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SENATE BILL NO. 931

Offered January 11, 2017

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A BILL to amend and reenact § 2.2-3705.7 of the Code of Virginia, relating to the Virginia Freedom of Information Act; working papers of presidents of public institutions of higher education.

Patrons—Petersen; Delegate: Kory

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:

1. That § 2.2-3705.7 of the Code of Virginia is amended and reenacted as follows:

§ 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; the Attorney General; the members of the General Assembly, the Division of Legislative Services, or the Clerks of the House of Delegates and the Senate of Virginia; or the mayor or chief executive officer of any political subdivision of the Commonwealth; or the president or other chief executive officer of any public institution of higher education in Virginia. However, no information that is otherwise open to inspection under this chapter shall be deemed excluded by virtue of the fact that it has been attached to or incorporated within any working paper or correspondence. Nothing in this subdivision shall be construed to authorize the withholding of any resumes or applications submitted by persons who are appointed by the Governor pursuant to § 2.2-106 or 2.2-107.

As used in this subdivision:

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

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

"Working papers" means those records prepared by or for an above-named public official for his personal or deliberative use.

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

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

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

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

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

8. Personal information, as defined in § 2.2-3801, (i) filed with the Virginia Housing Development Authority concerning individuals who have applied for or received loans or other housing assistance or who have applied for occupancy of or have occupied housing financed, owned or otherwise assisted by the Virginia Housing Development Authority; (ii) concerning persons participating in or persons on the waiting list for federally funded rent-assistance programs; (iii) filed with any local redevelopment and housing authority created pursuant to § 36-4 concerning persons participating in or persons on the waiting list for housing assistance programs funded by local governments or by any such authority; or

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59 (iv) filed with any local redevelopment and housing authority created pursuant to § 36-4 or any other  
60 local government agency concerning persons who have applied for occupancy or who have occupied  
61 affordable dwelling units established pursuant to § 15.2-2304 or 15.2-2305. However, access to one's  
62 own information shall not be denied.

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

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

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

79 12. Information held by the Virginia Retirement System, acting pursuant to § 51.1-124.30, or a local  
80 retirement system, acting pursuant to § 51.1-803, or the Rector and Visitors of the University of  
81 Virginia, acting pursuant to § 23.1-2210, or the Virginia College Savings Plan, acting pursuant to  
82 § 23.1-704, relating to the acquisition, holding, or disposition of a security or other ownership interest in  
83 an entity, where such security or ownership interest is not traded on a governmentally regulated  
84 securities exchange, if disclosure of such information would (i) reveal confidential analyses prepared for  
85 the Rector and Visitors of the University of Virginia, prepared by the retirement system or the Virginia  
86 College Savings Plan, or provided to the retirement system or the Virginia College Savings Plan under a  
87 promise of confidentiality of the future value of such ownership interest or the future financial  
88 performance of the entity and (ii) have an adverse effect on the value of the investment to be acquired,  
89 held, or disposed of by the retirement system, the Rector and Visitors of the University of Virginia, or  
90 the Virginia College Savings Plan. Nothing in this subdivision shall be construed to authorize the  
91 withholding of information relating to the identity of any investment held, the amount invested, or the  
92 present value of such investment.

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

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

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

116 16. Information held by the Department of Environmental Quality, the State Water Control Board,  
117 the State Air Pollution Control Board, or the Virginia Waste Management Board relating to (i) active  
118 federal environmental enforcement actions that are considered confidential under federal law and (ii)  
119 enforcement strategies, including proposed sanctions for enforcement actions. Upon request, such  
120 information shall be disclosed after a proposed sanction resulting from the investigation has been

121 proposed to the director of the agency. This subdivision shall not be construed to authorize the  
122 withholding of information related to inspection reports, notices of violation, and documents detailing  
123 the nature of any environmental contamination that may have occurred or similar documents.

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

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

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

137 20. Information pertaining to the planning, scheduling, and performance of examinations of holder  
138 records pursuant to the Uniform Disposition of Unclaimed Property Act (§ 55-210.1 et seq.) prepared by  
139 or for the State Treasurer or his agents or employees or persons employed to perform an audit or  
140 examination of holder records.

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

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

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

162 24. Information held by the Judicial Inquiry and Review Commission made confidential by  
163 § 17.1-913.

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

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

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

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

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

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

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

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

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

186 26. Information held by the Department of Corrections made confidential by § 53.1-233.

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

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

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

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

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

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

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

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

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

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

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

236 c. Stating the reasons why protection is necessary.

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

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