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SENATE BILL NO. 1180

Offered January 9, 2019

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A BILL to amend and reenact §§ 2.2-3701, 2.2-3705.2, 2.2-3705.6, 2.2-3705.7, and 2.2-3711 of the Code of Virginia, relating to the Virginia Freedom of Information Act; definition of trade secret.

Patron—Stuart

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-3701, 2.2-3705.2, 2.2-3705.6, 2.2-3705.7, and 2.2-3711 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 the use of technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities to transmit or receive information.

"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 electronic communication means pursuant to § 2.2-3708.2, 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 (a) 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 (b) 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; governing boards of public institutions of higher education; and other organizations, corporations or agencies in the Commonwealth supported wholly or principally by public funds. It shall include (i) the Virginia Birth-Related Neurological Injury Compensation Program and its board of directors established pursuant to Chapter 50 (§ 38.2-5000 et seq.) of Title 38.2 and (ii) any committee, subcommittee, or other entity however designated, of the public body created to perform delegated functions of the public body or to advise the public body. It shall not exclude any such committee, subcommittee or entity because it has private sector or citizen members. Corporations organized by the Virginia Retirement System are "public bodies" for purposes of this chapter.

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

"Public records" means all writings and recordings that consist of letters, words or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photography, magnetic impulse, optical or magneto-optical form, mechanical or electronic recording or other form of data compilation, however stored, and regardless of physical form or characteristics, prepared or owned by, or in the possession of a public body or its officers, employees or agents in the transaction of public business.

"Regional public body" means a unit of government organized as provided by law within defined boundaries, as determined by the General Assembly, which unit includes two or more localities.

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

62 *"Trade secret" means the same as that term is defined in the Uniform Trade Secrets Act (§ 59.1-336*
63 *et seq.).*

64 **§ 2.2-3705.2. Exclusions to application of chapter; records relating to public safety.**

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

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

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

74 3. Information that would disclose the security aspects of a system safety program plan adopted
75 pursuant to Federal Transit Administration regulations by the Commonwealth's designated Rail Fixed
76 Guideway Systems Safety Oversight agency; and information in the possession of such agency, the
77 release of which would jeopardize the success of an ongoing investigation of a rail accident or other
78 incident threatening railway safety.

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

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

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

89 6. Subscriber data provided directly or indirectly by a communications services provider to a public
90 body that operates a 911 or E-911 emergency dispatch system or an emergency notification or reverse
91 911 system if the data is in a form not made available by the communications services provider to the
92 public generally. Nothing in this subdivision shall prevent the disclosure of subscriber data generated in
93 connection with specific calls to a 911 emergency system, where the requester is seeking to obtain
94 public records about the use of the system in response to a specific crime, emergency or other event as
95 to which a citizen has initiated a 911 call.

96 For the purposes of this subdivision:

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

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

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

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

109 For the purposes of this subdivision:

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

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

113 8. Information held by the Virginia Military Advisory Council or any commission created by
114 executive order for the purpose of studying and making recommendations regarding preventing closure
115 or realignment of federal military and national security installations and facilities located in Virginia and
116 relocation of such facilities to Virginia, or a local or regional military affairs organization appointed by a
117 local governing body, that would (i) reveal strategies under consideration or development by the Council
118 or such commission or organizations to prevent the closure or realignment of federal military
119 installations located in Virginia or the relocation of national security facilities located in Virginia, to
120 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 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.

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.

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.

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.

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 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.

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.

15. Information held by the Virginia Commercial Space Flight Authority that is categorized as classified or sensitive but unclassified, including national security, defense, and foreign policy information, provided that such information is exempt under the federal Freedom of Information Act, 5 U.S.C. § 552.

§ 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.

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

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

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

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

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

10. Confidential information designated as provided in subsection F of § 2.2-4342 as trade secrets or

proprietary information by any person in connection with a procurement transaction or by any person who has submitted to a public body an application for prequalification to bid on public construction projects in accordance with subsection B of § 2.2-4317.

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

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

(1) 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 responsible public entity 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 responsible public entity shall determine whether public disclosure prior to the execution of an interim agreement or a comprehensive agreement would adversely affect the financial interest or bargaining position of the public or private entity. The responsible public entity shall make a written determination of the nature and scope of the protection to be afforded by the responsible public entity under this subdivision. Once a written determination is made by the responsible public entity, the information afforded protection under this subdivision shall continue to be protected from disclosure when in the possession of any affected jurisdiction or affected local jurisdiction.

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

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

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

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

305 been implemented by the franchisee on a nonexperimental scale in the franchise area, and where, if such
306 information were made public, the competitive advantage or financial interests of the franchisee would
307 be adversely affected.

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

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

316 14. Information of a proprietary or confidential nature furnished by a supplier or manufacturer of
317 charitable gaming supplies to the Department of Agriculture and Consumer Services (i) pursuant to
318 subsection E of § 18.2-340.34 and (ii) pursuant to regulations promulgated by the Charitable Gaming
319 Board related to approval of electronic and mechanical equipment.

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

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

326 17. Information relating to a grant or loan application, or accompanying a grant or loan application,
327 to the Innovation and Entrepreneurship Investment Authority pursuant to Article 3 (§ 2.2-2233.1 et seq.)
328 of Chapter 22 of Title 2.2 or to the Commonwealth Health Research Board pursuant to Chapter 5.3
329 (§ 32.1-162.23 et seq.) of Title 32.1 if disclosure of such information would (i) reveal proprietary
330 business or research-related information produced or collected by the applicant in the conduct of or as a
331 result of study or research on medical, rehabilitative, scientific, technical, technological, or scholarly
332 issues, when such information has not been publicly released, published, copyrighted, or patented, and
333 (ii) be harmful to the competitive position of the applicant.

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

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

343 19. Confidential proprietary information and trade secrets developed by or for a local authority
344 created in accordance with the Virginia Wireless Service Authorities Act (§ 15.2-5431.1 et seq.) to
345 provide qualifying communications services as authorized by Article 5.1 (§ 56-484.7:1 et seq.) of
346 Chapter 15 of Title 56, where disclosure of such information would be harmful to the competitive
347 position of the authority, except that information required to be maintained in accordance with
348 § 15.2-2160 shall be released.

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

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

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

366 In order for the information specified in this subdivision to be excluded from the provisions of this

chapter, the private or nongovernmental entity shall make a written request to the State Inspector General:

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

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

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

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, information or other materials for which protection is sought; and

c. Stating the reasons why protection is necessary.

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

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

b. Information provided by a private entity to the Commercial Space Flight Authority if disclosure of such information would (i) reveal (a) trade secrets of the private entity as defined in the Uniform Trade 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. Information relating to a grant or loan application, or accompanying a grant or loan application, submitted to the Virginia Research Investment Committee established pursuant to Article 8 (§ 23.1-3130 et seq.) of Chapter 31 of Title 23.1, to the extent that such records would (i) reveal (a) trade secrets as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.); (b) financial information of a party to a grant or loan application that is not a public body, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise; or (c) research-related information produced or collected by a party to the application 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 a party to a grant or loan application; and memoranda, staff evaluations, or other information prepared by the Committee or its staff, or a reviewing entity pursuant to subsection D of § 23.1-3133, exclusively for the evaluation of grant or loan applications, including any scoring or prioritization documents prepared for and forwarded to the Committee pursuant to subsection D of § 23.1-3133.

In order for the information submitted by the applicant and specified in this subdivision to be excluded from the provisions of this chapter, the applicant shall make a written request to the Committee:

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, information, or other materials for which protection is sought; and

c. Stating the reasons why protection is necessary.

The Virginia Research Investment Committee shall determine whether the requested exclusion from disclosure is necessary to protect the trade secrets, financial information, or research-related information of the party to the application. The Committee shall make a written determination of the nature and scope of the protection to be afforded by it under this subdivision.

29. Proprietary information, voluntarily provided by a private business pursuant to a promise of confidentiality from a public body, used by the public body for a solar services agreement, where disclosure of such information would (i) reveal (a) trade secrets of the private business as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.); (b) financial information of the private business, 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 business and (ii) adversely affect the financial interest or bargaining position of the public body or private business.

In order for the information specified in clauses (i)(a), (b), and (c) to be excluded from the provisions of this chapter, the private business shall make a written request to the public body:

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.

30. 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.

31. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), including, but not limited to, financial information, including balance sheets and financial statements that are not

generally available to the public through regulatory disclosure or otherwise, and revenue and cost projections supplied by a private or nongovernmental entity to the Virginia Department of Transportation for the purpose of an audit, special investigation, or any study requested by the Virginia Department of Transportation in accordance with law.

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

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

§ 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 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 public institution of higher education in the Commonwealth. 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. Further, information publicly available or not otherwise subject to an exclusion under this chapter or other provision of law that has been aggregated, combined, or changed in format without substantive analysis or revision shall not be deemed working papers. 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; the Governor's chief of staff, counsel, director of policy, and Cabinet Secretaries; 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 a public official identified in this subdivision for his personal or deliberative use.

3. Information contained in library records that can be used to identify (i) both (a) any library patron who has borrowed material from a library and (b) the material such patron borrowed or (ii) any library patron under 18 years of age. For the purposes of clause (ii), access shall not be denied to the parent, including a noncustodial parent, or guardian of such library patron.

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 charged or paid for such utility service.

8. Personal information, as defined in § 2.2-3801, (i) filed with the Virginia Housing Development Authority concerning individuals who have applied for or received loans or other housing assistance or

who have applied for occupancy of or have occupied housing financed, owned or otherwise assisted by the Virginia Housing Development Authority; (ii) concerning persons participating in or persons on the waiting list for federally funded rent-assistance programs; (iii) filed with any local redevelopment and housing authority created pursuant to § 36-4 concerning persons participating in or persons on the waiting list for housing assistance programs funded by local governments or by any such authority; or (iv) filed with any local redevelopment and housing authority created pursuant to § 36-4 or any other local government agency concerning persons who have applied for occupancy or who have occupied affordable dwelling units established pursuant to § 15.2-2304 or 15.2-2305. However, access to one's own information shall not be denied.

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

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

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

12. Information held by the Virginia Retirement System, acting pursuant to § 51.1-124.30, or a 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 post-retirement benefits other than pensions, acting pursuant to Article 8 (§ 15.2-1544 et seq.) of Chapter 15 of Title 15.2, or by the board of visitors of the University of Virginia, acting pursuant to § 23.1-2210, or by the board of visitors of The College of William and Mary in Virginia, acting pursuant to § 23.1-2803, 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 board of visitors of the University of Virginia, prepared for the board of visitors of The College of William and Mary in 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 board of visitors of the University of Virginia, the board of visitors of The College of William and Mary in 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.

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

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

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

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

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

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

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

b. Trade secrets, as defined in the Uniform Trade Secrets Act (~~§ 59.1-336 et seq.~~), provided by a private entity to the retirement system or the Virginia College Savings Plan if disclosure of such records

674 would have an adverse impact on the financial interest of the retirement system or the Virginia College
675 Savings Plan.

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

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

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

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

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

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

686 25. Information held by the Department of Corrections made confidential by § 53.1-233.

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

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

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

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

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

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

716 32. Information reflecting the substance of meetings in which (i) individual sexual assault cases are
717 discussed by any sexual assault team established pursuant to § 15.2-1627.4 or (ii) individual child abuse
718 or neglect cases or sex offenses involving a child are discussed by multidisciplinary child abuse teams
719 established pursuant to § 15.2-1627.5. The findings of any such team may be disclosed or published in
720 statistical or other aggregated form that does not disclose the identity of specific individuals.

721 33. Information contained in the strategic plan, marketing plan, or operational plan prepared by the
722 Virginia Economic Development Partnership Authority pursuant to § 2.2-2237.1 regarding target
723 companies, specific allocation of resources and staff for marketing activities, and specific marketing
724 activities that would reveal to the Commonwealth's competitors for economic development projects the
725 strategies intended to be deployed by the Commonwealth, thereby adversely affecting the financial
726 interest of the Commonwealth. The executive summaries of the strategic plan, marketing plan, and
727 operational plan shall not be redacted or withheld pursuant to this subdivision.

728 **§ 2.2-3711. Closed meetings authorized for certain limited purposes.**

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

730 1. Discussion, consideration, or interviews of prospective candidates for employment; assignment,
731 appointment, promotion, performance, demotion, salaries, disciplining, or resignation of specific public
732 officers, appointees, or employees of any public body; and evaluation of performance of departments or
733 schools of public institutions of higher education where such evaluation will necessarily involve
734 discussion of the performance of specific individuals. Any teacher shall be permitted to be present
735 during a closed meeting in which there is a discussion or consideration of a disciplinary matter that

involves the teacher and some student and the student involved in the matter is present, provided the teacher makes a written request to be present to the presiding officer of the appropriate board. Nothing in this subdivision, however, shall be construed to authorize a closed meeting by a local governing body or an elected school board to discuss compensation matters that affect the membership of such body or board collectively.

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

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

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

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

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

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

8. Consultation with legal counsel employed or retained by a public body regarding specific legal matters requiring the provision of legal advice by such counsel. Nothing in this subdivision shall be construed to permit the closure of a meeting merely because an attorney representing the public body is in attendance or is consulted on a matter.

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

10. Discussion or consideration by the boards of trustees of the Virginia Museum of Fine Arts, the Virginia Museum of Natural History, the Jamestown-Yorktown Foundation, and The Science Museum of Virginia of matters relating to specific gifts, bequests, and grants from private sources.

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

12. Discussion or consideration of tests, examinations, or other information used, administered, or prepared by a public body and subject to the exclusion in subdivision 4 of § 2.2-3705.1.

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

14. 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

797 closed meeting.

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

800 16. Discussion or consideration of medical and mental health records subject to the exclusion in
801 subdivision 1 of § 2.2-3705.5.

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

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

812 19. Discussion of plans to protect public safety as it relates to terrorist activity or specific
813 cybersecurity threats or vulnerabilities and briefings by staff members, legal counsel, or law-enforcement
814 or emergency service officials concerning actions taken to respond to such matters or a related threat to
815 public safety; discussion of information subject to the exclusion in subdivision 2 or 14 of § 2.2-3705.2,
816 where discussion in an open meeting would jeopardize the safety of any person or the security of any
817 facility, building, structure, information technology system, or software program; or discussion of reports
818 or plans related to the security of any governmental facility, building or structure, or the safety of
819 persons using such facility, building or structure.

820 20. Discussion by the Board of the Virginia Retirement System, acting pursuant to § 51.1-124.30, or
821 of any local retirement system, acting pursuant to § 51.1-803, or by a local finance board or board of
822 trustees of a trust established by one or more local public bodies to invest funds for postemployment
823 benefits other than pensions, acting pursuant to Article 8 (§ 15.2-1544 et seq.) of Chapter 15 of Title
824 15.2, or by the board of visitors of the University of Virginia, acting pursuant to § 23.1-2210, or by the
825 Board of the Virginia College Savings Plan, acting pursuant to § 23.1-706, regarding the acquisition,
826 holding or disposition of a security or other ownership interest in an entity, where such security or
827 ownership interest is not traded on a governmentally regulated securities exchange, to the extent that
828 such discussion (i) concerns confidential analyses prepared for the board of visitors of the University of
829 Virginia, prepared by the retirement system, or a local finance board or board of trustees, or the Virginia
830 College Savings Plan or provided to the retirement system, a local finance board or board of trustees, or
831 the Virginia College Savings Plan under a promise of confidentiality, of the future value of such
832 ownership interest or the future financial performance of the entity, and (ii) would have an adverse
833 effect on the value of the investment to be acquired, held, or disposed of by the retirement system, a
834 local finance board or board of trustees, the board of visitors of the University of Virginia, or the
835 Virginia College Savings Plan. Nothing in this subdivision shall be construed to prevent the disclosure
836 of information relating to the identity of any investment held, the amount invested or the present value
837 of such investment.

838 21. Those portions of meetings in which individual child death cases are discussed by the State Child
839 Fatality Review team established pursuant to § 32.1-283.1, those portions of meetings in which
840 individual child death cases are discussed by a regional or local child fatality review team established
841 pursuant to § 32.1-283.2, those portions of meetings in which individual death cases are discussed by
842 family violence fatality review teams established pursuant to § 32.1-283.3, those portions of meetings in
843 which individual adult death cases are discussed by the state Adult Fatality Review Team established
844 pursuant to § 32.1-283.5, those portions of meetings in which individual adult death cases are discussed
845 by a local or regional adult fatality review team established pursuant to § 32.1-283.6, and those portions
846 of meetings in which individual death cases are discussed by overdose fatality review teams established
847 pursuant to § 32.1-283.7.

848 22. Those portions of meetings of the board of visitors of the University of Virginia or the Eastern
849 Virginia Medical School Board of Visitors, as the case may be, and those portions of meetings of any
850 persons to whom management responsibilities for the University of Virginia Medical Center or Eastern
851 Virginia Medical School, as the case may be, have been delegated, in which there is discussed
852 proprietary, business-related information pertaining to the operations of the University of Virginia
853 Medical Center or Eastern Virginia Medical School, as the case may be, including business development
854 or marketing strategies and activities with existing or future joint venturers, partners, or other parties
855 with whom the University of Virginia Medical Center or Eastern Virginia Medical School, as the case
856 may be, has formed, or forms, any arrangement for the delivery of health care, if disclosure of such
857 information would adversely affect the competitive position of the Medical Center or Eastern Virginia
858 Medical School, as the case may be.

23. Discussion or consideration by the Virginia Commonwealth University Health System Authority or the board of visitors of Virginia Commonwealth University of any of the following: the acquisition or disposition by the Authority of real property, equipment, or technology software or hardware and related goods or services, where disclosure would adversely affect the bargaining position or negotiating strategy of the Authority; matters relating to gifts or bequests to, and fund-raising activities of, the Authority; grants and contracts for services or work to be performed by the Authority; marketing or operational strategies plans of the Authority where disclosure of such strategies or plans would adversely affect the competitive position of the Authority; and members of the Authority's medical and teaching staffs and qualifications for appointments thereto.

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

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

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

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

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

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

30. Discussion or consideration of grant or loan application information subject to the exclusion in subdivision 17 of § 2.2-3705.6 by (i) the Commonwealth Health Research Board or (ii) the Innovation and Entrepreneurship Investment Authority or the Research and Technology Investment Advisory Committee appointed to advise the Innovation and Entrepreneurship Investment Authority.

31. Discussion or consideration by the Commitment Review Committee of information subject to the exclusion in subdivision 5 of § 2.2-3705.2 relating to individuals subject to commitment as sexually violent predators under Chapter 9 (§ 37.2-900 et seq.) of Title 37.2.

32. Discussion or consideration of confidential proprietary information and trade secrets developed and held by a local public body providing certain telecommunication services or cable television services and subject to the exclusion in subdivision 18 of § 2.2-3705.6. 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.).

33. Discussion or consideration by a local authority created in accordance with the Virginia Wireless Service Authorities Act (§ 15.2-5431.1 et seq.) of confidential proprietary information and trade secrets subject to the exclusion in subdivision 19 of § 2.2-3705.6.

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

35. Discussion or consideration by the Forensic Science Board or the Scientific Advisory Committee created pursuant to Article 2 (§ 9.1-1109 et seq.) of Chapter 11 of Title 9.1 of criminal investigative files subject to the exclusion in subdivision B 1 of § 2.2-3706.

36. Discussion or consideration by the Brown v. Board of Education Scholarship Committee of information or confidential matters subject to the exclusion in subdivision A 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.

37. Discussion or consideration by the Virginia Port Authority of information subject to the exclusion

920 in subdivision 1 of § 2.2-3705.6 related to certain proprietary information gathered by or for the Virginia
921 Port Authority.

922 38. Discussion or consideration by the Board of Trustees of the Virginia Retirement System acting
923 pursuant to § 51.1-124.30, by the Investment Advisory Committee appointed pursuant to § 51.1-124.26,
924 by any local retirement system, acting pursuant to § 51.1-803, by the Board of the Virginia College
925 Savings Plan acting pursuant to § 23.1-706, or by the Virginia College Savings Plan's Investment
926 Advisory Committee appointed pursuant to § 23.1-702 of information subject to the exclusion in
927 subdivision 24 of § 2.2-3705.7.

928 39. Discussion or consideration of information subject to the exclusion in subdivision 3 of
929 § 2.2-3705.6 related to economic development.

930 40. Discussion or consideration by the Board of Education of information relating to the denial,
931 suspension, or revocation of teacher licenses subject to the exclusion in subdivision 11 of § 2.2-3705.3.

932 41. Those portions of meetings of the Virginia Military Advisory Council or any commission created
933 by executive order for the purpose of studying and making recommendations regarding preventing
934 closure or realignment of federal military and national security installations and facilities located in
935 Virginia and relocation of such facilities to Virginia, or a local or regional military affairs organization
936 appointed by a local governing body, during which there is discussion of information subject to the
937 exclusion in subdivision 8 of § 2.2-3705.2.

938 42. Discussion or consideration by the Board of Trustees of the Veterans Services Foundation of
939 information subject to the exclusion in subdivision 28 of § 2.2-3705.7 related to personally identifiable
940 information of donors.

941 43. Discussion or consideration by the Virginia Tobacco Region Revitalization Commission of
942 information subject to the exclusion in subdivision 23 of § 2.2-3705.6 related to certain information
943 contained in grant applications.

944 44. Discussion or consideration by the board of directors of the Commercial Space Flight Authority
945 of information subject to the exclusion in subdivision 24 of § 2.2-3705.6 related to rate structures or
946 charges for the use of projects of, the sale of products of, or services rendered by the Authority and
947 certain proprietary information of a private entity provided to the Authority.

948 45. Discussion or consideration of personal and proprietary information related to the resource
949 management plan program and subject to the exclusion in (i) subdivision 25 of § 2.2-3705.6 or (ii)
950 subsection E of § 10.1-104.7. This exclusion shall not apply to the discussion or consideration of
951 records that contain information that has been certified for release by the person who is the subject of
952 the information or transformed into a statistical or aggregate form that does not allow identification of
953 the person who supplied, or is the subject of, the information.

954 46. Discussion or consideration by the Board of Directors of the Virginia Alcoholic Beverage Control
955 Authority of information subject to the exclusion in subdivision 1 of § 2.2-3705.3 related to
956 investigations of applicants for licenses and permits and of licensees and permittees.

957 47. Discussion or consideration of grant or loan application records subject to the exclusion in
958 subdivision 28 of § 2.2-3705.6 related to the submission of an application for an award from the
959 Virginia Research Investment Fund pursuant to Article 8 (§ 23.1-3130 et seq.) of Chapter 31 of Title
960 23.1 or interviews of parties to an application by a reviewing entity pursuant to subsection D of
961 § 23.1-3133 or by the Virginia Research Investment Committee.

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

965 49. Discussion or consideration of (i) individual sexual assault cases by a sexual assault team
966 established pursuant to § 15.2-1627.4 or (ii) individual child abuse or neglect cases or sex offenses
967 involving a child by a child abuse team established pursuant to § 15.2-1627.5.

968 50. Discussion or consideration by the Board of the Virginia Economic Development Partnership
969 Authority, the Joint Legislative Audit and Review Commission, or any subcommittees thereof, of the
970 portions of the strategic plan, marketing plan, or operational plan exempt from disclosure pursuant to
971 subdivision 33 of § 2.2-3705.7.

972 51. Those portions of meetings of the subcommittee of the Board of the Virginia Economic
973 Development Partnership Authority established pursuant to subsection F of § 2.2-2237.3 to review and
974 discuss information received from the Virginia Employment Commission pursuant to subdivision C 2 of
975 § 60.2-114.

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

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

982 obtain notice of the legal defect in their election.

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

986 E. This section shall not be construed to (i) require the disclosure of any contract between the
987 Department of Health Professions and an impaired practitioner entered into pursuant to Chapter 25.1
988 (§ 54.1-2515 et seq.) of Title 54.1 or (ii) require the board of directors of any authority created pursuant
989 to the Industrial Development and Revenue Bond Act (§ 15.2-4900 et seq.), or any public body
990 empowered to issue industrial revenue bonds by general or special law, to identify a business or industry
991 to which subdivision A 5 applies. However, such business or industry shall be identified as a matter of
992 public record at least 30 days prior to the actual date of the board's authorization of the sale or issuance
993 of such bonds.