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HOUSE BILL NO. 2638

Offered January 21, 1999

A *BILL to amend and reenact § 2.1-342 of the Code of Virginia, relating to the Freedom of Information Act; procedure for responding to request for records.*

Patrons—Devolites, Albo, Bryant, Byron, Cantor and May

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:**1. That § 2.1-342 of the Code of Virginia is amended and reenacted as follows:**

§ 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

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60 producing the requested documents are likely to exceed \$200, the public body may, before continuing to
61 process the request, require the citizen requesting the information to agree to payment of an amount not
62 to exceed the advance determination by five percent. The period within which the public body must
63 respond under this section shall be tolled for the amount of time that elapses between notice of the
64 advance determination and the response of the citizen requesting the information.

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

79 Public bodies shall not be required to create or prepare a particular requested record if it does not
80 already exist. Public bodies may, but shall not be required to, abstract or summarize information from
81 official records or convert an official record available in one form into another form at the request of
82 the citizen. The public body shall make reasonable efforts to reach an agreement with the requester
83 concerning the production of the records requested *including, where the public body has the capability,*
84 *the option of posting the records on a website or delivering the records through an electronic mail*
85 *address provided by the requester.*

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

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

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

104 Criminal incident information relating to felony offenses shall not be excluded from the provisions of
105 this chapter; however, where the release of criminal incident information is likely to jeopardize an
106 ongoing criminal investigation or the safety of an individual, cause a suspect to flee or evade detection,
107 or result in the destruction of evidence, such information may be withheld until the above-referenced
108 damage is no longer likely to occur from release of the information.

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

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

120 Where the person who is the subject of medical records is confined in a state or local correctional
121 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,

306 copyrighted or patented. Whether released, published or copyrighted, all game-related information shall
307 be subject to public disclosure under this chapter upon the first day of sales for the specific lottery game
308 to which it pertains.

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

316 39. Those portions of engineering and construction drawings and plans submitted for the sole purpose
317 of complying with the building code in obtaining a building permit which would identify specific trade
318 secrets or other information the disclosure of which would be harmful to the competitive position of the
319 owner or lessee; however, such information shall be exempt only until the building is completed.
320 Information relating to the safety or environmental soundness of any building shall not be exempt from
321 disclosure.

322 40. [Repealed.]

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

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

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

330 44. [Repealed.]

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

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

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

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

357 49. In the case of corporations organized by the Virginia Retirement System, (i) proprietary
358 information provided by, and financial information concerning, coventurers, partners, lessors, lessees, or
359 investors, and (ii) records concerning the condition, acquisition, disposition, use, leasing, development,
360 coventuring, or management of real estate the disclosure of which would have a substantial adverse
361 impact on the value of such real estate or result in a competitive disadvantage to the corporation or
362 subsidiary.

363 50. Confidential proprietary records related to inventory and sales, voluntarily provided by private
364 energy suppliers to the Department of Mines, Minerals and Energy, used by that Department for energy
365 contingency planning purposes or for developing consolidated statistical information on energy supplies.

366 51. Confidential proprietary information furnished to the Board of Medical Assistance Services or the
367 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

429 memoranda, working papers or other records related to proposals filed under the Public-Private
430 Transportation Act of 1995, where, if such records were made public, the financial interest of the public
431 or private entity involved with such proposal or the process of competition or bargaining would be
432 adversely affected. In order for confidential proprietary information to be excluded from the provisions
433 of this chapter, the private entity shall (i) invoke such exclusion upon submission of the data or other
434 materials for which protection from disclosure is sought, (ii) identify the data or other materials for
435 which protection is sought, and (iii) state the reasons why protection is necessary. For the purposes of
436 this subdivision, the terms public entity and private entity shall be defined as they are defined in the
437 Public-Private Transportation Act of 1995.

438 63. Records of law-enforcement agencies, to the extent that such records contain specific tactical
439 plans, the disclosure of which would jeopardize the safety or security of law-enforcement personnel or
440 the general public; engineering plans, architectural drawings, or operational specifications of
441 governmental law-enforcement facilities, including but not limited to courthouses, jails, and detention
442 facilities, to the extent that disclosure could jeopardize the safety or security of law-enforcement offices;
443 however, general descriptions shall be provided to the public upon request.

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

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

453 66. Records of the Medical College of Virginia Hospitals Authority pertaining to any of the
454 following: (i) an individual's qualifications for or continued membership on its medical or teaching
455 staffs; proprietary information gathered by or in the possession of the Authority from third parties
456 pursuant to a promise of confidentiality; contract cost estimates prepared for confidential use in
457 awarding contracts for construction or the purchase of goods or services; data, records or information of
458 a proprietary nature produced or collected by or for the Authority or members of its medical or teaching
459 staffs; financial statements not publicly available that may be filed with the Authority from third parties;
460 the identity, accounts or account status of any customer of the Authority; consulting or other reports
461 paid for by the Authority to assist the Authority in connection with its strategic planning and goals; and
462 the determination of marketing and operational strategies where disclosure of such strategies would be
463 harmful to the competitive position of the Authority; and (ii) data, records or information of a
464 proprietary nature produced or collected by or for employees of the Authority, other than the Authority's
465 financial or administrative records, in the conduct of or as a result of study or research on medical,
466 scientific, technical or scholarly issues, whether sponsored by the Authority alone or in conjunction with
467 a governmental body or a private concern, when such data, records or information have not been
468 publicly released, published, copyrighted or patented.

469 67. Confidential proprietary information or trade secrets, not publicly available, provided by a private
470 person or entity to the Virginia Resources Authority or to a fund administered in connection with
471 financial assistance rendered or to be rendered by the Virginia Resources Authority where, if such
472 information is made public, the financial interest of the private person or entity would be adversely
473 affected, and, after June 30, 1997, where such information was provided pursuant to a promise of
474 confidentiality.

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

485 69. Records of the Intervention Program Committee within the Department of Health Professions to
486 the extent such records may identify any practitioner who may be, or who is actually, impaired to the
487 extent disclosure is prohibited by § 54.1-2517.

488 70. Records submitted as a grant application, or accompanying a grant application, to the
489 Commonwealth Neurotrauma Initiative Advisory Board pursuant to Article 12 (§ 32.1-73.1 et seq.) of
490 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.

74. Any record copied, recorded or received by the Commissioner of Health in the course of an examination, investigation or review of a managed care health insurance plan licensee pursuant to §§ 32.1-137.4 and 32.1-137.5, including books, records, files, accounts, papers, documents, and any or all computer or other recordings.

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.