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HOUSE BILL NO. 890

Offered January 12, 2022

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A BILL to amend and reenact §§ 2.2-3704, 2.2-3706, 2.2-3711, 2.2-3714, 19.2-174.1, and 19.2-368.3 of the Code of Virginia and to repeal § 2.2-3706.1 of the Code of Virginia, relating to the Virginia Freedom of Information Act; repeal; release of certain law-enforcement criminal incident information and criminal investigative files.

Patron—Kilgore

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-3704, 2.2-3706, 2.2-3711, 2.2-3714, 19.2-174.1, and 19.2-368.3 of the Code of Virginia are amended and reenacted as follows:

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

A. Except as otherwise specifically provided by law, all public records shall be open to citizens of the Commonwealth, representatives of newspapers and magazines with circulation in the Commonwealth, and representatives of radio and television stations broadcasting in or into the Commonwealth during the regular office hours of the custodian of such records. Access to such records shall be provided by the custodian in accordance with this chapter by inspection or by providing copies of the requested records, at the option of the requester. The custodian may require the requester to provide his name and legal address. The custodian of such records shall take all necessary precautions for their preservation and safekeeping.

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

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

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

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

4. It is not practically possible to provide the requested records or to determine whether they are available within the five-work-day period. Such response shall specify the conditions that make a response impossible. If the response is made within five working days, the public body shall have an additional seven work days ~~or, in the case of a request for criminal investigative files pursuant to § 2.2-3706.1, 60 work days~~ in which to provide one of the four preceding responses.

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

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

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

F. A public body may make reasonable charges not to exceed its actual cost incurred in accessing, duplicating, supplying, or searching for the requested records. No public body shall impose any extraneous, intermediary, or surplus fees or expenses to recoup the general costs associated with creating

59 or maintaining records or transacting the general business of the public body. Any duplicating fee
60 charged by a public body shall not exceed the actual cost of duplication. The public body may also
61 make a reasonable charge for the cost incurred in supplying records produced from a geographic
62 information system at the request of anyone other than the owner of the land that is the subject of the
63 request. However, such charges shall not exceed the actual cost to the public body in supplying such
64 records, except that the public body may charge, on a pro rata per acre basis, for the cost of creating
65 topographical maps developed by the public body, for such maps or portions thereof, which encompass
66 a contiguous area greater than 50 acres. All charges for the supplying of requested records shall be
67 estimated in advance at the request of the citizen. The period within which the public body shall
68 respond under this section shall be tolled for the amount of time that elapses between notice of the cost
69 estimate and the response of the requester. If the public body receives no response from the requester
70 within 30 days of sending the cost estimate, the request shall be deemed to be withdrawn.

71 G. Public records maintained by a public body in an electronic data processing system, computer
72 database, or any other structured collection of data shall be made available to a requester at a reasonable
73 cost, not to exceed the actual cost in accordance with subsection F. When electronic or other databases
74 are combined or contain exempt and nonexempt records, the public body may provide access to the
75 exempt records if not otherwise prohibited by law, but shall provide access to the nonexempt records as
76 provided by this chapter.

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

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

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

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

110 **§ 2.2-3706. Disclosure of law-enforcement and criminal records; limitations.**

111 A. Records required to be released. All public bodies engaged in criminal law-enforcement activities
112 shall provide the following records when requested in accordance with the provisions of this chapter:

113 1. *Criminal incident information relating to felony offenses, which shall include:*

114 a. *A general description of the criminal activity reported;*

115 b. *The date the alleged crime was committed;*

116 c. *The general location where the alleged crime was committed;*

117 d. *The identity of the investigating officer or other point of contact; and*

118 e. *A general description of any injuries suffered or property damaged or stolen.*

119 A verbal response as agreed to by the requester and the public body is sufficient to satisfy the
120 requirements of this subdivision.

Where the release of criminal incident information, however, is likely to jeopardize an ongoing investigation or prosecution or the safety of an individual, cause a suspect to flee or evade detection, or result in the destruction of evidence, such information may be withheld until the above-referenced damage is no longer likely to occur from release of the information. Nothing in this subdivision shall be construed to authorize the withholding of these portions of such information that are not likely to cause the above-referenced damage;

2. Adult arrestee photographs taken during the initial intake following the arrest and as part of the routine booking procedure, except when necessary to avoid jeopardizing an investigation in felony cases until such time as the release of the photograph will no longer jeopardize the investigation;

2- 3. Information relative to the identity of any individual, other than a juvenile, who is arrested and charged, and the status of the charge or arrest; and

3- 4. Records of completed unattended death investigations to the parent or spouse of the decedent or, if there is no living parent or spouse, to the most immediate family member of the decedent, provided the person is not a person of interest or a suspect. For the purposes of this subdivision, "unattended death" means a death determined to be a suicide, accidental or natural death where no criminal charges will be initiated, and "immediate family" means the decedent's personal representative or, if no personal representative has qualified, the decedent's next of kin in order of intestate succession as set forth in § 64.2-200.

B. Discretionary releases. The following records are 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:

1. Criminal investigative files, defined as any documents and information, including complaints, court orders, memoranda, notes, diagrams, maps, photographs, correspondence, reports, witness statements, and evidence, relating to a criminal investigation or prosecution ~~not required to be disclosed in accordance with § 2.2-3706.1, other than criminal incident information subject to release in accordance with subdivision A 1;~~

2. Reports submitted in confidence to (i) state and local law-enforcement agencies, (ii) investigators authorized pursuant to Chapter 3.2 (§ 2.2-307 et seq.), and (iii) campus police departments of public institutions of higher education established pursuant to Article 3 (§ 23.1-809 et seq.) of Chapter 8 of Title 23.1;

3. Records of local law-enforcement agencies relating to neighborhood watch programs that include the names, addresses, and operating schedules of individual participants in the program that are provided to such agencies under a promise of anonymity;

4. All records of persons imprisoned in penal institutions in the Commonwealth provided such records relate to the imprisonment;

5. Records of law-enforcement agencies, to the extent that such records contain specific tactical plans, the disclosure of which would jeopardize the safety or security of law-enforcement personnel or the general public;

6. All records of adult persons under (i) investigation or supervision by a local pretrial services agency in accordance with Article 5 (§ 19.2-152.2 et seq.) of Chapter 9 of Title 19.2; (ii) investigation, probation supervision, or monitoring by a local community-based probation services agency in accordance with Article 9 (§ 9.1-173 et seq.) of Chapter 1 of Title 9.1; or (iii) investigation or supervision by state probation and parole services in accordance with Article 2 (§ 53.1-141 et seq.) of Chapter 4 of Title 53.1;

7. Records of a law-enforcement agency to the extent that they disclose 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;

8. Those portions of any records containing information related to undercover operations or protective details that would reveal the staffing, logistics, or tactical plans of such undercover operations or protective details. Nothing in this subdivision shall operate to allow the withholding of information concerning the overall costs or expenses associated with undercover operations or protective details;

9. Records of (i) background investigations of applicants for law-enforcement agency employment, (ii) administrative investigations relating to allegations of wrongdoing by employees of a law-enforcement agency, and (iii) other administrative investigations conducted by law-enforcement agencies that are made confidential by law;

10. The identity of any victim, witness, or undercover officer, or investigative techniques or procedures. However, the identity of any victim or witness shall be withheld if disclosure is prohibited or restricted under § 19.2-11.2; and

11. Records of the Sex Offender and Crimes Against Minors Registry maintained by the Department of State Police pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1, including information obtained from state, local, and regional officials, except to the extent that information is required to be posted on

182 the Internet pursuant to § 9.1-913.

183 C. Prohibited releases. The identity of any individual providing information about a crime or criminal
184 activity under a promise of anonymity shall not be disclosed.

185 D. Noncriminal records. Public bodies (i) engaged in emergency medical services, (ii) engaged in fire
186 protection services, (iii) engaged in criminal law-enforcement activities, or (iv) engaged in processing
187 calls for service or other communications to an emergency 911 system or any other equivalent reporting
188 system may withhold those portions of noncriminal incident or other noncriminal investigative reports or
189 materials that contain identifying information of a personal, medical, or financial nature where the
190 release of such information would jeopardize the safety or privacy of any person. Access to personnel
191 records of persons employed by a law-enforcement agency shall be governed by the provisions of
192 subdivision B 9 of this section and subdivision 1 of § 2.2-3705.1, as applicable.

193 E. Records of any call for service or other communication to an emergency 911 system or
194 communicated with any other equivalent reporting system shall be subject to the provisions of this
195 chapter.

196 F. Conflict resolution. In the event of conflict between this section as it relates to requests made
197 under this section and other provisions of law, this section shall control.

198 **§ 2.2-3711. Closed meetings authorized for certain limited purposes.**

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

200 1. Discussion, consideration, or interviews of prospective candidates for employment; assignment,
201 appointment, promotion, performance, demotion, salaries, disciplining, or resignation of specific public
202 officers, appointees, or employees of any public body; and evaluation of performance of departments or
203 schools of public institutions of higher education where such evaluation will necessarily involve
204 discussion of the performance of specific individuals. Any teacher shall be permitted to be present
205 during a closed meeting in which there is a discussion or consideration of a disciplinary matter that
206 involves the teacher and some student and the student involved in the matter is present, provided the
207 teacher makes a written request to be present to the presiding officer of the appropriate board. Nothing
208 in this subdivision, however, shall be construed to authorize a closed meeting by a local governing body
209 or an elected school board to discuss compensation matters that affect the membership of such body or
210 board collectively.

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

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

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

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

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

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

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

239 9. Discussion or consideration by governing boards of public institutions of higher education of
240 matters relating to gifts, bequests and fund-raising activities, and of grants and contracts for services or
241 work to be performed by such institution. However, the terms and conditions of any such gifts, bequests,
242 grants, and contracts made by a foreign government, a foreign legal entity, or a foreign person and
243 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, the Fort Monroe Authority, 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 closed meeting.

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

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

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

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

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

20. Discussion by the Board of the Virginia Retirement System, acting pursuant to § 51.1-124.30, or of any local retirement system, acting pursuant to § 51.1-803, or by a local finance board or board of trustees of a trust established by one or more local public bodies to invest funds for postemployment benefits other than pensions, acting pursuant to Article 8 (§ 15.2-1544 et seq.) of Chapter 15 of Title 15.2, or by the board of visitors of the University of Virginia, acting pursuant to § 23.1-2210, or by the Board of the Virginia College Savings Plan, acting pursuant to § 23.1-706, regarding the acquisition, holding or disposition of a security or other ownership interest in an entity, where such security or ownership interest is not traded on a governmentally regulated securities exchange, to the extent that such discussion (i) concerns confidential analyses prepared for the board of visitors of the University of Virginia, prepared by the retirement system, or 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) would have an adverse

305 effect on the value of the investment to be acquired, held, or disposed of by the retirement system, a
306 local finance board or board of trustees, the board of visitors of the University of Virginia, or the
307 Virginia College Savings Plan. Nothing in this subdivision shall be construed to prevent the disclosure
308 of information relating to the identity of any investment held, the amount invested or the present value
309 of such investment.

310 21. Those portions of meetings in which individual child death cases are discussed by the State Child
311 Fatality Review Team established pursuant to § 32.1-283.1, those portions of meetings in which
312 individual child death cases are discussed by a regional or local child fatality review team established
313 pursuant to § 32.1-283.2, those portions of meetings in which individual death cases are discussed by
314 family violence fatality review teams established pursuant to § 32.1-283.3, those portions of meetings in
315 which individual adult death cases are discussed by the state Adult Fatality Review Team established
316 pursuant to § 32.1-283.5, those portions of meetings in which individual adult death cases are discussed
317 by a local or regional adult fatality review team established pursuant to § 32.1-283.6, those portions of
318 meetings in which individual death cases are discussed by overdose fatality review teams established
319 pursuant to § 32.1-283.7, those portions of meetings in which individual maternal death cases are
320 discussed by the Maternal Mortality Review Team pursuant to § 32.1-283.8, and those portions of
321 meetings in which individual death cases of persons with developmental disabilities are discussed by the
322 Developmental Disabilities Mortality Review Committee established pursuant to § 37.2-314.1.

323 22. Those portions of meetings of the board of visitors of the University of Virginia or the Eastern
324 Virginia Medical School Board of Visitors, as the case may be, and those portions of meetings of any
325 persons to whom management responsibilities for the University of Virginia Medical Center or Eastern
326 Virginia Medical School, as the case may be, have been delegated, in which there is discussed
327 proprietary, business-related information pertaining to the operations of the University of Virginia
328 Medical Center or Eastern Virginia Medical School, as the case may be, including business development
329 or marketing strategies and activities with existing or future joint venturers, partners, or other parties
330 with whom the University of Virginia Medical Center or Eastern Virginia Medical School, as the case
331 may be, has formed, or forms, any arrangement for the delivery of health care, if disclosure of such
332 information would adversely affect the competitive position of the Medical Center or Eastern Virginia
333 Medical School, as the case may be.

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

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

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

351 26. Discussion or consideration, by the former Wireless Carrier E-911 Cost Recovery Subcommittee
352 created pursuant to former § 56-484.15, of trade secrets submitted by CMRS providers, as defined in §
353 56-484.12, related to the provision of wireless E-911 service.

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

360 28. Discussion or consideration of information subject to the exclusion in subdivision 11 of
361 § 2.2-3705.6 by a responsible public entity or an affected locality or public entity, as those terms are
362 defined in § 33.2-1800, or any independent review panel appointed to review information and advise
363 the responsible public entity concerning such records.

364 29. Discussion of the award of a public contract involving the expenditure of public funds, including
365 interviews of bidders or offerors, and discussion of the terms or scope of such contract, where
366 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 the Commonwealth Health Research Board.

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 § 24.2-410.2 or 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 in subdivision 1 of § 2.2-3705.6 related to certain proprietary information gathered by or for the Virginia Port Authority.

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

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

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

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

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

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

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

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

46. Discussion or consideration by the Board of Directors of the Virginia Alcoholic Beverage Control Authority of information subject to the exclusion in subdivision 1 of § 2.2-3705.3 related to

428 investigations of applicants for licenses and permits and of licensees and permittees.

429 47. Discussion or consideration of grant, loan, or investment application records subject to the
430 exclusion in subdivision 28 of § 2.2-3705.6 for a grant, loan, or investment pursuant to Article 11
431 (§ 2.2-2351 et seq.) of Chapter 22.

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

435 49. Discussion or consideration of (i) individual sexual assault cases by a sexual assault response
436 team established pursuant to § 15.2-1627.4, (ii) individual child abuse or neglect cases or sex offenses
437 involving a child by a child sexual abuse response team established pursuant to § 15.2-1627.5, or (iii)
438 individual cases involving abuse, neglect, or exploitation of adults as defined in § 63.2-1603 pursuant to
439 §§ 15.2-1627.5 and 63.2-1605.

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

444 51. Those portions of meetings of the subcommittee of the Board of the Virginia Economic
445 Development Partnership Authority established pursuant to subsection F of § 2.2-2237.3 to review and
446 discuss information received from the Virginia Employment Commission pursuant to subdivision C 2 of
447 § 60.2-114.

448 52. Discussion or consideration by the Commonwealth of Virginia Innovation Partnership Authority
449 (the Authority), an advisory committee of the Authority, or any other entity designated by the Authority,
450 of information subject to the exclusion in subdivision 35 of § 2.2-3705.7.

451 53. Deliberations of the Virginia Lottery Board conducted pursuant to § 58.1-4105 regarding the
452 denial or revocation of a license of a casino gaming operator, or the refusal to issue, suspension of, or
453 revocation of any license or permit related to casino gaming, and discussion, consideration, or review of
454 matters related to investigations excluded from mandatory disclosure under subdivision 1 of
455 § 2.2-3705.3.

456 54. Deliberations of the Virginia Lottery Board in an appeal conducted pursuant to § 58.1-4007
457 regarding the denial of, revocation of, suspension of, or refusal to renew any license or permit related to
458 sports betting and any discussion, consideration, or review of matters related to investigations excluded
459 from mandatory disclosure under subdivision 1 of § 2.2-3705.3.

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

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

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

470 E. This section shall not be construed to (i) require the disclosure of any contract between the
471 Department of Health Professions and an impaired practitioner entered into pursuant to Chapter 25.1
472 (§ 54.1-2515 et seq.) of Title 54.1 or (ii) require the board of directors of any authority created pursuant
473 to the Industrial Development and Revenue Bond Act (§ 15.2-4900 et seq.), or any public body
474 empowered to issue industrial revenue bonds by general or special law, to identify a business or industry
475 to which subdivision A 5 applies. However, such business or industry shall be identified as a matter of
476 public record at least 30 days prior to the actual date of the board's authorization of the sale or issuance
477 of such bonds.

478 **§ 2.2-3714. Violations and penalties.**

479 A. In a proceeding commenced against any officer, employee, or member of a public body under
480 § 2.2-3713 for a violation of § 2.2-3704, 2.2-3705.1 through 2.2-3705.7, 2.2-3706, ~~2.2-3706.1~~, 2.2-3707,
481 2.2-3708.2, 2.2-3710, 2.2-3711, or 2.2-3712, the court, if it finds that a violation was willfully and
482 knowingly made, shall impose upon such officer, employee, or member in his individual capacity,
483 whether a writ of mandamus or injunctive relief is awarded or not, a civil penalty of not less than \$500
484 nor more than \$2,000, which amount shall be paid into the Literary Fund. For a second or subsequent
485 violation, such civil penalty shall be not less than \$2,000 nor more than \$5,000.

486 B. In addition to any penalties imposed pursuant to subsection A, if the court finds that any officer,
487 employee, or member of a public body failed to provide public records to a requester in accordance with
488 the provisions of this chapter because such officer, employee, or member altered or destroyed the
489 requested public records with the intent to avoid the provisions of this chapter with respect to such

request prior to the expiration of the applicable record retention period set by the retention regulations promulgated pursuant to the Virginia Public Records Act (§ 42.1-76 et seq.) by the State Library Board, the court may impose upon such officer, employee, or member in his individual capacity, whether or not a writ of mandamus or injunctive relief is awarded, a civil penalty of up to \$100 per record altered or destroyed, which amount shall be paid into the Literary Fund.

C. In addition to any penalties imposed pursuant to subsections A and B, if the court finds that a public body voted to certify a closed meeting in accordance with subsection D of § 2.2-3712 and such certification was not in accordance with the requirements of clause (i) or (ii) of subsection D of § 2.2-3712, the court may impose on the public body, whether or not a writ of mandamus or injunctive relief is awarded, a civil penalty of up to \$1,000, which amount shall be paid into the Literary Fund. In determining whether a civil penalty is appropriate, the court shall consider mitigating factors, including reliance of members of the public body on (i) opinions of the Attorney General, (ii) court cases substantially supporting the rationale of the public body, and (iii) published opinions of the Freedom of Information Advisory Council.

§ 19.2-174.1. Information required prior to admission to a mental health facility.

Prior to any person being placed into the custody of the Commissioner for evaluation or treatment pursuant to §§ 19.2-169.2, 19.2-169.3, 19.2-169.6, 19.2-182.2, and 19.2-182.3, and Chapter 9 (§ 37.2-900 et seq.) of Title 37.2, the court or special justice shall provide the Commissioner with the following, if available: (i) the commitment order; (ii) the names and addresses for the attorney for the Commonwealth, the attorney for the person, and the judge holding jurisdiction over the person; (iii) a copy of the warrant or indictment; and (iv) a copy of the criminal incident information as defined in § 2.2-3706.1 2.2-3706 or a copy of the arrest report or a summary of the facts relating to the crime. The party requesting the placement into the Commissioner's custody or, in the case of admissions pursuant to §§ 19.2-169.3 and 19.2-169.6, and Chapter 9 (§ 37.2-900 et seq.) of Title 37.2, the person having custody over the defendant or inmate shall gather the above information for submission to the court at the hearing. If the information is not available at the hearing, it shall be provided by the party requesting placement or the person having custody directly to the Commissioner within 96 hours of the person being placed into the Commissioner's custody. If the 96-hour period expires on a Saturday, Sunday or legal holiday, the 96 hours shall be extended to the next day that is not a Saturday, Sunday or legal holiday.

§ 19.2-368.3. Powers and duties of Commission.

The Commission shall have the following powers and duties in the administration of the provisions of this chapter:

1. To adopt, promulgate, amend and rescind suitable rules and regulations to carry out the provisions and purposes of this chapter, to include a distinct policy (i) for the payment of physical evidence recovery kit examinations and (ii) to require each health care provider as defined in § 8.01-581.1 that provides services under this chapter to negotiate with the Commission or its designee to establish prospective agreements relating to rates for payment of claims for such services allowed under § 19.2-368.11:1, such rates to discharge the obligation to the provider in full except where the provider is an agency of the Commonwealth and the claimant receives a third party recovery in addition to the payment from the Fund.

2. Notwithstanding the provisions of §§ § 2.2-3706 and ~~2.2-3706.1~~, to acquire from the attorneys for the Commonwealth, State Police, local police departments, sheriffs' departments, and the Chief Medical Examiner such investigative results, information, and data as will enable the Commission to determine if, in fact, a crime was committed or attempted, and the extent, if any, to which the victim or claimant was responsible for his own injury. These data shall include prior adult arrest records and juvenile court disposition records of the offender. For such purposes and in accordance with § 16.1-305, the Commission may also acquire from the juvenile and domestic relations district courts a copy of the order of disposition relating to the crime. The use of any information received by the Commission pursuant to this subdivision shall be limited to carrying out the purposes set forth in this section, and this information shall be confidential and shall not be disseminated further. The agency from which the information is requested may submit original reports, portions thereof, summaries, or such other configurations of information as will comply with the requirements of this section.

3. To hear and determine all claims for awards filed with the Commission pursuant to this chapter, and to reinvestigate or reopen cases as the Commission deems necessary.

4. To require and direct medical examination of victims.

5. To hold hearings, administer oaths or affirmations, examine any person under oath or affirmation and to issue summonses requiring the attendance and giving of testimony of witnesses and require the production of any books, papers, documentary or other evidence. The powers provided in this subsection may be delegated by the Commission to any member or employee thereof.

6. To take or cause to be taken affidavits or depositions within or without the Commonwealth.

551 7. To render each year to the Governor and to the General Assembly a written report of its activities.
552 This report shall include a detailed section on all unclaimed restitution collected and disbursed to the
553 victim from the Criminal Injuries Compensation Fund pursuant to subsection I of § 19.2-305.1.

554 8. To accept from the government of the United States grants of federal moneys for disbursement
555 under the provisions of this chapter.

556 9. To collect and disburse unclaimed restitution pursuant to subsection I of § 19.2-305.1 and develop,
557 in consultation with circuit court clerks and the Office of the Executive Secretary of the Supreme Court
558 of Virginia, policies and procedures for the receipt, collection, and disbursement of unclaimed restitution
559 to victims of crime.

560 10. To identify and locate victims of crime for whom restitution owed to such victims has been
561 deposited into the Criminal Injuries Compensation Fund pursuant to subsection I of § 19.2-305.1.
562 Notwithstanding the provisions of §§ § 2.2-3706 and ~~2.2-3706.1~~, the Commission may acquire from the
563 attorneys for the Commonwealth, State Police, local police departments, and sheriffs' departments such
564 information as will enable the Commission to identify and locate such victims. The use of any
565 information received by the Commission pursuant to this subdivision shall be limited to carrying out the
566 purposes set forth in this section, and this information shall be confidential and shall not be
567 disseminated further.

568 **2. That § 2.2-3706.1 of the Code of Virginia is repealed.**