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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 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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*For purposes of this subdivision:*

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

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

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

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

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

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

pursuant to § 54.1-2506.1.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

(3) Stating the reasons why protection is necessary.

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

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

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

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

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

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

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

c. Stating the reasons why protection is necessary.

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

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

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

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

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

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

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*

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

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

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

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

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

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

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

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

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

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 ~~24.~~ 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,

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

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

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

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

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

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

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

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

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

c. Stating the reasons why protection is necessary.

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

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

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

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

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

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

#### **§ 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

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

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

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

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

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

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

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

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

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

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

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.



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

When the Board of Education determines through the school academic review process that the failure of schools within a division to achieve full accreditation status is related to division-level failure to implement the Standards of Quality or other division-level action or inaction, the Board may require a 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

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

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

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

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

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

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

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

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

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

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

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

Records and other information furnished to or prepared by the Board during the conduct of a review or investigation may be withheld pursuant to subdivision 44 10 of § 2.2-3705.3. However, this section 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

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

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

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

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

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

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

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

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

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

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

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



subdivision 17 12 of § 2.2-3705.5.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

operations that assigns primary and support responsibilities for basic emergency services functions to state agencies, organizations and personnel as appropriate;

6. Coordinate and administer disaster mitigation, preparedness, response and recovery plans and programs with the proponent federal, state and local government agencies and related groups;

7. Provide guidance and assistance to state agencies and units of local government in developing and maintaining emergency management and continuity of operations (COOP) programs, plans and systems;

8. Make necessary recommendations to agencies of the federal, state, or local governments on preventive and preparedness measures designed to eliminate or reduce disasters and their impact;

9. Determine requirements of the Commonwealth and its political subdivisions for those necessities needed in the event of a declared emergency which are not otherwise readily available;

10. Assist state agencies and political subdivisions in establishing and operating training programs and programs of public information and education regarding emergency services and disaster preparedness activities;

11. Consult with the Board of Education regarding the development and revision of a model school crisis and emergency management plan for the purpose of assisting public schools in establishing, operating, and maintaining emergency services and disaster preparedness activities;

12. Consult with the State Council of Higher Education in the development and revision of a model institutional crisis and emergency management plan for the purpose of assisting public and private two-year and four-year institutions of higher education in establishing, operating, and maintaining emergency services and disaster preparedness activities and, as needed, in developing an institutional crisis and emergency management plan pursuant to § 23.1-804;

13. Develop standards, provide guidance and encourage the maintenance of local and state agency emergency operations plans, which shall include the requirement for a provision that the Department of Criminal Justice Services and the Virginia Criminal Injuries Compensation Fund be contacted immediately to deploy assistance in the event of an emergency as defined in the emergency response plan when there are victims as defined in § 19.2-11.01. The Department of Criminal Justice Services and the Virginia Criminal Injuries Compensation Fund shall be the lead coordinating agencies for those individuals determined to be victims, and the plan shall also contain current contact information for both agencies;

14. Prepare, maintain, coordinate or implement emergency resource management plans and programs with federal, state and local government agencies and related groups, and make such surveys of industries, resources, and facilities within the Commonwealth, both public and private, as are necessary to carry out the purposes of this chapter;

15. Coordinate with the federal government and any public or private agency or entity in achieving any purpose of this chapter and in implementing programs for disaster prevention, mitigation, preparation, response, and recovery;

16. Establish guidelines pursuant to § 44-146.28, and administer payments to eligible applicants as authorized by the Governor;

17. Coordinate and be responsible for the receipt, evaluation, and dissemination of emergency services intelligence pertaining to all probable hazards affecting the Commonwealth;

18. Coordinate intelligence activities relating to terrorism with the Department of State Police; and

19. Develop an emergency response plan to address the needs of individuals with household pets and service animals in the event of a disaster and assist and coordinate with local agencies in developing an emergency response plan for household pets and service animals.

The Department of Emergency Management shall ensure that all such plans, assessments, and programs required by this subsection include specific preparedness for, and response to, disasters resulting from electromagnetic pulses and geomagnetic disturbances.

C. The Department of Emergency Management shall during a period of impending emergency or declared emergency be responsible for:

1. The receipt, evaluation, and dissemination of intelligence pertaining to an impending or actual disaster;

2. Providing facilities from which state agencies and supporting organizations may conduct emergency operations;

3. Providing an adequate communications and warning system capable of notifying all political subdivisions in the Commonwealth of an impending disaster within a reasonable time;

4. Establishing and maintaining liaison with affected political subdivisions;

5. Determining requirements for disaster relief and recovery assistance;

6. Coordinating disaster response actions of federal, state and volunteer relief agencies;

7. Coordinating and providing guidance and assistance to affected political subdivisions to ensure orderly and timely response to and recovery from disaster effects.

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 excepted 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



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

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

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

C. Notwithstanding the provisions of subsection B and of subdivision 4 2 of § 2.2-3705.5, the Committee may disclose such records relative to an impaired practitioner only:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

D. The Director may enter into agreements for mutual exchange of information among prescription 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.