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SENATE BILL NO. 1023

Senate Amendments in [] — January 26, 1999

A *BILL to amend and reenact §§ 2.1-116.05, 2.1-340.1, 2.1-341, 2.1-341.1, 2.1-342, 2.1-343, 2.1-343.1, 2.1-343.2, 2.1-344, 2.1-344.1, 2.1-346, 2.1-346.1, 15.2-1722, 19.2-368.3, 23-50.16:32, 32.1-283.1, 52-8.3, and 54.1-2517 of the Code of Virginia, to amend the Code of Virginia by adding sections numbered 2.1-341.2, 2.1-342.01, and 2.1-342.2, and to repeal §§ 2.1-342.1 and 2.1-345 of the Code of Virginia, relating to the Freedom of Information Act; penalties.*

Patrons—Bolling, Forbes, Hawkins, Houck, Lambert, Schrock, Trumbo and Wampler; Delegates: Day, DeBoer, Hull, May and Woodrum

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.1-116.05, 2.1-340.1, 2.1-341, 2.1-341.1, 2.1-342, 2.1-343, 2.1-343.1, 2.1-343.2, 2.1-344, 2.1-344.1, 2.1-346, 2.1-346.1, 15.2-1722, 19.2-368.3, 23-50.16:32, 32.1-283.1, 52-8.3, and 54.1-2517 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding sections numbered 2.1-341.2, 2.1-342.01, and 2.1-342.2, as follows:

§ 2.1-116.05. Grievance procedure generally.

A. It shall be the policy of the Commonwealth, as an employer, to encourage the resolution of employee problems and complaints. To that end, employees must be able to freely, and without retaliation, discuss their concerns with their immediate supervisors and management. To the extent that such concerns cannot be resolved informally, the grievance procedure shall afford an immediate and fair method for the resolution of employment disputes which may arise between state agencies and those employees who have access to the procedure under § 2.1-116.09.

B. As part of the Commonwealth's program of employee relations management, the Department shall develop a grievance procedure that includes not more than three successively higher grievance resolution steps and a formal hearing as provided in this chapter.

C. Prior to initiating a written grievance, the employee shall be encouraged to pursue an informal complaint with his immediate supervisor. The supervisor shall have authority to resolve the complaint if it involves actions within his control.

D. An employee may pursue a formal written grievance through the grievance resolution steps if the complaint has been presented to management within thirty calendar days of the employee's knowledge of the event that gave rise to the complaint. Employees' rights to pursue grievances shall not be used to harass or otherwise impede the efficient operations of government.

E. Upon receipt of a timely written complaint, management shall review the grievance and respond to the merits thereof. Each level of management review shall have the authority to provide the employee with a remedy. At least one face-to-face meeting between the employee and management shall be required. The persons who may be present at this meeting are the employee, the appropriate manager, an individual selected by the employee, and an individual selected by the manager. Witnesses may be called by either party.

F. Pursuant to ~~§ 2.1-342 B~~ ~~§ 3~~ *2.1-242.01 A 4* of the Virginia Freedom of Information Act and § 2.1-382 of the Virginia Privacy Protection Act of 1976, all information relating to the actions grieved shall be made available to the employee by the agency, except as otherwise provided by law. Information pertaining to other employees that is relevant to the grievance shall be produced in such a manner as to preserve the privacy of the individuals not personally involved in the complaint or dispute.

G. All time limitations prescribed in the grievance procedure, including, but not limited to, submission of an initial complaint and employee appeal of management decisions, shall be reasonable, specific, and equally applicable to the agency and the employee. Expedited grievance procedures shall be established for terminations, demotions, suspensions, and lost wages or salaries.

H. Within five workdays of the receipt of a written notice of noncompliance, failure of the employee or the agency to comply with a substantial procedural requirement of the grievance procedure without just cause may result in a decision against the noncomplying party on any qualified issue. Written notice of noncompliance by the agency must be made to the agency head. The Director shall render all decisions related to procedural compliance, and such decisions shall be final.

I. Grievances qualified pursuant to § 2.1-116.06 that have not been resolved through the grievance resolution steps shall advance to a hearing which shall be the final step in the grievance procedure.

§ 2.1-340.1. Policy of chapter.

By enacting this chapter, the General Assembly ensures the people of ~~this~~ the Commonwealth ready

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60 access to records in the custody of public officials and free entry to meetings of public bodies wherein
61 the business of the people is being conducted. Committees or subcommittees of public bodies created to
62 perform delegated functions of a public body or to advise a public body shall also conduct their
63 meetings and business pursuant to this chapter. The affairs of government are not intended to be
64 conducted in an atmosphere of secrecy since at all times the public is to be the beneficiary of any action
65 taken at any level of government. Unless ~~the~~ a public body or public official specifically elects to
66 exercise an exemption provided by this chapter or any other statute, every meeting shall be open to the
67 public and all reports, documents and other material, and all public records shall be available for
68 disclosure inspection and copying upon request. All public records and meetings shall be presumed
69 open, unless an exemption is properly invoked.

70 This The provisions of this chapter shall be liberally construed to promote an increased awareness by
71 all persons of governmental activities and afford every opportunity to citizens to witness the operations
72 of government. Any exception or exemption from applicability public access to records or meetings
73 shall be narrowly construed in order that no thing which should be public may be hidden from any
74 person, and no record shall be withheld or meeting closed to the public unless specifically made exempt
75 pursuant to this chapter or other specific provision of law. This chapter shall not be construed to
76 discourage the free discussion by government officials or employees of public matters with the citizens
77 of the Commonwealth.

78 The public body All public bodies and public officials shall make reasonable efforts to reach an
79 agreement with the a requester concerning the production of the records requested.

80 Any ordinance adopted by a local governing body which conflicts with the provisions of this chapter
81 shall be void.

82 § 2.1-341. Definitions.

83 The following terms, whenever used or referred to in this chapter, shall have the following meanings,
84 unless a different meaning clearly appears from the contextAs used in this chapter unless the context
85 requires a different meaning::

86 "Criminal incident information" means a general description of the criminal activity reported, the
87 date and general location the alleged crime was committed, the identity of the investigating officer, and
88 a general description of any injuries suffered or property damaged or stolen; however, the identity of
89 any victim, witness, undercover officer, or investigative techniques or procedures need not but may be
90 disclosed unless disclosure is prohibited or restricted under § 19.2-11.2. The identity of any individual
91 providing information about a crime or criminal activity under a promise of anonymity shall not be
92 disclosed.

93 "Executive meeting" or "closed meeting" "Closed meeting" means a meeting from which the public
94 is excluded.

95 "Emergency" means an unforeseen circumstance rendering the notice required by this chapter
96 impossible or impracticable and which circumstance requires immediate action.

97 "Meeting" or "meetings" means the meetings including work sessions, when sitting physically, or
98 through telephonic or video equipment pursuant to § 2.1-343.1, as a body or entity, or as an informal
99 assemblage of (i) as many as three members, or (ii) a quorum, if less than three, of the constituent
100 membership, wherever held, with or without minutes being taken, whether or not votes are cast, of any
101 public body, including any legislative body, authority, board, bureau, commission, district or agency of
102 the Commonwealth or of any political subdivision of the Commonwealth, including cities, towns and
103 counties; municipal councils; governing bodies of counties; school boards and planning commissions;
104 boards of visitors of state institutions of higher education; and other organizations, corporations or
105 agencies in the Commonwealth, supported wholly or principally by public funds. The notice provisions
106 of this chapter shall not apply to the said informal meetings or gatherings of the members of the
107 General Assembly. Nothing in this chapter shall be construed to make unlawful the gathering or
108 attendance of two or more members of a public body (i) at any place or function where no part of the
109 purpose of such gathering or attendance is the discussion or transaction of any public business, and such
110 gathering or attendance was not called or prearranged with any purpose of discussing or transacting any
111 business of the public body or (ii) at a public meeting whose purpose is to inform the electorate and not
112 to transact public business or to hold discussions relating to the transaction of public business, even
113 though the performance of the members individually or collectively in the conduct of public business
114 may be a topic of discussion or debate at such public meeting. The gathering of employees of a public
115 body shall not be deemed a "meeting" subject to the provisions of this chapter.

116 No meeting shall be conducted through telephonic, video, electronic or other communication means
117 where the members are not physically assembled to discuss or transact public business, except as
118 provided in § 2.1-343.1 or as may specifically be provided in Title 54.1 for the summary suspension of
119 professional licenses.

120 "Official records" means all written or printed books, papers, letters, documents, maps and tapes,
121 photographs, films, sound recordings, reports or other material, regardless of physical form or

characteristics, prepared, owned, or in the possession of a public body or any employee or officer of a public body in the transaction of public business.

"Open meeting" or "public meeting" means a meeting at which the public may be present.

"Public body" means any of the groups, agencies or organizations enumerated in the definition of "meeting" as provided in this section, including any committees or subcommittees of the public body created to perform delegated functions of the public body or to advise the public body legislative body; any authority, board, bureau, commission, district or agency of the Commonwealth or of any political subdivision of the Commonwealth, including cities, towns and counties; municipal councils, governing bodies of counties, school boards and planning commissions; boards of visitors of state institutions of higher education; and other organizations, corporations or agencies in the Commonwealth, supported wholly or principally by public funds. It shall include any committee or subcommittee of the public body created to perform delegated functions of the public body or to advise the public body, and shall not exclude any such committee or subcommittee because it has private sector or citizen members. Corporations organized by the Virginia Retirement System are "public bodies" for purposes of this chapter.

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

"Scholastic records" means those records, files, documents, and other materials containing information about directly related to a student and maintained by a public body which is an educational agency or institution or by a person acting for such agency or institution; but, for the purpose of access by a student, does not "scholastic records" shall include (i) financial records of a parent or guardian and (ii) records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto, which are in the sole possession of the maker thereof and which are not accessible or revealed to any other person except a substitute.

§ 2.1-341.1. Notice of chapter.

A. Any person elected, reelected, appointed or reappointed to any body not excepted from this chapter shall be furnished by the public body's administrator or legal counsel with a copy of this chapter within two weeks following election, reelection, appointment or reappointment.

B. Public officials shall read and familiarize themselves with the provisions of this chapter.

§ 2.1-341.2. Public bodies and records to which chapter inapplicable; voter registration and election records.

A. The provisions of this chapter shall not apply to:

1. The Virginia Parole Board, except that (i) information from the Virginia Parole Board providing the number of inmates considered by such Board for discretionary parole, the number of inmates granted or denied parole, and the number of parolees returned to the custody of the Department of Corrections solely as a result of a determination by such Board of a violation of parole shall be open to inspection and available for release, on a monthly basis, as provided by § 2.1-342, and (ii) all records concerning the finances of the Virginia Parole Board shall be public records and subject to the provisions of this chapter. The information required by clause (i) shall be furnished by offense, sex, race, age of the inmate, and the locality in which the conviction was obtained, upon the request of the party seeking the information;

2. Petit juries and grand juries;

3. Family assessment and planning teams established pursuant to § 2.1-753; and

4. The Virginia State Crime Commission.

B. Public access to voter registration and election records shall be governed by the provisions of Title 24.2 and this chapter. The provisions of Title 24.2 shall be controlling in the event of any conflict.

§ 2.1-342. Public records to be open to inspection; procedure for requesting records and responding to request; charges.

A. Except as otherwise specifically provided by law, all official public 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

B. A request for public records shall identify the requested records with reasonable specificity. The request need not make reference to this chapter in order to invoke the provisions of this chapter shall

183 make an initial response to citizens requesting records open to inspection within five work days after the
184 receipt of the request by the public body or to impose the time limits for response by a public body.
185 Any public body which is subject to this chapter and which is the custodian of the requested records:
186 Such citizen request shall designate the requested records with reasonable specificity. A specific
187 reference to this chapter by the requesting citizen in his request shall not be necessary to invoke the
188 provisions of this chapter and the time limits for response by the public body. The response by the
189 public body within such five work days shall be *shall promptly, but in all cases within five working*
190 *days of receiving a request, make one of the following responses:*

191 1. The requested records shall *will* be provided to the requesting citizen requester.

192 2. If the public body determines that an exemption applies to all of the requested records, it may
193 refuse to release such records and provide to the requesting citizen a written explanation as to why the
194 records are not available with the explanation making specific reference to the applicable Code sections
195 which make the requested records exempt.

196 3. If the public body determines that an exemption applies to a portion of the requested records, it
197 may delete or excise that portion of the records to which an exemption applies, but shall disclose the
198 remainder of the requested records and provide to the requesting citizen a written explanation as to why
199 these portions of the record are not available to the requesting citizen with the explanation making
200 specific reference to the applicable Code sections which make that portion of the requested records
201 exempt. Any reasonably segregatable portion of an official record shall be provided to any person
202 requesting the record after the deletion of the exempt portion. *The requested records will be entirely*
203 *withheld because their release is prohibited by law or the custodian has exercised his discretion to*
204 *withhold the records in accordance with the chapter. Such response shall (i) be in writing, (ii) identify*
205 *with reasonable particularity the volume and subject matter of withheld records, and (iii) cite, as to*
206 *each category of withheld records, the specific Code section which authorizes the withholding of the*
207 *records. Any exemption not identified in the public body's initial response shall be waived and may not*
208 *be asserted thereafter for any purpose, including the defense of any action brought to enforce this*
209 *chapter.*

210 3. *The requested records will be provided in part and withheld in part because the release of part of*
211 *the records is prohibited by law or the custodian has exercised his discretion to withhold a portion of*
212 *the records in accordance with this chapter. Such response shall (i) be in writing, (ii) identify with*
213 *reasonable particularity the subject matter of withheld portions, and (iii) cite, as to each category of*
214 *withheld records, the specific Code section which authorizes the withholding of the records. Any*
215 *exemption not identified in the public body's initial response shall be waived and may not be asserted*
216 *thereafter for any purpose, including the defense of any action brought to enforce this chapter. When a*
217 *portion of a requested record is withheld, the public body may delete or excise only that portion of the*
218 *record to which an exemption applies and shall release the remainder of the record.*

219 4. If the public body determines that it is *practically impossible* *It is not practically possible* to
220 provide the requested records or to determine whether they are available within the five-work-day
221 period; *the public body shall so inform the requesting citizen and shall have.* Such response shall be in
222 writing and specify the conditions which make a response impossible. If the response is made within five
223 working days, the public body shall have an additional seven work days in which to provide one of the
224 three preceding responses.

225 Nothing in this section shall prohibit any public body from petitioning C. Any public body may
226 petition the appropriate court for additional time to respond to a request for records when the request is
227 for an extraordinary volume of records and a response by the public body within the time required by
228 this chapter will prevent the public body from meeting its operational responsibilities. Before proceeding
229 with *this the* petition, however, the public body shall make reasonable efforts to reach an agreement
230 with the requester concerning the production of the records requested.

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

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

236 The F. A public body may make reasonable charges for the copying, search time and computer time
237 expended in the supplying of such records *its actual cost incurred in accessing, duplicating, supplying,*
238 *or searching for the requested records. No public body shall impose any extraneous, intermediary or*
239 *surplus fees or expenses to recoup the general costs associated with creating or maintaining records or*
240 *transacting the general business of the public body. Any duplicating fee charged by a public body shall*
241 *not exceed the actual cost of duplication. The public body may also make a reasonable charge for*
242 *preparing documents the cost incurred in supplying records produced from a geographic information*
243 *system at the request of anyone other than the owner of the land that is the subject of the request.*
244 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~~ All 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 records are likely to exceed \$200, the public body may, before continuing to process the request, require the citizen requesting the information requester to agree to payment of an amount not to exceed the advance determination by five percent a deposit not to exceed the amount of the advance determination. The deposit shall be credited toward the final cost of supplying the requested records. The period within which the public body must shall 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 requester.

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.

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

H. Beginning July 1, 1997, every 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 records residing in a computer. Such index shall be an official a public 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 produce nonexempt records maintained in an electronic database in any tangible medium identified by the requester, if that medium is used by the public body in the regular course of business. No public body shall be required to produce records from an electronic database in a format not regularly used by the public body. However, the public body shall make reasonable efforts to reach an agreement with the requester concerning the production of the records requested provide records in any format under such terms and conditions as agreed between the requester and public body, including the payment of reasonable costs. The excision of exempt fields of information from a database or the conversion of data from one available format to another shall not be deemed the creation, preparation or compilation of a new public record.

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

306 custody of law-enforcement officials relative to the identity of any individual other than a juvenile who
307 is arrested and charged; and the status of the charge or arrest, shall not be excluded from the provisions
308 of this chapter.

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

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

317 3. State income, business, and estate tax returns, personal property tax returns, scholastic records and
318 personnel records containing information concerning identifiable individuals, except that such access
319 shall not be denied to the person who is the subject thereof, and medical

320 and mental records, except that such records can be personally reviewed by the subject person or a
321 physician of the subject person's choice; however, the subject person's mental records may not be
322 personally reviewed by such person when the subject person's treating physician has made a part of such
323 person's records a written statement that in his opinion a review of such records by the subject person
324 would be injurious to the subject person's physical or mental health or well-being.

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

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

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

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

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

357 6. Memoranda, working papers and records compiled specifically for use in litigation or as a part of
358 an active administrative investigation concerning a matter which is properly the subject of an executive
359 or closed meeting under § 2.1-344 and material furnished in confidence with respect thereto. 7.
360 Confidential letters and statements of recommendation placed in the records of educational agencies or
361 institutions respecting (i) admission to any educational agency or institution, (ii) an application for
362 employment, or (iii) receipt of an honor or honorary recognition.

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

365 9. Any test or examination used, administered or prepared by any public body for purposes of
366 evaluation of (i) any student or any student's performance, (ii) any employee or employment seeker's
367 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,

429 persons supplying the information or other individuals involved in the investigation.

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

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

434 28. Documents and writings furnished by a member of the General Assembly to a meeting of a
435 standing committee, special committee or subcommittee of his house established solely for the purpose
436 of reviewing members' annual disclosure statements and supporting materials filed under § 2.1-639.40 or
437 of formulating advisory opinions to members on standards of conduct, or both.

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

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

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

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

461 (i) Security manuals, including emergency plans that are a part thereof;

462 (ii) Engineering and architectural drawings of correctional and juvenile facilities, and operational
463 specifications of security systems utilized by the Departments, provided the general descriptions of such
464 security systems, cost and quality shall be made available to the public;

465 (iii) Training manuals designed for correctional and juvenile facilities to the extent that they address
466 procedures for institutional security, emergency plans and security equipment;

467 (iv) Internal security audits of correctional and juvenile facilities, but only to the extent that they
468 specifically disclose matters described in (i), (ii), or (iii) above or other specific operational details the
469 disclosure of which would jeopardize the security of a correctional or juvenile facility or institution;

470 (v) Minutes or recordings of divisional, regional and institutional staff meetings or portions thereof to
471 the extent that such minutes deal with security issues listed in (i), (ii), (iii), and (iv) of this subdivision;

472 (vi) Investigative case files by investigators authorized pursuant to § 53.1-16; however, nothing in
473 this section shall prohibit the disclosure of information taken from inactive reports in a form which does
474 not reveal the identity of complainants or charging parties, persons supplying information, confidential
475 sources, or other individuals involved in the investigation, or other specific operational details the
476 disclosure of which would jeopardize the security of a correctional or juvenile facility or institution;
477 nothing herein shall permit the disclosure of materials otherwise exempt as set forth in subdivision 1 of
478 subsection B of this section;

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

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

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

486 33. Personal information, as defined in § 2.1-379, (i) filed with the Virginia Housing Development
487 Authority concerning individuals who have applied for or received loans or other housing assistance or
488 who have applied for occupancy of or have occupied housing financed, owned or otherwise assisted by
489 the Virginia Housing Development Authority, (ii) concerning persons participating in or persons on the
490 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 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

675 person or entity to the Virginia Resources Authority or to a fund administered in connection with
676 financial assistance rendered or to be rendered by the Virginia Resources Authority where, if such
677 information is made public, the financial interest of the private person or entity would be adversely
678 affected, and, after June 30, 1997, where such information was provided pursuant to a promise of
679 confidentiality.

680 68. Confidential proprietary records which are provided by a franchisee under § 15.1-23.1 to its
681 franchising authority pursuant to a promise of confidentiality from the franchising authority which
682 relates to the franchisee's potential provision of new services, adoption of new technologies or
683 implementation of improvements, where such new services, technologies or improvements have not been
684 implemented by the franchisee on a nonexperimental scale in the franchise area, and where, if such
685 records were made public, the competitive advantage or financial interests of the franchisee would be
686 adversely affected. In order for confidential proprietary information to be excluded from the provisions
687 of this chapter, the franchisee shall (i) invoke such exclusion upon submission of the data or other
688 materials for which protection from disclosure is sought; (ii) identify the data or other materials for
689 which protection is sought; and (iii) state the reason why protection is necessary.

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

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

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

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

708 73. Personal information, as defined in § 2.1-379, provided to the Board of the Virginia Higher
709 Education Tuition Trust Fund or its employees by or on behalf of individuals who have requested
710 information about, applied for, or entered into prepaid tuition contracts pursuant to Chapter 4.9
711 (§ 23-38.75 et seq.) of Title 23. Nothing in this subdivision shall be construed to prohibit disclosure or
712 publication of information in a statistical or other form which does not identify individuals or provide
713 personal information. Individuals shall be provided access to their own personal information.

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

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

730 § 2.1-342.01. Exclusions to application of chapter.

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

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

736 2. State income, business, and estate tax returns, personal property tax returns, scholastic and

confidential records held pursuant to § 58.1-3.

3. Scholastic records containing information concerning identifiable individuals, except that such access shall not be denied to the person who is the subject thereof, or the parent or legal guardian of the student. The parent or legal guardian of a student may prohibit, by written request, the release of any individual information regarding that student until the student reaches the age of eighteen years. For scholastic records of students under the age of eighteen years, the right of access may be asserted only by his legal guardian or 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. For scholastic records of students who are emancipated or attending a state-supported institution of higher education, the right of access may be asserted by the student.

Any person who is the subject of any scholastic record and who is eighteen years of age or older may waive, in writing, the protections afforded by this subdivision. If the protections are so waived, the public body shall open such records for inspection and copying.

4. Personnel records containing information concerning identifiable individuals, except that access shall not be denied to the person who is the subject thereof. Any person who is the subject of any personnel record and who is eighteen years of age or older may waive, in writing, the protections afforded by this subdivision. If the protections are so waived, the public body shall open such records for inspection and copying.

5. Medical and mental records, except that such records may 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 only be reviewed 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 by the administrator or chief medical officer of the facility to any person except the subject or except as provided by law.

For the purposes of this chapter, 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 copying as provided in § 2.1-342. No such summaries or data shall include any patient-identifying information. Where the person who is the subject of 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 public institution of higher education, the right of access may be asserted by the subject person.

6. Working papers and correspondence of the Governor, Lieutenant Governor, and the Attorney General; the members of the General Assembly or the Division of Legislative Services; the mayor or chief executive officer of any political subdivision of the Commonwealth; or the president or other chief executive officer of any public institution of higher education. As used in this subdivision, "working papers" means those records prepared by or for an above-named public official for his personal deliberative use. However, no record which is otherwise open to inspection under this chapter shall be deemed exempt by virtue of the fact that it has been attached to or incorporated within any working paper or correspondence.

7. Written advice of the county, city and town attorneys to their local government clients and any other records protected by the attorney-client privilege.

8. Legal memoranda and other work product compiled specifically for use in litigation or for use in an active administrative investigation concerning a matter which is properly the subject of a closed meeting under § 2.1-344.

9. 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.

10. 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.

11. 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

798 *qualifications or aptitude for employment, retention, or promotion, or (iii) qualifications for any license*
799 *or certificate issued by a public body.*

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

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

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

817 *13. Records of active investigations being conducted by the Department of Health Professions or by*
818 *any health regulatory board in the Commonwealth.*

819 *14. Records recorded in or compiled exclusively for use in closed meetings lawfully held pursuant to*
820 *§ 2.1-344. However, no record which is otherwise open to inspection under this chapter may be deemed*
821 *exempt by virtue of the fact that it has been reviewed or discussed in a closed meeting.*

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

823 *16. Proprietary information gathered by or for the Virginia Port Authority as provided in*
824 *§ 62.1-132.4 or § 62.1-134.1.*

825 *17. Contract cost estimates prepared for the confidential use of the Department of Transportation in*
826 *awarding contracts for construction or the purchase of goods or services, and records and automated*
827 *systems prepared for the Department's Bid Analysis and Monitoring Program.*

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

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

837 *20. Lists of registered owners of bonds issued by a political subdivision of the Commonwealth,*
838 *whether the lists are maintained by the political subdivision itself or by a single fiduciary designated by*
839 *the political subdivision.*

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

848 *22. Information which was filed as confidential under the Toxic Substances Information Act*
849 *(§ 32.1-239 et seq.), as such Act existed prior to July 1, 1992.*

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

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

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

859 *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. Records 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. 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.

33. Records 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.

34. 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.

35. 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.

36. 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.

37. 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) the 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 clauses (iii), (iv) and (v) shall be open to inspection and copying upon completion of the study or investigation.

38. 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.

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

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

925 41. Investigative notes, correspondence and information furnished in confidence, and records
926 otherwise exempted by this chapter or any Virginia statute, provided to or produced by or for the (i)
927 Auditor of Public Accounts; (ii) Joint Legislative Audit and Review Commission; (iii) Department of the
928 State Internal Auditor with respect to an investigation initiated through the State Employee Fraud,
929 Waste and Abuse Hotline; or (iv) the committee or the auditor with respect to an investigation or audit
930 conducted pursuant to § 15.2-825. Records of completed investigations shall be disclosed in a form that
931 does not reveal the identity of complainants or persons supplying information to investigators. Unless
932 disclosure is prohibited by this section, the records disclosed shall include, but not be limited to, the
933 agency involved, the identity of the person who is the subject of the complaint, the nature of the
934 complaint, and the actions taken to resolve the complaint. If an investigation does not lead to corrective
935 action, the identity of the person who is the subject of the complaint may be released only with the
936 consent of the subject person.

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

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

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

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

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

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

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

971 49. Information required to be provided pursuant to § 54.1-2506.1.

972 50. Confidential information designated as provided in subsection D of § 11-52 as trade secrets or
973 proprietary information by any person who has submitted to a public body an application for
974 prequalification to bid on public construction projects in accordance with subsection B of § 11-46.

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

977 52. Financial, medical, rehabilitative and other personal information concerning applicants for or
978 recipients of loan funds submitted to or maintained by the Assistive Technology Loan Fund Authority
979 under Chapter 11 (§ 51.5-53 et seq.) of Title 51.5.

980 53. Confidential proprietary records which are voluntarily provided by a private entity pursuant to a
981 proposal filed with a public entity under the Public-Private Transportation Act of 1995 (§ 56-556 et
982 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.

54. 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; or records of emergency service agencies to the extent that such records contain specific tactical plans relating to anti-terrorist activity.

55. 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.

56. 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.

57. Records of the Medical College of Virginia Hospitals Authority pertaining to any of the following: an individual's qualifications for or continued membership on its medical or teaching staffs; proprietary information gathered by or in the possession of the Authority from third parties pursuant to a promise of confidentiality; contract cost estimates prepared for confidential use in awarding contracts for construction or the purchase of goods or services; 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 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.

58. 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 were 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.

59. Confidential proprietary records which are provided by a franchisee under § 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.

60. 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.

61. 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.

62. 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.

63. 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.

64. 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.

65. Engineering and architectural drawings, operational, procedural, tactical planning or training manuals, or staff meeting minutes or other records, the disclosure of which would reveal surveillance techniques, personnel deployments, alarm systems or technologies, or operational and transportation plans or protocols, to the extent such disclosure would jeopardize the security or employee safety of (i) the Virginia Museum of Fine Arts or any of its warehouses; (ii) any government store or warehouse controlled by the Department of Alcoholic Beverage Control; (iii) any courthouse, jail, detention or law-enforcement facility; or (iv) any correctional or juvenile facility or institution under the supervision of the Department of Corrections or the Department of Juvenile Justice.

B. 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 (i) contracts between a public official and a public body, other than contracts settling public employee employment disputes held confidential as personnel records under subdivision 4 of subsection A; (ii) records of the position, job classification, official salary or rate of pay of, and records of the allowances or reimbursements for expenses paid to, any officer, official or employee of a public body; or (iii) the compensation or benefits paid by any corporation organized by the Virginia Retirement System or its officers or employees. The provisions of this subsection, however, shall not require public access to records of the official salaries or rates of pay of public employees whose annual rate of pay is \$10,000 or less.

C. 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.

§ 2.1-342.2. Disclosure of criminal records; limitations.

A. As used in this section, "criminal incident information" means a general description of the criminal activity reported, the date and general location the alleged crime was committed, the identity of the investigating officer, and a general description of any injuries suffered or property damaged or stolen.

B. Law-enforcement officials shall make available upon request criminal incident information relating to felony offenses. However, where the release of criminal incident information is likely to jeopardize an ongoing investigation or prosecution, or the safety of an individual; cause a suspect to flee or evade detection; or result in the destruction of evidence, such information may be withheld until the above-referenced damage is no longer likely to occur from release of the information. Nothing in this subsection shall be construed to prohibit the release of those portions of such information that are not likely to cause the above-referenced damage.

C. 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 be released.

D. The identity of any victim, witness or undercover officer, or investigative techniques or procedures need not but may be disclosed unless disclosure is prohibited or restricted under § 19.2-11.2.

E. The identity of any individual providing information about a crime or criminal activity under a promise of anonymity shall not be disclosed.

F. 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. Complaints, memoranda, correspondence and evidence relating to a criminal investigation or prosecution, other than criminal incident information as defined in subsection A;

2. Adult arrestee photographs when necessary to avoid jeopardizing an investigation in felony cases until such time as the release of the photograph will no longer jeopardize the investigation;

3. Reports submitted in confidence to (i) state and local law-enforcement agencies, (ii) investigators authorized pursuant to § 53.1-16, and (iii) campus police departments of public institutions of higher education established pursuant to Chapter 17 (§ 23-232 et seq.) of Title 23;

4. Portions of records of local government crime commissions that would identify individuals providing information about crimes or criminal activities under a promise of anonymity;

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

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

G. Records kept by law-enforcement agencies as required by § 15.2-1722 shall be subject to the provisions of this section except:

1. Those portions of noncriminal incident or other investigative reports or materials containing identifying information of a personal, medical or financial nature provided to a law-enforcement agency where the release of such information would jeopardize the safety or privacy of any person;

2. Those portions of any records containing information related to plans for or resources dedicated to undercover operations; or

3. Records of background investigations of applicants for law-enforcement agency employment or other confidential administrative investigations conducted pursuant to law.

H. In the event of conflict between this section and other provisions of law, this section shall control.

§ 2.1-343. Meetings to be public; notice of meetings; recordings; minutes.

Except as otherwise specifically provided by law and except as provided in §§ 2.1-344 and 2.1-345,

A. All meetings of public bodies shall be public meetings, including meetings and work sessions during which no votes are cast or any decisions made. Notice including the time, date and place of each meeting shall be furnished to any citizen of the Commonwealth who requests such information. Notices for meetings of public bodies of the Commonwealth on which there is at least one member appointed by the Governor shall state whether or not public comment will be received at the meeting, and, if so, the approximate points during the meeting public comment will be received. Requests to be notified on a continual basis shall be made at least once a year in writing and include name, address, zip code and organization of the requester. Notice, reasonable under the circumstance, of special or emergency meetings shall be given contemporaneously with the notice provided members of the public body conducting the meeting.

Unless otherwise exempt, at least one copy of all agenda packets and materials furnished to members of a public body for a meeting shall be made available for inspection by the public at the same time such documents are furnished to the members of the public body open, except as provided in § 2.1-344.

B. No meeting shall be conducted through telephonic, video, electronic or other communication means where the members are not physically assembled to discuss or transact public business, except as provided in § 2.1-343.1 or as may be specifically provided in Title 54.1 for the summary suspension of professional licenses.

C. Every public body shall give notice of the date, time, and location of its meetings by placing the notice in a prominent public location at which notices are regularly posted; in the office of the clerk of the public body, or in the case of a public body which has no clerk, in the office of the chief administrator. Publication of meeting notices by electronic means shall be encouraged. The notice shall be posted at least three working days prior to the meeting. Notices for meetings of state public bodies on which there is at least one member appointed by the Governor shall state whether or not public comment will be received at the meeting and, if so, the approximate point during the meeting when public comment will be received.

D. Notice, reasonable under the circumstance, of special or emergency meetings shall be given contemporaneously with the notice provided members of the public body conducting the meeting.

E. Any person may annually file a written request for notification with a public body. The request shall include the requester's name, address, zip code, daytime telephone number, and organization, if any. The public body receiving such request shall provide notice of all meetings directly to each such person.

F. At least one copy of all agenda packets and, unless exempt, all materials furnished to members of a public body for a meeting shall be made available for public inspection at the same time such documents are furnished to the members of the public body.

G. Nothing in this chapter shall be construed to prohibit the gathering or attendance of two or more

1167 *members of a public body (i) at any place or function where no part of the purpose of such gathering*
1168 *or attendance is the discussion or transaction of any public business, and such gathering or attendance*
1169 *was not called or prearranged with any purpose of discussing or transacting any business of the public*
1170 *body or (ii) at a public forum, candidate appearance, or debate, the purpose of which is to inform the*
1171 *electorate and not to transact public business or to hold discussions relating to the transaction of public*
1172 *business, even though the performance of the members individually or collectively in the conduct of*
1173 *public business may be a topic of discussion or debate at such public meeting. The notice provisions of*
1174 *this chapter shall not apply to informal meetings or gatherings of the members of the General Assembly.*

1175 *H. Any person may photograph, film, record or otherwise reproduce any portion of a meeting*
1176 *required to be open. The public body conducting the meeting may adopt rules governing the placement*
1177 *and use of equipment necessary for broadcasting, photographing, filming or recording a meeting to*
1178 *prevent interference with the proceedings.*

1179 ~~Voting by secret or written ballot in an open meeting shall be a violation of this chapter.~~

1180 *I. Minutes shall be recorded at all public open meetings. However, minutes shall not be required to*
1181 *be taken at deliberations of (i) standing and other committees of the General Assembly, (ii) legislative*
1182 *interim study commissions and committees, including the Virginia Code Commission, (iii) study*
1183 *committees or commissions appointed by the Governor, or (iv) study commissions or study committees,*
1184 *or any other committees or subcommittees appointed by the governing bodies or school boards of*
1185 *counties, cities and towns, except where the membership of any such commission, committee or*
1186 *subcommittee includes a majority of the governing body of the county, city or town or school board.*
1187 *Minutes, including draft minutes, and all other records of open meetings, including audio or*
1188 *audio/visual records shall be deemed public records and subject to the provisions of this chapter. Audio*
1189 *or audio/visual records of open meetings shall be public records which shall be produced in accordance*
1190 *with § 2.1-342.*

1191 *§ 2.1-343.1. Electronic communication meetings.*

1192 *A. It is shall be a violation of this chapter for any political subdivision or any governing body,*
1193 *authority, board, bureau, commission, district or agency of local government or any committee thereof to*
1194 *conduct a meeting wherein the public business is discussed or transacted through telephonic, video,*
1195 *electronic or other communication means where the members are not physically assembled. Nothing in*
1196 *this section shall be construed to prohibit the use of interactive audio or video means to expand public*
1197 *participation.*

1198 *B. For purposes of subsections B through F of this section, "public body" means any public body of*
1199 *the Commonwealth, as provided in the definitions of "meeting" and "public body" in § 2.1-341, but*
1200 *excluding excludes any political subdivision or any governing body, authority, board, bureau,*
1201 *commission, district or agency of local government.*

1202 ~~Such State~~ *public bodies may conduct any meeting, except executive or closed meetings held*
1203 *pursuant to § 2.1-344, wherein the public business is discussed or transacted through telephonic or video*
1204 *means. Where a quorum of a public body of the Commonwealth is physically assembled at one location*
1205 *for the purpose of conducting a meeting authorized under this subsectionsection, additional members of*
1206 *such public body may participate in the meeting through telephonic means provided such participation is*
1207 *available to the public.*

1208 *C. Notice of any meetings held pursuant to this section shall be provided at least thirty days in*
1209 *advance of the date scheduled for the meeting. The notice shall include the date, time, place and*
1210 *purpose for the meeting and shall identify the location or locations for the meeting. All locations for the*
1211 *meeting shall be made accessible to the public. All persons attending the meeting at any of the meeting*
1212 *locations shall be afforded the same opportunity to address the public body as persons attending the*
1213 *primary or central location. Any interruption in the telephonic or video broadcast of the meeting shall*
1214 *result in the suspension of action at the meeting until repairs are made and public access restored.*

1215 *Thirty-day notice shall not be required for telephonic or video meetings continued to address an*
1216 *emergency situation as provided in subsection F of this section or to conclude the agenda of a*
1217 *telephonic or video meeting of the public body for which the proper notice has been given, when the*
1218 *date, time, place and purpose of the continued meeting are set during the meeting prior to adjournment.*

1219 *The public body shall provide the Director of the Department of Information Technology with notice*
1220 *of all public meetings held through telephonic or video means pursuant to this section.*

1221 *D. An agenda and materials which will be distributed to members of the public body and which have*
1222 *been made available to the staff of the public body in sufficient time for duplication and forwarding to*
1223 *all location sites locations where public access will be provided shall be made available to the public at*
1224 *the time of the meeting. Minutes of all meetings held by telephonic or video means shall be recorded as*
1225 *required by § 2.1-343. Votes taken during any meeting conducted through telephonic or video means*
1226 *shall be recorded by name in roll-call fashion and included in the minutes. In addition, the public body*
1227 *shall make an audio recording of the meeting, if a telephonic medium is used, or an audio/visual*
1228 *recording, if the meeting is held by video means. The recording shall be preserved by the public body*

for a period of three years following the date of the meeting and shall be available to the public.

E. No more than twenty-five percent of all meetings held annually by a public body, including meetings of any ad hoc or standing committees, may be held by telephonic or video means. Any public body which meets by telephonic or video means shall file with the Director of the Department of Information Technology by July 1 of each year a statement identifying the total number of meetings held during the preceding fiscal year, the dates on which the meetings were held and the number and purpose of those conducted through telephonic or video means.

F. Notwithstanding the limitations imposed by subsection E of this section, a public body may meet by telephonic or video means as often as needed if an emergency exists and the public body is unable to meet in regular session. As used in this subsection "emergency" means an unforeseen circumstance rendering the notice required by this section, or by § 2.1-343 of this chapter, impossible or impracticable and which circumstance requires immediate action. Public bodies conducting emergency meetings through telephonic or video means shall comply with the provisions of subsection D requiring minutes, recordation and preservation of the audio or audio/visual recording of the meeting. The basis for nature of the emergency shall be stated in the minutes.

§ 2.1-343.2. Transaction of public business other than by votes at meetings prohibited.

Unless otherwise specifically provided by law, no vote of any kind of the membership, or any part thereof, of any public body shall be taken to authorize the transaction of any public business, other than a vote taken at a meeting conducted in accordance with the provisions of this chapter. *No public body shall vote by secret or written ballot, and unless expressly provided by this chapter, no public body shall vote by telephone or other electronic communication means.*

Notwithstanding the foregoing, nothing contained herein shall be construed to prohibit separately contacting the membership, or any part thereof, of any public body for the purpose of ascertaining a member's position with respect to the transaction of public business.

§ 2.1-344. Closed meetings authorized for certain limited purposes.

A. Public bodies are not required to conduct executive or closed meetings. However, should a public body determine that an executive or closed meeting is desirable, such meeting shall be held *may hold closed meetings* only for the following purposes:

1. Discussion, consideration or interviews of prospective candidates for employment; assignment, appointment, promotion, performance, demotion, salaries, disciplining or resignation of specific public officers, appointees or employees of any public body; and evaluation of performance of departments or schools of state public institutions of higher education where such matters regarding such evaluation will necessarily involve discussion of the performance of specific individuals might be affected by such evaluation. Any teacher shall be permitted to be present during an executive session or a closed meeting in which there is a discussion or consideration of a disciplinary matter which involves the teacher and some student or students and the student or students involved in the matter are is present, provided the teacher makes a written request to be present to the presiding officer of the appropriate board.

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

3. Discussion or consideration of the condition, acquisition or use of real property for a public purpose, or of the disposition of publicly held real property, or of plans for the future of a state institution of higher education which could where discussion in an open meeting would adversely affect the value of property owned or desirable for ownership by such institution bargaining position or negotiating strategy of the public body.

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

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

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

7. 6. Consultation with legal counsel and briefings by staff members, or consultants or attorneys, pertaining to actual or probable litigation, or other where such consultation or briefing in open meeting would adversely affect the negotiating or litigating posture of the public body; and consultation with legal counsel employed or retained by a public body regarding specific legal matters requiring the provision of legal advice by such counsel. For the purposes of this subdivision, "probable litigation" means litigation which has been specifically threatened or on which the public body or its legal counsel has a reasonable basis to believe will be commenced by or against a known party. Nothing in this

1290 *subdivision shall be construed to permit the closure of a meeting merely because an attorney*
1291 *representing the public body is in attendance or is consulted on a matter.*

1292 8. 7. In the case of boards of visitors of ~~state~~ *public* institutions of higher education, discussion or
1293 consideration of matters relating to gifts, bequests and fund-raising activities, and grants and contracts
1294 for services or work to be performed by such institution. However, the terms and conditions of any such
1295 gifts, bequests, grants and contracts made by a foreign government, a foreign legal entity or a foreign
1296 person and accepted by a ~~state~~ *public* institution of higher education shall be subject to public disclosure
1297 upon written request to the appropriate board of visitors. For the purpose of this subdivision, (i) "foreign
1298 government" means any government other than the United States government or the government of a
1299 state or a political subdivision thereof; (ii) "foreign legal entity" means any legal entity created under the
1300 laws of the United States or of any state thereof if a majority of the ownership of the stock of such
1301 legal entity is owned by foreign governments or foreign persons or if a majority of the membership of
1302 any such entity is composed of foreign persons or foreign legal entities, or any legal entity created under
1303 the laws of a foreign government; and (iii) "foreign person" means any individual who is not a citizen
1304 or national of the United States or a trust territory or protectorate thereof.

1305 9. 8. In the case of the boards of trustees of the Virginia Museum of Fine Arts and The Science
1306 Museum of Virginia, discussion or consideration of matters relating to specific gifts, bequests, and
1307 grants.

1308 ~~10.~~ 9. Discussion or consideration of honorary degrees or special awards.

1309 ~~11.~~ 10. Discussion or consideration of tests ~~or~~, examinations or other ~~documents~~ *records* excluded
1310 from this chapter pursuant to § ~~2-1-342 B~~ 9 2.1-342.01 A 11.

1311 ~~12.~~ 11. Discussion, consideration or review by the appropriate House or Senate committees of
1312 possible disciplinary action against a member arising out of the possible inadequacy of the disclosure
1313 statement filed by the member, provided the member may request in writing that the committee meeting
1314 not be conducted in ~~executive session~~ *a closed meeting*.

1315 ~~13.~~ 12. Discussion of strategy with respect to the negotiation of a siting agreement or to consider the
1316 terms, conditions, and provisions of a siting agreement if the governing body in open meeting finds that
1317 an open meeting will have a ~~detrimental effect~~ *an adverse affect* upon the negotiating position of the
1318 governing body or the establishment of the terms, conditions and provisions of the siting agreement, or
1319 both. All discussions with the applicant or its representatives may be conducted in a closed meeting ~~or~~
1320 ~~executive session~~.

1321 ~~14.~~ 13. Discussion by the Governor and any economic advisory board reviewing forecasts of
1322 economic activity and estimating general and nongeneral fund revenues.

1323 ~~15.~~ 14. Discussion or consideration of medical and mental records excluded from this chapter
1324 pursuant to § ~~2-1-342 B~~ 3 2.1-342.01 A 5, and those portions of disciplinary proceedings by any
1325 regulatory board within the Department of Professional and Occupational Regulation or Department of
1326 Health Professions conducted pursuant to § 9-6.14:11 or § 9-6.14:12 during which the board deliberates
1327 to reach a decision.

1328 ~~16.~~ 15. Discussion, consideration or review of State Lottery Department matters related to proprietary
1329 lottery game information and studies or investigations exempted from disclosure under subdivisions 37
1330 36 and 38 37 of subsection ~~BA~~ of § ~~2-1-342~~ 2.1-342.01.

1331 ~~17.~~ 16. Those portions of meetings by local government crime commissions where the identity of, or
1332 information tending to identify, individuals providing information about crimes or criminal activities
1333 under a promise of anonymity is discussed or disclosed.

1334 ~~18.~~ 17. Discussion, consideration, review and deliberations by local community corrections resources
1335 boards regarding the placement in community diversion programs of individuals previously sentenced to
1336 state correctional facilities.

1337 ~~19. [Repealed.]~~

1338 ~~20.~~ 18. Those portions of meetings in which the Board of Corrections discusses or discloses the
1339 identity of, or information tending to identify, any prisoner who (i) provides information about crimes or
1340 criminal activities, (ii) renders assistance in preventing the escape of another prisoner or in the
1341 apprehension of an escaped prisoner, or (iii) voluntarily or at the instance of a prison official renders
1342 other extraordinary services, the disclosure of which is likely to jeopardize the prisoner's life or safety.

1343 ~~21.~~ 19. Discussion of plans to protect public safety as it relates to terrorist activity.

1344 ~~22.~~ In the case of corporations organized by the Virginia Retirement System, discussion or
1345 consideration of (i) proprietary information provided by, and financial information concerning,
1346 coventurers, partners, lessors, lessees, or investors, and (ii) the condition, acquisition, disposition, use,
1347 leasing, development, coventuring, or management of real estate the disclosure of which would have a
1348 substantial adverse impact on the value of such real estate or result in a competitive disadvantage to the
1349 corporation or subsidiary.

1350 ~~23.~~ 20. Those portions of meetings in which individual child death cases are discussed by the State
1351 Child Fatality Review Team established pursuant to § 32.1-283.1.

24. 21. Those portions of meetings of the University of Virginia Board of Visitors and those portions of meetings of any persons to whom management responsibilities for the University of Virginia Medical Center have been delegated, in which there is discussed 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 adversely affect the competitive position of the Medical Center.

25. 22. In the case of the Medical College of Virginia Hospitals Authority, discussion or consideration of any of the following: the condition, acquisition, use or disposition of real or personal property where disclosure would adversely affect the bargaining position or negotiating strategy of the Authority; operational plans that could affect the value of such property, real or personal, owned or desirable for ownership by the Authority; matters relating to gifts, bequests and fund-raising activities; grants and contracts for services or work to be performed by the Authority; marketing or operational strategies where disclosure of such strategies would be harmful to adversely affect the competitive position of the Authority; members of its medical and teaching staffs and qualifications for appointments thereto; and qualifications or evaluations of other employees.

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

27. 24. Those meetings Meetings or portions of meetings of the Board of the Virginia Higher Education Tuition Trust Fund wherein personal information, as defined in § 2.1-379, which has been provided to the Board or its employees by or on behalf of individuals who have requested information about, applied for, or entered into prepaid tuition contracts pursuant to Chapter 4.9 (§ 23-38.75 et seq.) of Title 23 is discussed.

B. No resolution, ordinance, rule, contract, regulation or motion adopted, passed or agreed to in an executive or a closed meeting shall become effective unless the public body, following the meeting, reconvenes in open meeting and takes a vote of the membership on such resolution, ordinance, rule, contract, regulation or motion which shall have its substance reasonably identified in the open meeting. This section shall not be construed to (i) require the disclosure of any contract between the Intervention Program Committee within the Department of Health Professions and an impaired practitioner entered into pursuant to Chapter 25.1 of Title 54.1 or (ii) require the board of directors of any authority created pursuant to the Industrial Development and Revenue Bond Act (§ 15.1-1373 et seq.), or any public body empowered to issue industrial revenue bonds by general or special law, to identify a business or industry to which subdivision A 5 of this section applies. However, such business or industry must be identified as a matter of public record at least thirty days prior to the actual date of the board's authorization of the sale or issuance of such bonds.

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

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

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

§ 2.1-344.1. Closed meetings procedures; certification of proceedings.

A. No closed meeting shall become an executive or closed meeting be held unless the public body proposing to convene such meeting shall have has taken an affirmative recorded vote in open session to that effect, by motion stating specifically the purpose or purposes which are to be the subject of the meeting, and reasonably identifying the substance of the matters to be discussed. A statement shall be included in the minutes of the open meeting which shall make an open meeting approving a motion which (i) identifies the subject matter, (ii) states the purpose of the meeting and (iii) makes specific reference to the applicable exemption or exemptions from open meeting requirements provided in § 2.1-343 or subsection A of § 2.1-344 or in § 2.1-345, and the. The matters contained in such motion

1413 shall be set forth in ~~those detail in the~~ minutes of the open meeting. A general reference to the
1414 provisions of this chapter ~~or, the~~ authorized exemptions from open meeting requirements, ~~or the subject~~
1415 ~~matter of the closed meeting~~ shall not be sufficient to satisfy the requirements for ~~an executive or~~
1416 ~~holding a~~ closed meeting.

1417 B. The notice provisions of this chapter shall not apply to ~~executive or~~ closed meetings of any public
1418 body held solely for the purpose of interviewing candidates for the position of chief administrative
1419 officer. Prior to any such ~~executive or~~ closed meeting for the purpose of interviewing candidates, the
1420 public body shall announce in an open meeting that such ~~executive or~~ closed meeting shall be held at a
1421 disclosed or undisclosed location within fifteen days thereafter.

1422 C. The public body holding an ~~executive or a~~ closed meeting shall restrict its ~~consideration of~~
1423 ~~matters discussion~~ during the closed ~~portions meeting~~ only to those ~~purposes matters~~ specifically
1424 exempted from the provisions of this chapter ~~and identified in the motion required by subsection A.~~

1425 D. At the conclusion of any ~~executive or~~ closed meeting ~~convened hereunder~~, the public body
1426 holding such meeting shall ~~immediately~~ reconvene in ~~an open session immediately thereafter meeting~~
1427 and shall take a roll call or other recorded vote to be included in the minutes of that body, certifying
1428 that to the best of ~~the~~ each member's knowledge (i) only public business matters lawfully exempted
1429 from open meeting requirements under this chapter; and (ii) only such public business matters as were
1430 identified in the motion by which the ~~executive or~~ closed meeting was convened were heard, discussed
1431 or considered in the meeting by the public body. Any member of the public body who believes that
1432 there was a departure from the requirements of subdivisions (i) and (ii) ~~above~~, shall so state prior to the
1433 vote, indicating the substance of the departure that, in his judgment, has taken place. The statement shall
1434 be recorded in the minutes of the public body.

1435 E. Failure of the certification required by subsection D; ~~above~~, to receive the affirmative vote of a
1436 majority of the members of the public body present during a ~~closed or executive session meeting~~ shall
1437 not affect the validity or confidentiality of such meeting with respect to matters considered therein in
1438 compliance with the provisions of this chapter. The recorded vote and any statement made in connection
1439 therewith, shall upon proper authentication, constitute evidence in any proceeding brought to enforce ~~the~~
1440 ~~provisions of~~ this chapter.

1441 F. A public body may permit nonmembers to attend ~~an executive or a~~ closed meeting if such persons
1442 are deemed necessary or if their presence will reasonably aid the public body in its consideration of a
1443 topic which is a subject of the meeting.

1444 G. Except as specifically authorized by law, in no event may any public body take action on matters
1445 discussed in any ~~executive or~~ closed meeting, except at a ~~public~~ *an open* meeting for which notice was
1446 given as required by § 2.1-343.

1447 H. Minutes may be taken during ~~executive or~~ closed ~~sessions meetings~~ of a public body, but shall
1448 not be required. Such minutes shall not be subject to mandatory public disclosure.

1449 § 2.1-346. Proceedings for enforcement of chapter.

1450 A. Any person, including the attorney for the Commonwealth acting in his official or individual
1451 capacity, denied the rights and privileges conferred by this chapter may proceed to enforce such rights
1452 and privileges by filing a petition for mandamus or injunction, supported by an affidavit showing good
1453 cause, addressed to the general district court or the court of record of the county or city from which the
1454 public body has been elected or appointed to serve and in which such rights and privileges were so
1455 denied. Failure by any person to request and receive notice of the time and place of meetings as
1456 provided in § 2.1-343 shall not preclude any person from enforcing his or her rights and privileges
1457 conferred by this chapter.

1458 B. Any petition alleging denial of rights and privileges conferred by this chapter by a board, bureau,
1459 commission, authority, district or agency of the state government or by a standing or other committee of
1460 the General Assembly, shall be addressed to the ~~General District Court~~ *general district court* or the
1461 ~~Circuit Court~~ *circuit court* of the residence of the aggrieved party or of the City of Richmond. *In any*
1462 *action brought before a general district court, a corporate petitioner may appear through its officer,*
1463 *director or managing agent without the assistance of counsel, notwithstanding any provision of law or*
1464 *Rule of the Supreme Court of Virginia to the contrary.*

1465 A C. The petition for mandamus or injunction ~~under this chapter~~ shall be heard within seven days of
1466 the date when the same is made. However, any petition made outside of the regular terms of the circuit
1467 court of a county which is included in a judicial circuit with another county or counties, the hearing on
1468 the petition shall be given precedence on the docket of such court over all cases which are not otherwise
1469 given precedence by law.

1470 D. The petition shall allege with reasonable specificity the circumstances of the denial of the rights
1471 and privileges conferred by this chapter. A single instance of denial of the rights and privileges
1472 conferred by this chapter shall be sufficient to invoke the remedies granted herein. If the court finds the
1473 denial to be in violation of the provisions of this chapter, the petitioner shall be entitled to recover
1474 reasonable costs and attorney's fees from the public body if the petitioner substantially prevails on the

merits of the case, unless special circumstances would make an award unjust. In making this determination, a court may consider, among other things, the reliance of a public body on an opinion of the Attorney General or a decision of a court that substantially supports the public body's position. The court may also impose appropriate sanctions in favor of the public body as provided in § 8.01-271.1.

E. In any action to enforce the provisions of this chapter, the public body shall bear the burden of proof to establish an exemption by a preponderance of the evidence. Any failure by a public body to follow the procedures established by this chapter shall be presumed to be a violation of this chapter.

§ 2.1-346.1. Violations and penalties.

In a proceeding commenced against members of public bodies under § 2.1-346 for a violation of §§ 2.1-342, [2.1-342.1, 2.1-342.2,] 2.1-343, 2.1-343.1, 2.1-343.2, 2.1-344 or § 2.1-344.1, the court, if it finds that a violation was willfully and knowingly made, shall impose upon such member in his individual capacity, whether a writ of mandamus or injunctive relief is awarded or not, a civil penalty of not less than \$25 \$100 nor more than \$1,000, which amount shall be paid into the State Literary Fund. For a second or subsequent violation, such civil penalty shall be not less than \$250 \$500 nor more than \$1,000 \$2,500.

§ 15.2-1722. Certain records to be kept by sheriffs and chiefs of police.

A. It shall be the duty of the sheriff or chief of police of every locality to insure, in addition to other records required by law, the maintenance of adequate personnel, arrest, investigative, reportable incidents, and noncriminal incidents records necessary for the efficient operation of a law-enforcement agency. Failure of a sheriff or a chief of police to maintain such records or failure to relinquish such records to his successor in office shall constitute a misdemeanor. Former sheriffs or chiefs of police shall be allowed access to such files for preparation of a defense in any suit or action arising from the performance of their official duties as sheriff or chief of police. The enforcement of this section shall be the duty of the attorney for the Commonwealth of the county or city wherein the violation occurs. Except for 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 of arrest, the records required to be maintained by this section shall be exempt from the provisions of Chapter 24 (§ 2.1-340 et seq.) of Title 2.1.

B. For purposes of this section, the following definitions shall apply:

"Arrest records" means a compilation of information, centrally maintained in law-enforcement custody, of any arrest or temporary detention of an individual, including the identity of the person arrested or detained, the nature of the arrest or detention, and the charge, if any.

"Investigative records" means the reports of any systematic inquiries or examinations into criminal or suspected criminal acts which have been committed, are being committed, or are about to be committed.

"Noncriminal incidents records" means compilations of noncriminal occurrences of general interest to law-enforcement agencies, such as missing persons, lost and found property, suicides and accidental deaths.

"Personnel records" means those records maintained on each and every individual employed by a law-enforcement agency which reflect personal data concerning the employee's age, length of service, amount of training, education, compensation level, and other pertinent personal information.

"Reportable incidents records" means a compilation of complaints received by a law-enforcement agency and action taken by the agency in response thereto.

§ 19.2-368.3. Powers and duties of Commission.

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

1. To adopt, promulgate, amend and rescind suitable rules and regulations to carry out the provisions and purposes of this chapter.

2. Notwithstanding the provisions of subdivision B 1 of § 2.1-342, to acquire from the attorneys for the Commonwealth, State Police, local police departments, sheriffs' departments, and the Chief Medical Examiner such investigative results, information and data as will enable the Commission to determine if, in fact, a crime was committed or attempted, and the extent, if any, to which the victim or claimant was responsible for his own injury. These data shall include prior adult arrest records and juvenile court disposition records of the offender. For such purposes and in accordance with § 16.1-305, the Commission may also acquire from the juvenile and domestic relations district courts a copy of the order of disposition relating to the crime. The use of any information received by the Commission pursuant to this subdivision shall be limited to carrying out the purposes set forth in this section, and this information shall be confidential and shall not be disseminated further. The agency from which the information is requested may submit original reports, portions thereof, summaries, or such other configurations of information as will comply with the requirements of this section.

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

4. To require and direct medical examination of victims.

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

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

7. To render each year to the Governor and to the General Assembly a written report of its activities.

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

§ 23-50.16:32. Confidential and public information.

A. The Authority shall be subject to the provisions of the Freedom of Information Act (§ 2.1-340 et seq.), which shall include the ~~exceptions~~ *exclusions* set forth in subdivision ~~66 of subsection B of § 2.1-342~~ *57 of subsection A of § 2.1-342.01* and subdivision ~~2522~~ of subsection A of § 2.1-344.

B. For purposes of the Freedom of Information Act (§ 2.1-340 et seq.), meetings of the Board shall not be considered meetings of the Board of Visitors of the University. Meetings of the Board may be conducted through telephonic or video means as provided in § 2.1-343.1 C through F or similar provisions of any successor law.

§ 32.1-283.1. State Child Fatality Review Team established; membership; access to and maintenance of records; confidentiality; etc.

A. There is hereby created the State Child Fatality Review Team, hereinafter referred to as the "Team," which shall develop and implement procedures to ensure that child deaths occurring in Virginia are analyzed in a systematic way. The Team shall review (i) violent and unnatural child deaths, (ii) sudden child deaths occurring within the first eighteen months of life, and (iii) those fatalities for which the cause or manner of death was not determined with reasonable medical certainty. No child death review shall be initiated by the Team until conclusion of any law-enforcement investigation or criminal prosecution. The Team shall (i) develop and revise as necessary operating procedures for the review of child deaths, including identification of cases to be reviewed and procedures for coordination among the agencies and professionals involved, (ii) improve the identification, data collection, and record keeping of the causes of child death, (iii) recommend components for prevention and education programs, (iv) recommend training to improve the investigation of child deaths, and (v) provide technical assistance, upon request, to any local child fatality teams that may be established. The operating procedures for the review of child deaths shall be exempt from the Administrative Process Act (§ 9-6.14:1 et seq.) pursuant to subdivision 17 of subsection B of § 9-6.14:4.1.

B. The sixteen-member Team shall be chaired by the Chief Medical Examiner and shall be composed of the following persons or their designees: the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services; the Director of Child Protective Services within the Department of Social Services; the Superintendent of Public Instruction; the State Registrar of Vital Records; and the Director of the Department of Criminal Justice Services. In addition, one representative from each of the following entities shall be appointed by the Governor to serve for a term of three years: local law-enforcement agencies, local fire departments, local departments of social services, the Medical Society of Virginia, the Virginia College of Emergency Physicians, the Virginia Pediatric Society, Virginia Sudden Infant Death Syndrome Alliance, local emergency medical services personnel, Commonwealth's attorneys, and community services boards.

C. Upon the request of the Chief Medical Examiner in his capacity as chair of the Team, made after the conclusion of any law-enforcement investigation or prosecution, information and records regarding a child whose death is being reviewed by the Team may be inspected and copied by the Chief Medical Examiner or his designee, including, but not limited to, any report of the circumstances of the event maintained by any state or local law-enforcement agency or medical examiner, and information or records maintained on such child by any school, social services agency or court. Information, records or reports maintained by any Commonwealth's Attorney shall be made available for inspection and copying by the Chief Medical Examiner pursuant to procedures which shall be developed by the Chief Medical Examiner and the Commonwealth's Attorneys' Services Council established by § 2.1-64.28:1. In addition, the Chief Medical Examiner may inspect and copy from any Virginia health care provider, on behalf of the Team, (i) without obtaining consent, the health and mental health records of the child and those perinatal medical records of the child's mother that related to such child, and (ii) upon obtaining consent from each adult regarding his personal records, or from a parent regarding the records of a minor child, the health and mental health records of the child's family. All such information and records shall be confidential and shall be excluded from the Virginia Freedom of Information Act (§ 2.1-340 et seq.) pursuant to subdivision ~~59 of subsection B of § 2.1-342~~ *51 of subsection A of § 2.1-342.01*. Upon the conclusion of the child death review, all information and records concerning the child and the child's family shall be shredded or otherwise destroyed by the Chief Medical Examiner in order to ensure confidentiality. Such information or records shall not be subject to subpoena or discovery or be

admissible in any criminal or civil proceeding. If available from other sources, however, such information and records shall not be immune from subpoena, discovery or introduction into evidence when obtained through such other sources solely because the information and records were presented to the Team during a child death review. Further, the findings of the Team may be disclosed or published in statistical or other form which shall not identify individuals. The portions of meetings in which individual child death cases are discussed by the Team shall be closed pursuant to subdivision 2320 of subsection A of § 2.1-344. In addition to the requirements of § 2.1-344.1, all team members, persons attending closed team meetings, and persons presenting information and records on specific child deaths to the Team during closed meetings shall execute a sworn statement to honor the confidentiality of the information, records, discussions, and opinions disclosed during any closed meeting to review a specific child death. Violations of this subsection shall be punishable as a Class 3 misdemeanor.

D. Upon notification of a child death, any state or local government agency maintaining records on such child or such child's family which are periodically purged shall retain such records for the longer of twelve months or until such time as the State Child Fatality Review Team has completed its child death review of the specific case.

E. The Team shall compile annual data which shall be made available to the Governor and the General Assembly as requested. These statistical data compilations shall not contain any personally identifying information and shall be public records.

§ 52-8.3. Disclosure of criminal investigative records and reports; penalty.

Any person employed by a law-enforcement agency or other governmental agency within the Commonwealth who has or has had access in an official capacity to an official written record or report submitted in confidence to the Department of State Police relating to an ongoing criminal investigation, and who uses or knowingly permits another to use such record or report for any purpose not consistent with the ~~exemptions~~ *exclusions* permitted in ~~§ 2.1-342~~ §§ 2.1-342.01 and 2.1-342.2, or other provision of state law, shall be guilty of a Class 2 misdemeanor.

The provisions of this section shall not be construed to impede or prohibit full access to information concerning the existence of any criminal investigation or to other verbal disclosures permitted by state police operating procedures.

§ 54.1-2517. Powers and duties of the Intervention Program Committee; certain meetings, decisions to be excepted from the Freedom of Information Act; confidentiality of records; immunity from liability.

A. The Intervention Program Committee shall have the following powers and duties:

1. To determine, in accordance with the regulations, eligibility to enter into the Program;
2. To determine, in accordance with the regulations, those Program participants who are eligible for stayed disciplinary action;
3. To enter into written contracts with practitioners which may include, among other terms and conditions, withdrawal from practice or limitations on the scope of the practice for a period of time;
4. To report to the Director and the health regulatory boards as necessary on the status of applicants for and participants in the Program; and
5. To report to the Director, at least annually, on the performance of the Program.

B. Records of the Intervention Program Committee, to the extent such records identify individual practitioners in the intervention program, shall be privileged and confidential, and shall not be disclosed consistent with the Virginia Freedom of Information Act (§ 2.1-340 et seq.). Such records shall be used by the Committee only in the exercise of the proper functions of the Committee as set forth in this chapter and shall not be public records nor shall such records be subject to court order, except as provided in subdivision C 4 below, or be subject to discovery or introduction as evidence in any civil, criminal, or administrative proceedings except those conducted by a health regulatory board.

C. Notwithstanding the provisions of subsection B above and of subdivision ~~B 67 of § 2.1-342~~ 60 of subsection A of § 2.1-342.01, the Committee may disclose such records relative to an impaired practitioner only:

1. When disclosure of the information is essential to the intervention, treatment or rehabilitation needs of the impaired practitioner;
2. When release of the information has been authorized in writing by the impaired practitioner;
3. To a health regulatory board within the Department of Health Professions; or
4. When an order by a court of competent jurisdiction has been granted, upon a showing of good cause therefor, including the need to avert a substantial risk of death or serious bodily harm. In assessing good cause, the court shall weigh the public interest and the need for disclosure against the injury to the patient, to the physician-patient relationship, and to the treatment services. Upon the granting of such order, the court, in determining the extent to which any disclosure of all or any part of any record is necessary, shall impose appropriate protections against unauthorized disclosures.

D. Pursuant to subdivision A 26 23 of § 2.1-344, the proceedings of the Committee which in any way pertain or refer to a specific practitioner who may be, or who is actually, impaired and who may be

1659 or is, by reason of such impairment, subject to disciplinary action by the relevant board shall be
1660 excluded from the requirements of the Freedom of Information Act (§ 2.1-340 et seq.) and may be
1661 closed. Such proceedings shall be privileged and confidential.

1662 E. The members of the Committee shall be immune from liability resulting from the exercise of the
1663 powers and duties of the Committee as provided in § 8.01-581.13.

1664 2. That §§ 2.1-342.1 and 2.1-345 of the Code of Virginia are repealed.