

VIRGINIA ACTS OF ASSEMBLY -- 1998 SESSION

CHAPTER 427

An Act to amend and reenact §§ 2.1-41.2, 2.1-342, 2.1-467, 2.1-467.2, 2.1-467.4, 2.1-467.5, 2.1-467.7, 2.1-467.8, 7.1-28, 7.1-29, 9-361, 15.2-1412, 28.2-1200, 41.1-1, 41.1-2, 41.1-5, 41.1-6, 41.1-7, 41.1-15, 42.1-1, 42.1-12, 42.1-13, 42.1-14, 42.1-15, 42.1-16, 42.1-18, 42.1-30, 42.1-31, 42.1-32.7, 42.1-77, 42.1-79 through 42.1-81, 42.1-85, 42.1-86, 42.1-86.1, 42.1-88, 42.1-89, 55-186.2, 55-200, 58.1-3129, and 58.1-3306 of the Code of Virginia, relating to the State Librarian.

[H 822]

Approved April 12, 1998

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.1-41.2, 2.1-342, 2.1-467, 2.1-467.2, 2.1-467.4, 2.1-467.5, 2.1-467.7, 2.1-467.8, 7.1-28, 7.1-29, 9-361, 15.2-1412, 28.2-1200, 41.1-1, 41.1-2, 41.1-5, 41.1-6, 41.1-7, 41.1-15, 42.1-1, 42.1-12, 42.1-13, 42.1-14, 42.1-15, 42.1-16, 42.1-18, 42.1-30, 42.1-31, 42.1-32.7, 42.1-77, 42.1-79 through 42.1-81, 42.1-85, 42.1-86, 42.1-86.1, 42.1-88, 42.1-89, 55-186.2, 55-200, 58.1-3129, and 58.1-3306 of the Code of Virginia are amended and reenacted as follows:

§ 2.1-41.2. Appointment of agency heads; chief of staff.

Notwithstanding any provision of law to the contrary, the Governor shall appoint the administrative head of each agency of the executive branch of state government except the following: the Executive Director of the Virginia Port Authority, the Director of the State Council of Higher Education for Virginia, the Executive Director of the Department of Game and Inland Fisheries, the Executive Director of the Jamestown-Yorktown Foundation, the Executive Director of the Motor Vehicle Dealer Board, the Executive Director of the Virginia Higher Education Tuition Trust Fund, and the ~~State~~ Librarian of Virginia. However, the manner of selection of those heads of agencies chosen by election as of January 1, 1976, or as set forth in the Constitution of Virginia shall continue without change. Each administrative head and Secretary appointed by the Governor pursuant to this section shall be subject to confirmation by the General Assembly, shall have such professional qualifications as may be prescribed by law, and shall serve at the pleasure of the Governor. The chief of staff who may be appointed by the Governor pursuant to § 2.1-38 shall be confirmed by a majority of the members of each house of the General Assembly. For the purpose of this section, "agency" shall include all administrative units established by law or by executive order which are not arms of the legislative or judicial branches of government, which are not educational institutions as classified under §§ 9-84, 22.1-346, 23-14, and 23-252, which are not regional planning districts, regional transportation authorities or districts, or regional sanitation districts and which are not assigned by law to other departments or agencies, not including assignments to secretaries under Chapter 5.1 (§ 2.1-51.7 et seq.) of this title.

§ 2.1-342. Official records to be open to inspection; procedure for requesting records and responding to request; charges; exceptions to application of chapter.

A. Except as otherwise specifically provided by law, all official records shall be open to inspection and copying by any citizens of the Commonwealth during the regular office hours of the custodian of such records. Access to such records shall not be denied 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. The custodian of such records shall take all necessary precautions for their preservation and safekeeping. Any public body covered under the provisions of this chapter shall make an initial response to citizens requesting records open to inspection within five work days after the receipt of the request by the public body which is the custodian of the requested records. Such citizen request shall designate the requested records with reasonable specificity. A specific reference to this chapter by the requesting citizen in his request shall not be necessary to invoke the provisions of this chapter and the time limits for response by the public body. The response by the public body within such five work days shall be one of the following responses:

1. The requested records shall be provided to the requesting citizen.
2. If the public body determines that an exemption applies to all of the requested records, it may refuse to release such records and provide to the requesting citizen a written explanation as to why the records are not available with the explanation making specific reference to the applicable Code sections which make the requested records exempt.
3. If the public body determines that an exemption applies to a portion of the requested records, it may delete or excise that portion of the records to which an exemption applies, but shall disclose the remainder of the requested records and provide to the requesting citizen a written explanation as to why these portions of the record are not available to the requesting citizen with the explanation making specific reference to the applicable Code sections which make that portion of the requested records

exempt. Any reasonably segregatable portion of an official record shall be provided to any person requesting the record after the deletion of the exempt portion.

4. If the public body determines that it is practically impossible to provide the requested records or to determine whether they are available within the five-work-day period, the public body shall so inform the requesting citizen and shall have an additional seven work days in which to provide one of the three preceding responses.

Nothing in this section shall prohibit any public body from petitioning the appropriate court for additional time to respond to a request for records when the request is for an extraordinary volume of records 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 this petition, however, the public body shall make reasonable efforts to reach an agreement with the requester concerning the production of the records requested.

The public body may make reasonable charges for the copying, search time and computer time expended in the supplying of such records. The public body may also make a reasonable charge for preparing documents produced from a geographic information system at the request of anyone other than the owner of the land that is the subject of the request. However, such charges shall not exceed the actual cost to the public body in supplying such records or documents, except that the public body may charge, on a pro rata per acre basis, for the cost of creating topographical maps developed by the public body, for such maps or portions thereof, which encompass a contiguous area greater than fifty acres. Such charges for the supplying of requested records shall be estimated in advance at the request of the citizen. The public body may require the advance payment of charges which are subject to advance determination.

In any case where a public body determines in advance that search and copying charges for producing the requested documents are likely to exceed \$200, the public body may, before continuing to process the request, require the citizen requesting the information to agree to payment of an amount not to exceed the advance determination by five percent. The period within which the public body must respond under this section shall be tolled for the amount of time that elapses between notice of the advance determination and the response of the citizen requesting the information.

Official records maintained by a public body on a computer or other electronic data processing system which are available to the public under the provisions of this chapter shall be made reasonably accessible to the public at reasonable cost. Beginning July 1, 1997, every public body of state government shall compile, and annually update, an index of computer databases which contains at a minimum those databases created by them on or after July 1, 1997. "Computer database" means a structured collection of data or documents residing in a computer. Such index shall be an official record and shall include, at a minimum, the following information with respect to each database listed therein: a list of data fields, a description of the format or record layout, the date last updated, a list of any data fields to which public access is restricted, a description of each format in which the database can be copied or reproduced using the public body's computer facilities, and a schedule of fees for the production of copies in each available form. The form, context, language, and guidelines for the indices and the databases to be indexed shall be developed by the Director of the Department of Information Technology in consultation with the *State Librarian of Virginia* and the State Archivist. The public body shall not be required to disclose its software security, including passwords.

Public bodies shall not be required to create or prepare a particular requested record if it does not already exist. Public bodies may, but shall not be required to, abstract or summarize information from official records or convert an official record available in one form into another form at the request of the citizen. The public body shall make reasonable efforts to reach an agreement with the requester concerning the production of the records requested.

Failure to make any response to a request for records shall be a violation of this chapter and deemed a denial of the request.

B. The following records are excluded from the provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law:

1. Memoranda, correspondence, evidence and complaints related to criminal investigations; adult arrestee photographs when necessary to avoid jeopardizing an investigation in felony cases until such time as the release of such photograph will no longer jeopardize the investigation; reports submitted to the state and local police, to investigators authorized pursuant to § 53.1-16 and to the campus police departments of public institutions of higher education as established by Chapter 17 (§ 23-232 et seq.) of Title 23 in confidence; portions of records of local government crime commissions that would identify individuals providing information about crimes or criminal activities under a promise of anonymity; records of local police departments relating to neighborhood watch programs that include the names, addresses, and operating schedules of individual participants in the program that are provided to such departments under a promise of confidentiality; and all records of persons imprisoned in penal institutions in the Commonwealth provided such records relate to the imprisonment. Information in the custody of law-enforcement officials relative to the identity of any individual other than a juvenile who is arrested and charged, and the status of the charge or arrest, shall not be excluded from the provisions

of this chapter.

Criminal incident information relating to felony offenses shall not be excluded from the provisions of this chapter; however, where the release of criminal incident information is likely to jeopardize an ongoing criminal investigation 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.

2. Confidential records of all investigations of applications for licenses and permits, and all licensees and permittees made by or submitted to the Alcoholic Beverage Control Board, the State Lottery Department, the Virginia Racing Commission, or the Charitable Gaming Commission.

3. State income, business, and estate tax returns, personal property tax returns, scholastic records and personnel records containing information concerning identifiable individuals, except that such access shall not be denied to the person who is the subject thereof, and medical and mental records, except that such records can be personally reviewed by the subject person or a physician of the subject person's choice; however, the subject person's mental records may not be personally reviewed by such person when the subject person's treating physician has made a part of such person's records a written statement that in his opinion a review of such records by the subject person would be injurious to the subject person's physical or mental health or well-being.

Where the person who is the subject of medical records is confined in a state or local correctional facility, the administrator or chief medical officer of such facility may assert such confined person's right of access to the medical records if the administrator or chief medical officer has reasonable cause to believe that such confined person has an infectious disease or other medical condition from which other persons so confined need to be protected. Medical records shall be reviewed only and shall not be copied by such administrator or chief medical officer. The information in the medical records of a person so confined shall continue to be confidential and shall not be disclosed to any person except the subject by the administrator or chief medical officer of the facility or except as provided by law.

For the purposes of this chapter such statistical summaries of incidents and statistical data concerning patient abuse as may be compiled by the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services shall be open to inspection and releasable as provided in subsection A of this section. No such summaries or data shall include any patient-identifying information. Where the person who is the subject of scholastic or medical and mental records is under the age of eighteen, his right of access may be asserted only by his guardian or his parent, including a noncustodial parent, unless such parent's parental rights have been terminated or a court of competent jurisdiction has restricted or denied such access. In instances where the person who is the subject thereof is an emancipated minor or a student in a state-supported institution of higher education, such right of access may be asserted by the subject person.

4. Memoranda, working papers and correspondence (i) held by or requested from members of the General Assembly or the Division of Legislative Services or (ii) held or requested by the Office of the Governor or Lieutenant Governor, Attorney General or the mayor or other chief executive officer of any political subdivision of the Commonwealth or the president or other chief executive officer of any state-supported institution of higher education. This exclusion shall not apply to memoranda, studies or other papers held or requested by the mayor or other chief executive officer of any political subdivision which are specifically concerned with the evaluation of performance of the duties and functions of any locally elected official and were prepared after June 30, 1992, nor shall this exclusion apply to agenda packets prepared and distributed to public bodies for use at a meeting.

Except as provided in § 30-28.18, memoranda, working papers and correspondence of a member of the General Assembly held by the Division of Legislative Services shall not be released by the Division without the prior consent of the member.

5. Written opinions of the city, county and town attorneys of the cities, counties and towns in the Commonwealth and any other writing protected by the attorney-client privilege.

6. Memoranda, working papers and records compiled specifically for use in litigation or as a part of an active administrative investigation concerning a matter which is properly the subject of an executive or closed meeting under § 2.1-344 and material furnished in confidence with respect thereto.

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

8. Library records which can be used to identify both (i) any library patron who has borrowed material from a library and (ii) the material such patron borrowed.

9. 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 any public body.

As used in this subdivision 9, "test or examination" shall include (i) any scoring key for any such test or examination and (ii) any other document which would jeopardize the security of such test or examination. Nothing contained in this subdivision 9 shall prohibit the release of test scores or results as

provided by law, or limit access to individual records as is provided by law. However, the subject of such employment tests shall be entitled to review and inspect all documents 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, such 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.

10. Applications for admission to examinations or for licensure and scoring records maintained by the Department of Health Professions or any board in that department on individual licensees or applicants. However, such material may be made available during normal working hours for copying, at the requester's expense, by the individual who is the subject thereof, in the offices of the Department of Health Professions or in the offices of any health regulatory board, whichever may possess the material.

11. Records of active investigations being conducted by the Department of Health Professions or by any health regulatory board in the Commonwealth.

12. Memoranda, legal opinions, working papers and records recorded in or compiled exclusively for executive or closed meetings lawfully held pursuant to § 2.1-344.

13. Reports, documentary evidence and other information as specified in §§ 2.1-373.2 and 63.1-55.4.

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

15. 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, documents and automated systems prepared for the Department's Bid Analysis and Monitoring Program.

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

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

18. Financial statements not publicly available filed with applications for industrial development financings.

19. 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.

20. Confidential proprietary records, voluntarily provided by private business pursuant to a promise of confidentiality from the Department of Business Assistance, the Virginia Economic Development Partnership or local or regional industrial or economic development authorities or organizations, used by the Department, the Partnership, or such entities for business, trade and tourism development; and memoranda, working papers or other records related to businesses that are considering locating or expanding in Virginia, prepared by the Partnership, where competition or bargaining is involved and where, if such records are made public, the financial interest of the governmental unit would be adversely affected.

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

22. Documents as specified in § 58.1-3.

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

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

25. Investigator notes, and other correspondence and information, furnished in confidence with respect to an active investigation of individual employment discrimination complaints made to the Department of Personnel and Training; however, nothing in this section shall prohibit the disclosure of information taken from inactive reports in a form which does not reveal the identity of charging parties, persons supplying the information or other individuals involved in the investigation.

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

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

28. Documents and writings 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 § 2.1-639.40 or of formulating advisory opinions to members on standards of conduct, or both.

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

30. Investigative notes and other correspondence and information furnished in confidence with respect to an investigation or conciliation process involving an alleged unlawful discriminatory practice under the Virginia Human Rights Act (§ 2.1-714 et seq.); however, nothing in this section shall prohibit the distribution of information taken from inactive reports in a form which does not reveal the identity of the parties involved or other persons supplying information.

31. Investigative notes; proprietary information not published, copyrighted or patented; information obtained from employee personnel records; personally identifiable information regarding residents, clients or other recipients of services; and other correspondence and information furnished in confidence to the Department of Social Services in connection with an active investigation of an applicant or licensee pursuant to Chapters 9 (§ 63.1-172 et seq.) and 10 (§ 63.1-195 et seq.) of Title 63.1; however, nothing in this section shall prohibit disclosure of information from the records of completed investigations in a form that does not reveal the identity of complainants, persons supplying information, or other individuals involved in the investigation.

32. Reports, manuals, specifications, documents, minutes or recordings of staff meetings or other information or materials of the Virginia Board of Corrections, the Virginia Department of Corrections or any institution thereof to the extent, as determined by the Director of the Department of Corrections or his designee or of the Virginia Board of Juvenile Justice, the Virginia Department of Juvenile Justice or any facility thereof to the extent as determined by the Director of the Department of Juvenile Justice, or his designee, that disclosure or public dissemination of such materials would jeopardize the security of any correctional or juvenile facility or institution, as follows:

- (i) Security manuals, including emergency plans that are a part thereof;
- (ii) Engineering and architectural drawings of correctional and juvenile facilities, and operational specifications of security systems utilized by the Departments, provided the general descriptions of such security systems, cost and quality shall be made available to the public;
- (iii) Training manuals designed for correctional and juvenile facilities to the extent that they address procedures for institutional security, emergency plans and security equipment;
- (iv) Internal security audits of correctional and juvenile facilities, but only to the extent that they specifically disclose matters described in (i), (ii), or (iii) above or other specific operational details the disclosure of which would jeopardize the security of a correctional or juvenile facility or institution;
- (v) Minutes or recordings of divisional, regional and institutional staff meetings or portions thereof to the extent that such minutes deal with security issues listed in (i), (ii), (iii), and (iv) of this subdivision;
- (vi) Investigative case files by investigators authorized pursuant to § 53.1-16; however, nothing in this section shall prohibit the disclosure of information taken from inactive reports in a form which does not reveal the identity of complainants or charging parties, persons supplying information, confidential sources, or other individuals involved in the investigation, or other specific operational details the disclosure of which would jeopardize the security of a correctional or juvenile facility or institution; nothing herein shall permit the disclosure of materials otherwise exempt as set forth in subdivision 1 of subsection B of this section;

(vii) Logs or other documents containing information on movement of inmates, juvenile clients or employees; and

(viii) Documents disclosing contacts between inmates, juvenile clients and law-enforcement personnel.

Notwithstanding the provisions of this subdivision, reports and information regarding the general operations of the Departments, including notice that an escape has occurred, shall be open to inspection and copying as provided in this section.

33. Personal information, as defined in § 2.1-379, (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, or (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. However, access to one's own information shall not be denied.

34. Documents regarding the siting of hazardous waste facilities, except as provided in § 10.1-1441, if disclosure of them 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.

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

36. Records containing 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 which has the responsibility for such information, disclosure of the information would jeopardize the continued existence or the integrity of the resource. This exemption shall not apply to requests from the owner of the land upon which the resource is located.

37. Official records, memoranda, working papers, graphics, video or audio tapes, production models, data and information of a proprietary nature produced by or for or collected by or for the State Lottery Department 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 official records have 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.

38. Official records of studies and investigations by the State Lottery Department of (i) lottery agents, (ii) lottery vendors, (iii) lottery crimes under §§ 58.1-4014 through 58.1-4018, (iv) defects in the law or regulations which cause abuses in the administration and operation of the lottery and any evasions of such provisions, or (v) use of the lottery as a subterfuge for organized crime and illegal gambling where such official records have not been publicly released, published or copyrighted. All studies and investigations referred to under subdivisions (iii), (iv) and (v) shall be subject to public disclosure under this chapter upon completion of the study or investigation.

39. Those portions of engineering and construction drawings and plans submitted for the sole purpose of complying with the building code in obtaining a building permit which would identify specific trade secrets or other information the disclosure of which 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.

40. [Repealed.]

41. Records concerning reserves established in specific claims administered by the Department of General Services through its Division of Risk Management as provided in Article 5.1 (§ 2.1-526.1 et seq.) of Chapter 32 of this title, or by any county, city, or town.

42. Information and records collected for the designation and verification of trauma centers and other specialty care centers within the Statewide Emergency Medical Services System and Services pursuant to Article 2.1 (§ 32.1-111.1 et seq.) of Chapter 4 of Title 32.1.

43. Reports and court documents required to be kept confidential pursuant to § 37.1-67.3.

44. [Repealed.]

45. Investigative notes; correspondence and information furnished in confidence with respect to an investigation; and official records otherwise exempted by this chapter or any Virginia statute, provided to or produced by or for the Auditor of Public Accounts and the Joint Legislative Audit and Review Commission; or investigative notes, correspondence, documentation and information furnished and provided to or produced by or for the Department of the State Internal Auditor with respect to an investigation initiated through the State Employee Fraud, Waste and Abuse Hotline. Nothing in this chapter shall prohibit disclosure of information from the records of completed investigations in a form that does not reveal the identity of complainants, persons supplying information or other individuals involved in the investigation; however, disclosure, unless such disclosure is prohibited by this section, of information from the records of completed investigations shall include, but is not limited to, the agency involved, the identity of the person who is the subject of the complaint, the nature of the complaint, and the actions taken to resolve the complaint. In the event an investigation does not lead to corrective action, the identity of the person who is the subject of the complaint may be released only with the consent of the subject person.

46. Data formerly required to be submitted to the Commissioner of Health relating to the establishment of new or expansion of existing clinical health services, acquisition of major medical equipment, or certain projects requiring capital expenditures pursuant to former § 32.1-102.3:4.

47. Documentation or other information which describes the design, function, operation or access control features of any security system, whether manual or automated, which is used to control access to or use of any automated data processing or telecommunications system.

48. 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 Interstate Commerce Commission or the Federal Rail Administration with respect to data provided in confidence to the Interstate Commerce Commission and the Federal Railroad Administration.

49. In the case of corporations organized by the Virginia Retirement System, (i) proprietary information provided by, and financial information concerning, coventurers, partners, lessors, lessees, or

investors, and (ii) records concerning the condition, acquisition, disposition, use, leasing, development, coventuring, or management of real estate the disclosure of which would have a substantial adverse impact on the value of such real estate or result in a competitive disadvantage to the corporation or subsidiary.

50. Confidential proprietary records 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.

51. 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.

52. [Repealed.]

53. 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 Intermodal Surface Transportation Efficiency Act of 1991 (P.L. 102-240) for transportation projects, provided such information is exempt under the federal Freedom of Information Act or the federal Interstate Commerce Act or other laws administered by the Interstate Commerce Commission or the Federal Rail Administration with respect to data provided in confidence to the Interstate Commerce Commission and the Federal Railroad Administration. However, the exemption provided by this subdivision shall not apply to any wholly owned subsidiary of a public body.

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

55. Reports, documents, memoranda or other information or materials which describe any aspect of security used by the Virginia Museum of Fine Arts to the extent that disclosure or public dissemination of such materials would jeopardize the security of the Museum or any warehouse controlled by the Museum, as follows:

- a. Operational, procedural or tactical planning documents, including any training manuals to the extent they discuss security measures;
- b. Surveillance techniques;
- c. Installation, operation, or utilization of any alarm technology;
- d. Engineering and architectural drawings of the Museum or any warehouse;
- e. Transportation of the Museum's collections, including routes and schedules; or
- f. Operation of the Museum or any warehouse used by the Museum involving the:
 - (1) Number of employees, including security guards, present at any time; or
 - (2) Busiest hours, with the maximum number of visitors in the Museum.

56. Reports, documents, memoranda or other information or materials which describe any aspect of security used by the Virginia Department of Alcoholic Beverage Control to the extent that disclosure or public dissemination of such materials would jeopardize the security of any government store as defined in Title 4.1, or warehouse controlled by the Department of Alcoholic Beverage Control, as follows:

- (i) Operational, procedural or tactical planning documents, including any training manuals to the extent they discuss security measures;
- (ii) Surveillance techniques;
- (iii) The installation, operation, or utilization of any alarm technology;
- (iv) Engineering and architectural drawings of such government stores or warehouses;
- (v) The transportation of merchandise, including routes and schedules; and
- (vi) The operation of any government store or the central warehouse used by the Department of Alcoholic Beverage Control involving the:

- a. Number of employees present during each shift;
- b. Busiest hours, with the maximum number of customers in such government store; and
- c. Banking system used, including time and place of deposits.

57. Information required to be provided pursuant to § 54.1-2506.1.

58. Confidential information designated as provided in subsection D of § 11-52 as trade secrets or proprietary information 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 § 11-46.

59. All information and records acquired during a review of any child death by the State Child Fatality Review Team established pursuant to § 32.1-283.1.

60. Investigative notes, correspondence, documentation and information provided to or produced by or for the committee or the auditor with respect to an investigation or audit conducted pursuant to § 15.1-765.2. Nothing in this section shall prohibit disclosure of information from the records of completed investigations or audits in a form that does not reveal the identity of complainants or persons supplying information.

61. 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.

62. Confidential proprietary records which are voluntarily provided by a private entity pursuant to a proposal filed with a public entity under the Public-Private Transportation Act of 1995 (§ 56-556 et seq.), pursuant to a promise of confidentiality from the responsible public entity, used by the responsible public entity for purposes related to the development of a qualifying transportation facility; and memoranda, working papers or other records related to proposals filed under the Public-Private Transportation Act of 1995, where, if such records were made public, the financial interest of the public or private entity involved with such proposal or the process of competition or bargaining would be adversely affected. In order for confidential proprietary information to be excluded from the provisions of this chapter, the private entity shall (i) invoke such exclusion upon submission of the data or other materials for which protection from disclosure is sought, (ii) identify the data or other materials for which protection is sought, and (iii) state the reasons why protection is necessary. For the purposes of this subdivision, the terms public entity and private entity shall be defined as they are defined in the Public-Private Transportation Act of 1995.

63. 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; engineering plans, architectural drawings, or operational specifications of governmental law-enforcement facilities, including but not limited to courthouses, jails, and detention facilities, to the extent that disclosure could jeopardize the safety or security of law-enforcement offices; however, general descriptions shall be provided to the public upon request.

64. All records of the University of Virginia or the University of Virginia Medical Center which contain proprietary, business-related information pertaining to the operations of the University of Virginia Medical Center, including its business development or marketing strategies and its activities with existing or future joint venturers, partners, or other parties with whom the University of Virginia Medical Center has formed, or forms, any arrangement for the delivery of health care, if disclosure of such information would be harmful to the competitive position of the Medical Center.

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

66. Records of the Medical College of Virginia Hospitals Authority pertaining to any of the following: (i) 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; data, records or 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; and the determination of marketing and operational strategies where disclosure of such strategies would be harmful to the competitive position of the Authority; and (ii) data, records or 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 data, records or information have not been publicly released, published, copyrighted or patented.

67. Confidential proprietary information or trade secrets, not publicly available, provided by a private person or entity 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 is made public, the financial interest of the private person or entity would be adversely affected, and, after June 30, 1997, where such information was provided pursuant to a promise of confidentiality.

68. Confidential proprietary records which are provided by a franchisee under ~~§ 45.1-23.4~~ 15.2-2108 to its franchising authority pursuant to a promise of confidentiality from the franchising authority which relates to the franchisee's potential provision of new services, adoption of new technologies or implementation of improvements, where such new services, technologies or improvements have not been implemented by the franchisee on a nonexperimental scale in the franchise area, and where, if such records were made public, the competitive advantage or financial interests of the franchisee would be adversely affected. In order for confidential proprietary information to be excluded from the provisions of this chapter, the franchisee shall (i) invoke such exclusion upon submission of the data or other materials for which protection from disclosure is sought, (ii) identify the data or other materials for which protection is sought, and (iii) state the reason why protection is necessary.

69. Records of the Intervention Program Committee within the Department of Health Professions to the extent such records may identify any practitioner who may be, or who is actually, impaired to the

extent disclosure is prohibited by § 54.1-2517.

70. Records submitted as a grant application, or accompanying a grant application, to the Commonwealth Neurotrauma Initiative Advisory Board pursuant to Article 12 (§ 32.1-73.1 et seq.) of Chapter 2 of Title 32.1, to the extent such records contain: (i) medical or mental records, or other data identifying individual patients, or (ii) proprietary business or research related information produced or collected by the applicant in the conduct of or as a result of study or research on medical, rehabilitative, scientific, technical or scholarly issues, when such information has not been publicly released, published, copyrighted or patented, if the disclosure of such information would be harmful to the competitive position of the applicant.

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

72. Documents and other information of a proprietary nature furnished by a supplier of charitable gaming supplies to the Charitable Gaming Commission pursuant to subsection E of § 18.2-340.34.

73. Personal information, as defined in § 2.1-379, provided to the Board of the Virginia Higher Education Tuition Trust Fund or its employees by or on behalf of individuals who have requested information about, applied for, or entered into prepaid tuition contracts pursuant to Chapter 4.9 (§ 23-38.75 et seq.) of Title 23. Nothing in this subdivision shall be construed to prohibit disclosure or publication of information in a statistical or other form which does not identify individuals or provide personal information. Individuals shall be provided access to their own personal information.

C. Neither any provision of this chapter nor any provision of Chapter 26 (§ 2.1-377 et seq.) of this title shall be construed as denying public access to contracts between a public official and a public body, other than contracts settling public employee employment disputes held confidential as personnel records under subdivision 3 of subsection B of this section, or to records of the position, job classification, official salary or rate of pay of, and to records of the allowances or reimbursements for expenses paid to, any public officer, official or employee at any level of state, local or regional government in the Commonwealth or to the compensation or benefits paid by any corporation organized by the Virginia Retirement System or its officers or employees. The provisions of this subsection, however, shall not apply to records of the official salaries or rates of pay of public employees whose annual rate of pay is \$10,000 or less.

D. No provision of this chapter shall be construed to afford any rights to any person incarcerated in a state, local or federal correctional facility, whether or not such facility is (i) located in the Commonwealth or (ii) operated pursuant to the Corrections Private Management Act (§ 53.1-261 et seq.). However, this subsection shall not be construed to prevent an incarcerated person from exercising his constitutionally protected rights, including but not limited to his rights to call for evidence in his favor in a criminal prosecution.

§ 2.1-467. Distribution of annual or biennial reports.

A. Unless otherwise provided by law, the Division of Purchases and Supply shall cause to be distributed by the reporting department, agency or institution, the printed volumes of annual or biennial reports as follows:

1. One or more copies to the Governor, as he may direct;
2. One copy to the President of the Senate;
3. Such number of copies to The Library of Virginia as may be designated by the ~~State~~ Librarian of Virginia, pursuant to § 2.1-467.2;
4. One copy to the Clerk of the Senate for the use of the Senate and one copy to the Clerk of the House of Delegates for the use of the House;
5. Such number of copies to the Law Library of the University of Virginia as may be designated by the Law Librarian, pursuant to § 30-34.9; and
6. One copy to the Division of Purchases and Supply, Department of General Services.

B. The Division of Purchases and Supply shall distribute to all legislators and agency heads a list of state agencies for the purpose of selecting those agencies whose reports they wish to receive. The Division shall also make provision on the list for individuals to specify the types of agency reports they wish to receive, including annual or biennial, recurring, major or all reports. Agencies shall be informed by the Division as to those individuals who wish to receive their reports and should limit the distribution of their reports accordingly.

C. Any member of the General Assembly or agency head may at any time file with the Division of Purchases and Supply a request that he not be sent reports from agencies named by him and that his name be deleted from the mailing lists of such agencies. The Division shall notify all agencies involved.

D. State agencies shall update their mailing lists annually and shall limit the quantities printed to the reasonably foreseeable demand.

§ 2.1-467.2. Agencies to furnish copies to The Library of Virginia.

Every agency shall furnish such number of copies as may be designated by the ~~State~~ Librarian of

Virginia of each of its publications at the time of issue to The Library of Virginia for its collection and copies sufficient for the depository system and for exchange purposes, not exceeding 100 copies.

§ 2.1-467.4. Records to be kept by agencies; information to be furnished to Librarian of Virginia upon request.

A. Every agency shall maintain such records of the cost of printing and distributing publications, and the revenue therefrom, as are necessary to disclose the actual costs of such publication and mailing and the revenue received therefrom. In addition to other expenses, there shall be included in the cost of publication the cost of purchased materials, staff time and the expenses involved in printing and mailing any such publication. Each agency shall furnish to the ~~State~~ Librarian of *Virginia* such records of costs of printing and distribution, along with such additional information relating to cost of printing and distribution of such publications as shall be specifically requested by the ~~State~~ Librarian of *Virginia*.

B. ~~[Repealed.]~~

§ 2.1-467.5. Annual listing.

The ~~State~~ Librarian of *Virginia* shall compile an annual listing of all publications printed by each state agency during the previous fiscal year, to include the quantity of each publication printed and the costs to print and distribute each publication.

§ 2.1-467.7. Librarian of Virginia to prepare and publish catalog.

The ~~State~~ Librarian of *Virginia* shall prepare, publish and make available annually a catalog of publications printed by state agencies. Each such publication shall be indexed by subject, author and issuing agency. The date of publication of each listed publication shall be noted in the catalog together with information showing, in appropriate cases, that library copies only are available. To the extent such information is available, the catalog shall set forth the price charged, if any, of each publication and how and where the same may be obtained.

§ 2.1-467.8. Distribution of catalog.

The catalog shall be made available without cost to persons indicating a continuing interest in such catalog. Copies sent out of state shall be on an exchange basis or at a price sufficient to equal the unit cost of printing and mailing; complimentary copies may be made available by the ~~State~~ Librarian of *Virginia*.

§ 7.1-28. Custody and use of seals; impressions displayed in The Library of Virginia.

The seals of the Commonwealth described in §§ 7.1-26 and 7.1-27 shall be kept and used as provided by law, and at least three clear impressions thereof shall be kept and displayed by the ~~State~~ Librarian of *Virginia* in some suitable place in The Library of Virginia, for public inspection.

§ 7.1-29. Canceled seals.

Former seals of the Commonwealth, which were required to be canceled by quartering the same with two straight lines crossing at right angles at the center of the disc, and cut at least as deep as the figures thereon, shall be safely kept in the office of the Secretary of the Commonwealth and at least three clear impressions thereof filed with the ~~State~~ Librarian of *Virginia* to be by him duly indexed and safely kept in a suitable place.

§ 9-361. Board of directors.

The Authority shall be governed by a board of directors consisting of eleven members, two of whom shall be the Secretary of Administration and the Director of the Council on Information Management, both of whom shall serve during their terms of office. The remaining nine members shall be appointed by the Governor as follows: three members who are chief executive officers of agencies in the executive branch; two members from a list submitted by the Virginia State Bar; three members from user associations of a statewide character, except that no two shall represent the same user association; and one member from a list submitted by the ~~State~~ Librarian of *Virginia*. Three members appointed by the Governor shall be appointed for terms of one year, three for terms of two years, and three for terms of three years, effective from their dates of appointment. Thereafter, board members shall be appointed for terms of three years. All board members appointed by the Governor shall be confirmed by the affirmative vote of a majority of those voting in each house of the General Assembly. Vacancies in board membership shall be filled by appointment for the unexpired portion of the term. Board members shall be subject to removal from office for cause. The board shall annually elect one of its members as chairman, one as vice-chairman, and another as secretary. The board may also elect other subordinate officers, who may or may not be members of the board, as it deems proper. The chairman or, in his absence, the vice-chairman shall preside at all meetings of the board. In the absence of both the chairman and vice-chairman, the board shall appoint a chairman pro tempore, who shall preside at such meetings. Six members shall constitute a quorum for the transaction of the Authority's business, and no vacancy in the membership shall impair the right of a quorum to exercise all the rights and perform all the duties of the Authority. Pursuant to § 14.1-5, board members shall be entitled to reimbursement for their reasonable travel, meal and lodging expenses incurred in attending board meetings or while otherwise engaged in discharging their duties. Such expenses shall be paid out of the treasury of the Authority upon vouchers signed by the board chairman or by such other person as the board designates for this purpose. The board shall employ a network manager of the Authority, who shall serve at the pleasure of the board, to direct the day-to-day operations and activities of the Authority and carry out

the powers and duties conferred upon him as may be delegated to him by the board. The network manager and employees of the Authority shall be compensated in the manner provided by the board.

§ 15.2-1412. Reproductions of records and documents and legal status thereof; destruction of originals.

Any locality may provide for the photographing or microphotographing, or the recording by any other process which accurately reproduces or forms a durable medium for reproducing the original of all or any part of the papers, records, documents or other material kept by or in the charge of any department, agency or institution of such locality in accordance with such standards and retention schedules as may be issued in pursuance of § 42.1-82.

A reproduction thereof if substantially the same size as the original, when satisfactorily identified, is as admissible in evidence as the original itself in any judicial or administrative proceeding whether the original is in existence or not, and an enlargement or facsimile of such reproduction is likewise admissible in evidence if the original reproduction is in existence and available for inspection under direction of the court. The introduction of a reproduced record, enlargement or facsimile, does not preclude admission of the original.

Whenever photographs or microphotographs shall have been made and put in conveniently accessible files, and provision has been made for preserving, examining and using the same, the locality may notify the *State Librarian of Virginia* that it intends to destroy the records and papers so photographed or microphotographed, or any part thereof. If within sixty days the *State Librarian of Virginia* has not notified the locality that such records or papers should be retained, the locality may destroy them. A locality may also, in its discretion, consult with the locality's librarian with reference to the advisability of destroying any such records, papers, documents or other material because of any historical significance or value.

With the approval of the judge of the circuit court entered of record, the clerk of the circuit court and the clerk of the district court, if directed to do so by the governing body, may microphotograph records in their respective offices which are not required for current use. No record so microphotographed shall be destroyed but may be stored in a safe place. The microphotograph or a certified copy thereof shall have the same force and effect as the original record.

§ 28.2-1200. Ungranted beds of bays, rivers, creeks and shores of the sea to remain in common.

All the beds of the bays, rivers, creeks and the shores of the sea within the jurisdiction of the Commonwealth, not conveyed by special grant or compact according to law, shall remain the property of the Commonwealth and may be used as a common by all the people of the Commonwealth for the purpose of fishing, fowling, hunting, and taking and catching oysters and other shellfish. No grant shall be issued by the *State Librarian of Virginia* to pass any estate or interest of the Commonwealth in any natural oyster bed, rock, or shoal, whether or not it ebbs bare.

§ 41.1-1. Librarian of Virginia in charge of Land Office.

The *State Librarian of Virginia* shall be in charge of and keep and preserve all records of the Land Office.

§ 41.1-2. Act changing name of Denny Martin taken as true; records, etc., of Northern Neck and other lands.

In all suits, either at law or in equity, in which title to any land is derived or sought to be derived from Lord Fairfax, through Denny Martin Fairfax, it shall not be necessary in order to make out a chain of title, to prove the act of Parliament authorizing Denny Martin, the devisee of Lord Fairfax, to take the name of Fairfax, but the same shall be presumed and taken to be true to the same extent as if a properly authenticated copy of such act had been adduced in evidence.

The records, documents, and entries of land granted by the former lord proprietor of the Northern Neck, and of all land granted, or to be granted, by the Commonwealth, shall be in the keeping of the *State Librarian of Virginia* in the Land Office in the City of Richmond.

§ 41.1-5. Circuit courts authorized to dispose of waste and unappropriated lands.

The circuit courts of the counties and cities in which waste and unappropriated lands are alleged to lie are vested with authority to sell and dispose thereof in proceedings brought under §§ 41.1-16 through 41.1-20; however, no sale or disposition shall be made of lands mentioned in § 28.2-1200 or of lands as to which a grant could not have been issued by the *State Librarian of Virginia* under § 41.1-3.

§ 41.1-6. Ratification of grants issued pursuant to § 41.1-3.

Any grants for land heretofore issued by the *State Librarian of Virginia* pursuant to § 41.1-3 (~~§ 41-8 of the Code of 1950~~) are hereby ratified and confirmed and title is confirmed in the grantees thereof.

§ 41.1-7. Copies of unsigned grants admissible in evidence; Commonwealth's right relinquished when certain taxes paid; correction of record.

Where the records in the Land Office disclose the fact that the land warrants used as the foundation for a grant of any of the public lands of the Commonwealth, subject to grant, were fully paid for and that the right to such grant was finally and fully completed in the manner prescribed by law and a grant therefor made out and spread upon the record book in the Land Office, in due form of law and regular in every respect only that the name of the then Governor of Virginia was not recorded at the foot thereof on the record book, it shall be the duty of the *State Librarian of Virginia*, upon the request of

any person interested, to furnish a copy of such grant as it appears of record in the Land Office, together with a certificate to the effect that the land warrants upon which such grant was founded, were fully paid for; that the right to such grant had been finally and fully completed in the manner prescribed by law, and that the grant was regular in every respect except only that the signature of the Governor did not appear at the foot thereof on the record. Such copy and certificate shall be received in evidence in any legal proceeding in which the title to the land described in such grant, or any part thereof, is brought in controversy, and shall be prima facie evidence of title to such land; and when the land embraced in such grant, or any part thereof, shall have been regularly on the proper land books and the taxes and levies regularly assessed thereon and paid by the claimants thereof, claiming under such grant, for a continuous period of ten years, any title which may rest in the Commonwealth, to so much of the land as has been so on the land books and upon which the taxes and levies shall have been so paid, shall be relinquished to the person so claiming the same, and any such claimant of such land, on which the taxes and levies shall have been so paid, may file a petition in the circuit court of the county or city in which such land lies, after ten days' notice in writing to the attorney for the Commonwealth for such county or city who shall appear and defend the same on behalf of the Commonwealth and the county or city; and upon satisfactory proof of the fact that such land has so been on the land books of the county or city and all the taxes and levies regularly paid thereon for the period of time hereinbefore specified, and the production before the court of the copy of such grant and the certificate of the *State Librarian of Virginia*, hereinbefore provided for, the court shall make an order which shall recite and set forth all of such facts so proved and shown, which order, when so made and entered of record on the proper order book of the court, shall operate to effectually relinquish to the person so claiming such land through and under such grant, whatever right and title may rest in the Commonwealth, thereto; and a copy of such order shall be conclusive evidence of the better right of the claimant under such grant, in any caveat proceeding, or in any other controversy between such claimant and any other person claiming under a location of such land or any part thereof, made after the date of such order.

But nothing contained in this section shall in any manner affect any right adverse to any person claiming under such grant, which vested prior to June 22, 1926, nor divest the right or title, if any, of any junior grantee of any part of the land embraced within the exterior bounds of such grant, claiming under a junior grant which was regularly issued prior to June 22, 1926, or anyone holding or claiming through or under such junior grantee, but in any controversy between such adverse claimants or junior grantees, or persons claiming or holding through or under them, and any person holding or claiming through or under such grant as is first herein mentioned, the contesting parties shall be left to the strength of their respective rights and titles according to the nature of the case, independent of this section, and just as if it had not been enacted.

If it shall appear from the original of any such grant as is first hereinbefore referred to, that such original was actually signed by the Governor, the *State Librarian of Virginia* shall, upon the presentation to him in the Land Office, of such original grant so signed, correct the record thereof so as to conform to such original grant, and affix thereto the date of such correction and a certificate of the fact that such original, duly signed by the Governor, had been presented to him.

§ 41.1-15. Recording decree of repeal.

Any decree for such repeal, in whole or in part, shall be certified to the *State Librarian of Virginia*, and shall thereupon be recorded by the *State Librarian of Virginia* in the manner prescribed in § 55-186.2.

§ 42.1-1. The Library of Virginia.

The Library of Virginia is hereby declared an educational institution and an institution of learning. The Library of Virginia shall be the library agency of the Commonwealth, the archival agency of the Commonwealth, and the reference library at the seat of government. It shall have the following powers and duties:

(1) [Repealed.]

(2) To accept gifts, bequests and endowments for the purposes which fall within the general legal powers and duties of The Library of Virginia. Unless otherwise specified by the donor or legator, the Library may either expend both the principal and interest of any gift or bequest or may invest such sums as the Board deems advisable, with the consent of the State Treasurer, in securities in which sinking funds may be invested. The Library shall be deemed to be an institution of higher education within the meaning of § 23-9.2;

(3) To purchase and maintain a general collection of books, periodicals, newspapers, maps, films, audiovisual materials and other materials for the use of the people of the Commonwealth as a means for the promotion of knowledge within the Commonwealth. The scope of the Library's collections shall be determined by the Library Board on recommendation of the *State Librarian of Virginia*, and, in making these decisions, the Board and Librarian of Virginia shall take into account the book collections of public libraries and college and university libraries throughout the Commonwealth and the availability of such collections to the general public. The Board shall make available for circulation to libraries or to the public such of its materials as it deems advisable;

(4) To give assistance, advice and counsel to other agencies of the Commonwealth maintaining

libraries and special reference collections as to the best means of establishing and administering such libraries and collections. It may establish in The Library of Virginia a union catalogue of all books, pamphlets and other materials owned and used for reference purposes by all other agencies of the Commonwealth and of all books, pamphlets and other materials maintained by libraries in the Commonwealth which are of interest to the people of the whole Commonwealth;

(5) To fix reasonable penalties for damage to or failure to return any book, periodical or other material owned by the Library, or for violation of any rule or regulation concerning the use of books, periodicals, and other materials in custody of the Library;

(6) To give direction, assistance and counsel to all libraries in the Commonwealth, to all communities which may propose to establish libraries, and to all persons interested in public libraries, as to means of establishment and administration of such libraries, selection of books, retrieval systems, cataloguing, maintenance, and other details of library management, and to conduct such inspections as are necessary;

(7) To engage in such activities in aid of city, county, town, regional and other public libraries as will serve to develop the library system of the Commonwealth;

(8) To administer and distribute state and federal library funds in accordance with law and its own regulations to the city, county, town and regional libraries of the Commonwealth; and

(9) To enter into contracts with other states or regions or districts for the purpose of providing cooperative library services.

Wherever in this title and the Code of Virginia the terms "State Library" or "Library" appear, they shall mean The Library of Virginia.

§ 42.1-12. Fees for copies made by Library staff.

The Library may, in its discretion, charge and collect such fees as it may deem reasonable for copies or extracts from any books, papers, records, documents or manuscripts in the Library, made by the Library staff, for persons applying for the same. The *State Librarian of Virginia* shall keep an accurate account of all such fees and pay the same into the general fund of the state treasury.

§ 42.1-13. Appointment; terms of office; employment; duties.

The Board shall appoint a librarian, to be known as the *State Librarian of Virginia*, who shall serve at the pleasure of the Board. The *State Librarian of Virginia* shall appoint principal assistants and approve the appointment of other employees. The terms of office and employment of such assistants and employees shall be subject to the personnel regulations of the Commonwealth.

The *State Librarian of Virginia* shall supervise the administration of The Library of Virginia. The *State Librarian of Virginia* shall make requests for appropriations of necessary funds and approve all expenditures of Library funds. Such expenditures shall be made as provided by law.

§ 42.1-14. Compensation.

The *State Librarian of Virginia*, assistants and employees shall be paid such salaries from appropriations out of the public treasury as are provided by law.

§ 42.1-15. Duties of Librarian of Virginia.

The *State Librarian of Virginia* shall have charge of The Library of Virginia. He shall see that the Library is properly kept and that its contents are properly preserved and cared for.

He shall be secretary of the Board, and shall perform all duties belonging to that position. He shall keep a record of all proceedings of the Board and such financial records as are required by the Commonwealth.

§ 42.1-16. Bond of Librarian of Virginia.

The *State Librarian of Virginia* shall give bond to the Commonwealth in the sum of \$2,000, with sureties approved by the State Treasurer, subject to the approval of the Governor, for the faithful discharge of his duties and the delivery over to his successor of all the property of the Commonwealth in his possession, which bond shall be recorded by the Secretary of the Commonwealth and deposited with the Comptroller.

§ 42.1-18. Exchanges; donation, etc., of duplicate material.

The Library may arrange for the exchange of the Virginia publications with such states and institutions, the general government and other governments, societies and others, as it sees fit. Publications received on exchange are to become the property of The Library of Virginia, except statute and law books, which shall be placed in the Law Library. The Library may also, when deemed advantageous, donate, exchange or sell any or all duplicate material now or hereafter the property of The Library of Virginia, and other printed material not within the scope of its collections. The *Librarian of Virginia* shall keep an accurate account of all such sales and pay the money arising therefrom into the general fund of the state treasury.

§ 42.1-30. Virginia World War II History Commission abolished; duties transferred to Librarian of Virginia.

The Virginia World War II History Commission, heretofore created and existing, is hereby abolished and its duty of collecting, assembling, editing and publishing such information and material with respect to the contribution to World War II made by Virginia and Virginians as is most worthy of preservation shall hereafter be performed by the *State Librarian of Virginia*. The Virginia World War II History

Commission shall deliver to the *State Librarian of Virginia* all material, records and information collected, assembled and compiled by it in the performance of its duties.

§ 42.1-31. Counties and cities may submit material.

Any county or city of the Commonwealth may assemble and submit to the *State Librarian of Virginia* information and material relating to its contribution and that of its citizens to World War II, and the governing body of any county or city may appropriate for this purpose such funds as it deems necessary.

§ 42.1-32.7. State Networking Users Advisory Board.

The State Networking Users Advisory Board shall be composed of nine members, to be appointed by the Governor as follows: one academic librarian serving in a public four-year institution of higher education; one academic librarian serving in a private four-year institution of higher education; one academic librarian serving in the Virginia Community College System; one public school librarian; one private school librarian; one librarian serving in a large public library system; one librarian serving in a small public library system; one librarian serving in a library having a specialized focus, such as, but not limited to, a corporate, legal, or medical library; and one librarian serving in an institutional library, such as, but not limited to, a state correctional institution, a mental health facility, or other agency of state government. The terms of office of the Board shall be three years. No person shall serve more than two successive full terms. Any vacancy occurring other than by expiration of term shall be filled for the unexpired term. Members shall hold office after the expiration of their terms until their successors are duly appointed and have qualified. Appointments to fill an unexpired term shall not be considered a full term. The State Networking Users Advisory Board shall advise the *State Librarian of Virginia* and the State Library Board in the development and direction of the network and its policies, standards, funding levels and requirements for use, after receiving the input of other libraries. The State Networking Users Advisory Board shall meet no less than twice annually.

§ 42.1-77. Definitions.

As used in this chapter:

"Agency" means all boards, commissions, departments, divisions, institutions, authorities, or parts thereof, of the Commonwealth or its political subdivisions and includes the offices of constitutional officers.

"Archival quality" means a quality of reproduction consistent with established standards specified by state and national agencies and organizations responsible for establishing such standards, such as the Association for Information and Image Management, the American Standards Association, and the National Bureau of Standards.

"Board" means the State Library Board.

"Council" means the State Public Records Advisory Council.

"Custodian" means the public official in charge of an office having public records.

"Data" means symbols, or representations, of facts or ideas that can be communicated, interpreted, or processed by manual or automated means.

"Database" means a set of data, consisting of one file or a group of integrated files, maintained as an information system managed by a database management system.

"Database management system" means a set of software programs that controls the organization, storage and retrieval of data in a database. It also controls the security and integrity of the database.

"Electronic record" means any information that is recorded in machine readable form.

"Electronic records system" means any information system that produces, processes, or stores records by using a computer, and is also called an automated information system.

"Information system" means the organized collection, processing, transmission, and dissemination of information in accordance with defined procedures, whether automated or manual.

"*State Librarian of Virginia*" means the *State Librarian of Virginia* or his designated representative.

"Public official" means all persons holding any office created by the Constitution of Virginia or by any act of the General Assembly, the Governor and all other officers of the executive branch of the state government, and all other officers, heads, presidents or chairmen of boards, commissions, departments, and agencies of the state government or its political subdivisions.

"Public record" means recorded information that documents a transaction or activity by or with any public officer, agency or employee of the state government or its political subdivisions. Regardless of physical form or characteristic, the recorded information is a public record if it is produced, collected, received or retained in pursuance of law or in connection with the transaction of public business.

The medium on which such information is recorded may be, but is not limited to paper, film, magnetic, optical or solid state devices which can store electronic signals, tapes, mylar, linen, silk or vellum. The general types of records may be, but are not limited to books, papers, letters, documents, printouts, photographs, films, tapes, microfiche, microfilm, photostats, sound recordings, maps, drawings, and any representations held in computer memory.

Nonrecord materials, meaning reference books and exhibit materials made or acquired and preserved solely for reference use or exhibition purposes, extra copies of documents preserved only for convenience or reference, and stocks of publications, shall not be included within the definition of

public records as used in this chapter.

"Archival records" means all noncurrent records of continuing and enduring value useful to the citizens of the Commonwealth and necessary to the administrative functions of public agencies in the conduct of services and activities mandated by law. In appraisal of public records deemed archival, the terms "administrative," "legal," "fiscal," and "historical" shall be defined as:

1. "Administrative value" : Records shall be deemed of administrative value if they have continuing utility in the operation of an agency.

2. "Legal value" : Records shall be deemed of legal value when they document actions taken in the protection and proving of legal or civil rights and obligations of individuals and agencies.

3. "Fiscal value" : Records shall be deemed of fiscal value so long as they are needed to document and verify financial authorizations, obligations and transactions.

4. "Historical value" : Records shall be deemed of historical value when they contain unique information, regardless of age, which provides understanding of some aspect of the government and promotes the development of an informed and enlightened citizenry.

"Medical records" means the documentation of health care services, whether physical or mental, rendered by direct or indirect patient-provider interaction which is used as a mechanism for tracking the patient's health care status. Medical records may be technologically stored by computerized or other electronic process, or through microfilm or other similar photographic form or chemical process.

"Official records" means public records.

"Persons under a disability" means persons so defined under subsection A of § 8.01-229.

"Preservation" means maintaining archival records in their original physical form by stabilizing them chemically or strengthening them physically to ensure their survival as long as possible in their original form. It also means the reformatting of written, printed, electronic or visual archival information to extend the life of the information.

"Retention and disposition schedule" means an approved timetable stating the retention time period and disposition action of records series.

"Software programs" means the written specifications used to operate an electronic records system as well as the documentation describing implementation strategies.

§ 42.1-79. Records management function vested in Board; State Library Board to be official custodian; State Archivist.

The archival and records management function shall be vested in the State Library Board. The State Library Board shall be the official custodian and trustee for the Commonwealth of all public records of whatever kind which are transferred to it from any public office of the Commonwealth or any political subdivision thereof. As the Commonwealth's official repository of public records, The Library of Virginia shall assume administrative control of such records on behalf of the Commonwealth.

The *State Librarian of Virginia* shall name a State Archivist who shall perform such functions as the *State Librarian of Virginia* assigns.

§ 42.1-79.1. Retention and disposition of medical records.

The medical records of all persons not under a disability shall be retained by all public agencies acting as custodians of medical records for ten years following the last date of treatment or contact. Such agencies shall retain the medical records of minors and persons under a disability for a minimum of five years following the age of majority or the removal of the disability, or ten years following the last date of treatment or contact, whichever comes later. Such agencies shall retain the medical records of deceased persons for a minimum of five years following the date of death.

Agencies of the Commonwealth which generate medical records shall notify patients at time of discharge the specific retention period that applies to their records. Such agencies shall be encouraged to destroy such medical records upon expiration of the required retention period. Such agencies may, at their discretion, retain summaries of destroyed medical records.

Medical records submitted to The Library of Virginia for retention and disposition in accordance with the terms of this section are presumed to be inactive. It shall be the duty of the originating agency to (i) designate medical records of minors, persons under a disability, or deceased persons prior to submission to The Library of Virginia for retention and disposition, and (ii) to make a verifiable attempt to notify patients that their records will be destroyed after the appropriate retention period. Unless notified otherwise by the originating agency, the *State Librarian of Virginia* shall begin to count the required retention period from the first date of submission. Prior to destroying any medical records, the *State Librarian of Virginia* or his designee shall notify the originating agency that the retention period has run out and that, unless the agency reclaims the medical records, the records will be destroyed.

No employee of The Library of Virginia or any agency acting in accordance with the terms of this section shall be liable, civilly or criminally, for the destruction of medical records.

The provisions of this section shall not supersede the provisions of § 16.1-306 or any other laws of this Commonwealth pertaining to the retention and disposition of records generated by agencies other than those agencies originating medical records.

§ 42.1-80. State Public Records Advisory Council continued; members; chairman and vice-chairman; compensation.

The State Public Records Advisory Council is continued. The Council shall consist of twelve members. The Council membership shall include the Secretary of the Commonwealth, the *State Librarian of Virginia*, the Attorney General, the State Health Commissioner, the Commonwealth Transportation Commissioner, the Director of the Department of Information Technology, the Auditor of Public Accounts, the Executive Secretary of the Supreme Court, the Director of the Council on Information Management, or their designated representatives and three members to be appointed by the Governor from the Commonwealth at large. The gubernatorial appointments shall include two clerks of courts of record and a member of a local governing body. Those members appointed by the Governor shall remain members of the Council for a term coincident with that of the Governor making the appointment, or until their successors are appointed and qualified. The Council shall elect annually from its membership a chairman and vice-chairman. Members of the Council shall receive no compensation for their services but shall be paid their reasonable and necessary expenses incurred in the performance of their duties.

§ 42.1-81. Powers and responsibilities of Council.

The Council shall propose to the State Library Board rules, regulations, and standards, not inconsistent with law, for the purpose of establishing uniform guidelines for the management and preservation of public records throughout the Commonwealth. The Council shall have the power to appoint such subcommittees and advisory bodies as it deems advisable. The Council shall be assisted in the execution of its responsibilities by the *State Librarian of Virginia*.

§ 42.1-85. Duties of Librarian of Virginia; agencies to cooperate; agencies to designate records officer.

The *State Librarian of Virginia* shall administer a records management program for the application of efficient and economical management methods to the creation, utilization, maintenance, retention, preservation, and disposal of public records consistent with rules, regulations, or standards promulgated by the State Library Board, including operations of a records center or centers. It shall be the duty of the *State Librarian of Virginia* to establish procedures and techniques for the effective management of public records, to make continuing surveys of paper work operations, and to recommend improvements in current records management practices, including the use of space, equipment, and supplies employed in creating, maintaining, and servicing records.

It shall be the duty of any agency with public records to cooperate with the *State Librarian of Virginia* in conducting surveys and to establish and maintain an active, continuing program for the economical and efficient management of the records of such agency.

Each state agency and political subdivision of this Commonwealth shall designate as many as appropriate, but at least one, records officer to serve as a liaison to The Library of Virginia for the purposes of implementing and overseeing a records management program, and coordinating legal disposition, including destruction of obsolete records. Designation of state agency records officers shall be by the respective agency head. Designation of a records officer for political subdivisions shall be by the governing body or chief administrative official of the political subdivision.

§ 42.1-86. Program to select and preserve important records; availability to public; security copies.

In cooperation with the head of each agency, the *State Librarian of Virginia* shall establish and maintain a program for the selection and preservation of public records considered essential to the operation of government and for the protection of the rights and interests of persons. He shall provide for preserving, classifying, arranging, and indexing so that such records are made available to the public and shall make security copies or designate as security copies existing copies of such essential public records. Security copies shall be of archival quality and shall be made by photographic, photostatic, microfilm, microcard, miniature photographic, or other process which accurately reproduces and forms a durable medium. Security copies shall have the same force and effect for all purposes as the original record and shall be as admissible in evidence as the original record whether the original record is in existence or not. Security copies shall be preserved in the place and manner prescribed by the State Library Board and the Governor. Public records deemed unnecessary for the transaction of the business of any agency, yet deemed to be of administrative, legal, fiscal, or historical value, may be transferred with the consent of the *State Librarian of Virginia* to the custody of The Library of Virginia.

§ 42.1-86.1. Disposition of public records.

No agency shall destroy or discard public records without a retention and disposition schedule approved by the *State Librarian of Virginia* as provided in § 42.1-82. No agency shall sell or give away public records.

§ 42.1-88. Custodians to deliver all records at expiration of term; penalty for noncompliance.

Any custodian of any public records shall, at the expiration of his term of office, appointment or employment, deliver to his successor, or, if there be none, to The Library of Virginia, all books, writings, letters, documents, public records, or other information, recorded on any medium kept or received by him in the transaction of his official business; and any such person who shall refuse or neglect for a period of ten days after a request is made in writing by the successor or *State Librarian of Virginia* to deliver the public records as herein required shall be guilty of a Class 3 misdemeanor.

§ 42.1-89. Petition and court order for return of public records not in authorized possession.

The ~~State~~ Librarian of Virginia or his designated representative such as the State Archivist or any public official who is the custodian of public records in the possession of a person or agency not authorized by the custodian or by law to possess such public records shall petition the circuit court in the city or county in which the person holding such records resides or in which the materials in issue, or any part thereof, are located for the return of such records. The court shall order such public records be delivered to the petitioner upon finding that the materials in issue are public records and that such public records are in the possession of a person not authorized by the custodian of the public records or by law to possess such public records. If the order of delivery does not receive compliance, the plaintiff shall request that the court enforce such order through its contempt power and procedures.

§ 55-186.2. Governor to sign and seal grant; Librarian of Virginia to record it, etc.; delivery to and by State Treasurer.

The State Treasurer shall deliver such grant to the Governor, by whom it shall be signed and sealed with the lesser seal of the Commonwealth. The grant shall then be delivered by the Governor to the ~~State~~ Librarian of Virginia, who shall record it, and the plat and certificate of survey, if provided, or other description sufficient to identify the parcel on which the grant is founded, by a procedural microphotographic process which meets archival standards. The ~~State~~ Librarian of Virginia shall certify to the State Treasurer that the grant has been recorded and then deliver the grant to the State Treasurer who shall in turn mail it to the party to whom it is made, or his order.

§ 55-200. How money paid into state treasury from escheats may be recovered.

A. If within 120 days from the date of sale, a purchaser submits evidence satisfactory to the State Treasurer that the property described in the grant does not exist or was improperly escheated, the State Treasurer may refund the purchase price, less the expenses of sale and the escheator's fee. Before any such refund is made, the purchaser must return the grant to the State Treasurer, who shall inform the ~~State~~ Librarian of Virginia of its return. Both of these officials shall note the grant's return in their records. When the purchaser has recorded his grant from the Commonwealth, he shall record a quitclaim deed and send proof thereof to the State Treasurer prior to the issuance of any refund.

B. After any sale of escheated lands and upon certification verified by oath of the city, town or county treasurer or other officer charged with the collection of local real estate taxes that the land so sold was, at the time of escheat to the Commonwealth, subject to the lien of unpaid local real estate taxes or that the land so sold was, at any time prior to sale, subject to other assessments, including liens for demolition, cutting or removing weeds or abating any nuisance on the escheated land, all of which assessments were validly assessed, levied, or imposed by the city, town or county on the lands within twenty years preceding the date of the escheat or inquest, the State Treasurer shall, upon receipt of the proceeds of sale, deduct the escheator's commission and costs of the inquest and sale. The State Treasurer shall then pay to the city, town or county treasurer out of the net proceeds of such sale, if any, the amount of the local real estate taxes and/or assessments, including accrued penalties and interest, up to but not exceeding the amount of the funds remaining in the hands of the State Treasurer from the proceeds of the sale. To the extent that local taxes and other appropriate local charges exceed the proceeds obtained for such escheated land at the escheat sale, such local taxes and other charges are exonerated. Any other liens on property which is escheated and sold will shift to the proceeds of the sale and will no longer remain a lien on the property.

C. Any person who had not asserted a claim before the sale of escheated property, being entitled to any property so escheated and sold, may recover so much of the net proceeds as remain after deduction of the escheator's commission, costs of the inquest and sale, and allowance of claims for unpaid real estate taxes and assessments due on the land or from any creditors of the decedent. The same may be allowed by the State Treasurer or if a claim in any such case is rejected by him, a petition for recovery may be made in the manner provided in § 8.01-192 for recovering claims against the Commonwealth, but subject to the limitation in § 8.01-255.

§ 58.1-3129. Destruction of paid tax tickets; other tax tickets; records.

A. The treasurer may, with the consent of the governing body, destroy all paid tax tickets at any time after five years from the end of the fiscal year during which taxes represented by such tickets were paid, in accordance with retention regulations pursuant to the Virginia Public Records Act (§ 42.1-76 et seq.).

B. The treasurer may, at any time after the expiration of three years from the date he certifies the lists mentioned in § 58.1-1801 and subdivisions 2 and 4 of § 58.1-3921, and after the expiration of five years from the date he certifies the list mentioned in subdivision 3 of § 58.1-3921, destroy the tax tickets made out by him for the taxes and levies included therein, provided the certification of the Auditor of Public Accounts is obtained to the effect that these tickets are no longer needed for audit purposes.

C. The treasurer may cause records to be destroyed after audit, with the consent of the Auditor of Public Accounts and the ~~State~~ Librarian of Virginia, in accordance with retention regulations for records maintained by the treasurer established under the Virginia Public Records Act (§ 42.1-76 et seq.).

D. In lieu of retaining the original tax tickets for at least five years after the end of the fiscal year during which taxes represented by such tickets were paid, the treasurer, with the consent of the Auditor

of Public Accounts and the local governing body, may have the original tax tickets copied. Any such copies shall be on a durable medium that complies with the requirements of the Virginia Public Records Act. After copying, the original tax tickets may be destroyed in accordance with the provisions of § ~~45.1-8~~ *15.2-1412* and the copies shall be retained in accordance with the provisions of subsections A, B and C of this section, mutatis mutandis. Any such copy may be used in any legal proceeding if the copy is authenticated in accordance with applicable law.

§ 58.1-3306. Librarian of Virginia to furnish abstracts of grants.

An abstract shall be made out by the ~~State~~ Librarian *of Virginia* on or before January 15 of each year, or as soon thereafter as practicable, for the commissioner of the revenue of each county or city, of all grants issued for lands therein from his office within the year ending December 31 next preceding. The ~~State~~ Librarian *of Virginia* shall transmit every such abstract to the commissioner of the revenue for the proper county or city.