impaired and who may be or
 2494 is, by reason of such impairment, subject to disciplinary action by the relevant board shall be excluded
 2495 from the requirements of the Freedom of Information Act (§ 2.2-3700 et seq.) and may be closed. Such
 2496 proceedings shall be privileged and confidential.

2497 E. The members of the Committee shall be immune from liability resulting from the exercise of the
 2498 powers and duties of the Committee as provided in § 8.01-581.13.

2499 **§ 54.1-2523. Confidentiality of data; disclosure of information; discretionary authority of**
 2500 **Director.**

2501 A. All data, records, and reports relating to the prescribing and dispensing of covered substances to
 2502 recipients and any abstracts from such data, records, and reports that are in the possession of the
 2503 Prescription Monitoring Program pursuant to this chapter and any material relating to the operation or
 2504 security of the program shall be confidential and shall be exempt from the Virginia Freedom of
 2505 Information Act (§ 2.2-3700 et seq.) pursuant to subdivision ~~15~~ 2 of § 2.2-3705.5. Records in possession
 2506 of the Prescription Monitoring Program shall not be available for civil subpoena, nor shall such records
 2507 be disclosed, discoverable, or compelled to be produced in any civil proceeding, nor shall such records
 2508 be deemed admissible as evidence in any civil proceeding for any reason. Further, the Director shall
 2509 only have discretion to disclose any such information as provided in subsections B and C.

2510 B. Upon receiving a request for information in accordance with the Department's regulations and in
 2511 compliance with applicable federal law and regulations, the Director shall disclose the following:

2512 1. Information relevant to a specific investigation of a specific recipient or of a specific dispenser or
 2513 prescriber to an agent who has completed the Virginia State Police Drug Diversion School designated by
 2514 the superintendent of the Department of State Police or designated by the chief law-enforcement officer
 2515 of any county, city, or town or campus police department to conduct drug diversion investigations
 2516 pursuant to § 54.1-3405.

2517 2. Information relevant to an investigation or inspection of or allegation of misconduct by a specific
 2518 person licensed, certified, or registered by or an applicant for licensure, certification, or registration by a
 2519 health regulatory board; information relevant to a disciplinary proceeding before a health regulatory

2520 board or in any subsequent trial or appeal of an action or board order to designated employees of the
2521 Department of Health Professions; or to designated persons operating the Health Practitioners'
2522 Monitoring Program pursuant to Chapter 25.1 (§ 54.1-2515 et seq.).

2523 3. Information relevant to the proceedings of any investigatory grand jury or special grand jury that
2524 has been properly impaneled in accordance with the provisions of Chapter 13 (§ 19.2-191 et seq.) of
2525 Title 19.2.

2526 4. Information relevant to a specific investigation of a specific recipient, dispenser, or prescriber to
2527 an agent of a federal law-enforcement agency with authority to conduct drug diversion investigations.

2528 5. Information relevant to a specific investigation, supervision, or monitoring of a specific recipient
2529 for purposes of the administration of criminal justice pursuant to Chapter 1 (§ 9.1-100 et seq.) of Title
2530 9.1 to a probation or parole officer as described in Article 2 (§ 53.1-141 et seq.) of Chapter 4 of Title
2531 53.1 or a local community-based probation officer as described in § 9.1-176.1 who has completed the
2532 Virginia State Police Drug Diversion School designated by the Director of the Department of
2533 Corrections or his designee.

2534 C. In accordance with the Department's regulations and applicable federal law and regulations, the
2535 Director may, in his discretion, disclose:

2536 1. Information in the possession of the program concerning a recipient who is over the age of 18 to
2537 that recipient. The information shall be mailed to the street or mailing address indicated on the recipient
2538 request form.

2539 2. Information on a specific recipient to a prescriber, as defined in this chapter, for the purpose of
2540 establishing the treatment history of the specific recipient when such recipient is either under care and
2541 treatment by the prescriber or the prescriber is consulting on or initiating treatment of such recipient. In
2542 a manner specified by the Director in regulation, notice shall be given to patients that information may
2543 be requested by the prescriber from the Prescription Monitoring Program.

2544 3. Information on a specific recipient to a dispenser for the purpose of establishing a prescription
2545 history to assist the dispenser in (i) determining the validity of a prescription in accordance with
2546 § 54.1-3303 or (ii) providing clinical consultation on the care and treatment of the recipient. In a manner
2547 specified by the Director in regulation, notice shall be given to patients that information may be
2548 requested by the dispenser from the Prescription Monitoring Program.

2549 4. Information relevant to an investigation or regulatory proceeding of a specific dispenser or
2550 prescriber to other regulatory authorities concerned with granting, limiting or denying licenses,
2551 certificates or registrations to practice a health profession when such regulatory authority licenses such
2552 dispenser or prescriber or such dispenser or prescriber is seeking licensure by such other regulatory
2553 authority.

2554 5. Information relevant to an investigation relating to a specific dispenser or prescriber who is a
2555 participating provider in the Virginia Medicaid program or information relevant to an investigation
2556 relating to a specific recipient who is currently eligible for and receiving or who has been eligible for
2557 and has received medical assistance services to the Medicaid Fraud Control Unit of the Office of the
2558 Attorney General or to designated employees of the Department of Medical Assistance Services, as
2559 appropriate.

2560 6. Information relevant to determination of the cause of death of a specific recipient to the designated
2561 employees of the Office of the Chief Medical Examiner.

2562 7. Information for the purpose of bona fide research or education to qualified personnel; however,
2563 data elements that would reasonably identify a specific recipient, prescriber, or dispenser shall be deleted
2564 or redacted from such information prior to disclosure. Further, release of the information shall only be
2565 made pursuant to a written agreement between such qualified personnel and the Director in order to
2566 ensure compliance with this subdivision.

2567 8. Information relating to prescriptions for covered substances issued by a specific prescriber, which
2568 have been dispensed and reported to the Program, to that prescriber.

2569 9. Information about a specific recipient who is a member of a Virginia Medicaid managed care
2570 program to a physician or pharmacist licensed in the Commonwealth and employed by the Virginia
2571 Medicaid managed care program. Such information shall only be used to determine eligibility for and to
2572 manage the care of the specific recipient in a Patient Utilization Management Safety or similar program.
2573 Notice shall be given to recipients that information may be requested by a licensed physician or
2574 pharmacist employed by the Virginia Medicaid managed care program from the Prescription Monitoring
2575 Program.

2576 10. (Expires July 1, 2022) Information to the Board of Medicine about prescribers who meet a
2577 certain threshold for prescribing covered substances for the purpose of requiring relevant continuing
2578 education. The threshold shall be determined by the Board of Medicine in consultation with the
2579 Program.

2580 D. The Director may enter into agreements for mutual exchange of information among prescription
2581 monitoring programs in other jurisdictions, which shall only use the information for purposes allowed by

2582 this chapter.

2583 E. This section shall not be construed to supersede the provisions of § 54.1-3406 concerning the
2584 divulging of confidential records relating to investigative information.

2585 F. Confidential information that has been received, maintained or developed by any board or
2586 disclosed by the board pursuant to subsection A shall not, under any circumstances, be available for
2587 discovery or court subpoena or introduced into evidence in any medical malpractice suit or other action
2588 for damages arising out of the provision of or failure to provide services. However, this subsection shall
2589 not be construed to inhibit any investigation or prosecution conducted pursuant to Article 1 (§ 18.2-247
2590 et seq.) of Chapter 7 of Title 18.2.

2591 **2. That the provisions of § 2.2-3704, subdivisions 10 and 14 of § 2.2-3705.2, subdivisions 2 and 3 of**
2592 **§ 2.2-3705.5, and subdivision 29 of § 2.2-3705.6 of the Code of Virginia, as amended by this act,**
2593 **are declaratory of existing law.**