

21101440D

HOUSE BILL NO. 2025

Offered January 13, 2021

Prefiled January 12, 2021

A BILL to amend and reenact § 2.2-3705.1 of the Code of Virginia, relating to the Virginia Freedom of Information Act; record exclusion for personal contact information provided to a public body.

Patrons—Gooditis, Levine, Samirah and Subramanyam; Senators: Bell and Boysko

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

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

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

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. Personnel information concerning identifiable individuals, except that access shall not be denied to the person who is the subject thereof. Any person who is the subject of such information and who is 18 years of age or older may waive, in writing, the protections afforded by this subdivision. If the protections are so waived, such information shall be disclosed. 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.

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

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

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

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

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

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

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

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

59 acquired from a vendor for purposes of processing data for agencies or political subdivisions of the
60 Commonwealth.

61 7. Computer software developed by or for a state agency, public institution of higher education in the
62 Commonwealth, or political subdivision of the Commonwealth.

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

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

72 10. Personal contact information furnished to a public body *or any of its members* for the purpose of
73 receiving electronic ~~mail~~ *communications* from the public body *or any of its members*, ~~provided that~~
74 ~~unless the electronic mail recipient has requested that of such electronic communications indicates his~~
75 ~~approval for the public body not to disclose such information.~~ However, access shall not be denied to
76 the person who is the subject of the record. As used in this subdivision, "personal contact information"
77 means the information provided to the public body *or any of its members* for the purpose of receiving
78 electronic ~~mail~~ *communications* from the public body *or any of its members* and includes home or
79 business (i) address, (ii) email address, or (iii) telephone number or comparable number assigned to any
80 other electronic communication device.

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

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

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