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SENATE BILL NO. 1264

Offered January 11, 2013

A *BILL to amend and reenact §§ 2.2-3706, 2.2-3711, and 15.2-1713.1 of the Code of Virginia, relating to the Freedom of Information Act; access to criminal and other records held by public bodies engaged in criminal law-enforcement activities.*

Patron—Stuart

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-3706, 2.2-3711, and 15.2-1713.1 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-3706. Disclosure of criminal records; limitations.

A. *Definitions.* 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.

"Criminal investigative file" means any documents and information including complaints, court orders, memoranda, notes, diagrams, maps, photographs, correspondence, reports, witness statements, and evidence relating to a criminal investigation or prosecution, other than criminal incident information.

B. Law-enforcement agencies 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 agencies 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. All public bodies engaged in criminal law-enforcement activities shall provide requested records in accordance with this chapter as follows:

1. *Records required to be released:*

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

(1) *A general description of the criminal activity reported;*

(2) *The date the alleged crime was committed;*

(3) *The general location where the alleged crime was committed;*

(4) *The identity of the investigating officer or other point of contact; and*

(5) *A general description of any injuries suffered or property damaged or stolen.*

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

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

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

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

2. *Discretionary releases.* 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:

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59 1. *a. Criminal investigative files as, defined in subsection A as any documents and information,*
60 *including complaints, court orders, memoranda, notes, diagrams, maps, photographs, correspondence,*
61 *reports, witness statements, and evidence relating to a criminal investigation or prosecution, other than*
62 *criminal incident information subject to release in accordance with subdivision 1 a;*

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

65 3. *b. Reports submitted in confidence to (i) state and local law-enforcement agencies, (ii)*
66 *investigators authorized pursuant to Chapter 3.2 (§ 2.2-307 et seq.), and (iii) campus police departments*
67 *of public institutions of higher education established pursuant to Chapter 17 (§ 23-232 et seq.) of Title*
68 *23;*

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

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

74 6. *d. All records of persons imprisoned in penal institutions in the Commonwealth provided such*
75 *records relate to the imprisonment;*

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

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

85 9. *g. Records of a law-enforcement agency to the extent that they disclose the telephone numbers for*
86 *cellular telephones, pagers, or comparable portable communication devices provided to its personnel for*
87 *use in the performance of their official duties;*

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

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

96 G. *Records kept by law-enforcement agencies as required by § 15.2-1722 shall be subject to the*
97 *provisions of this chapter except that those portions of noncriminal incident or other investigative reports*
98 *or materials that contain identifying information of a personal, medical or financial nature may be*
99 *withheld where the release of such information would jeopardize the safety or privacy of any person.*

100 H. *Records of the Sex Offender and Crimes Against Minors Registry maintained by the Department*
101 *of State Police pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1 are excluded from the provisions of*
102 *this chapter, including information obtained from state, local and regional officials, except to the extent*
103 *that information is required to be posted on the Internet pursuant to § 9.1-913.*

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

107 k. *Records of the Sex Offender and Crimes Against Minors Registry maintained by the Department of*
108 *State Police pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1, including information obtained from*
109 *state, local, and regional officials, except to the extent that information is required to be posted on the*
110 *Internet pursuant to § 9.1-913; and*

111 3. *Prohibited releases. The identity of any individual providing information about a crime or*
112 *criminal activity under a promise of anonymity shall not be disclosed.*

113 B. *Noncriminal records. Records (i) required to be maintained by law-enforcement agencies pursuant*
114 *to § 15.2-1722 or (ii) maintained by other public bodies engaged in criminal law-enforcement activities*
115 *shall be subject to the provisions of this chapter except that those portions of noncriminal incident or*
116 *other noncriminal investigative reports or materials that contain identifying information of a personal,*
117 *medical, or financial nature may be withheld where the release of such information would jeopardize*
118 *the safety or privacy of any person. Access to personnel records of persons employed by a*
119 *law-enforcement agency shall be governed by the provisions of subdivision A 2 i of this section and*
120 *subdivision 1 of § 2.2-3705.1, as applicable.*

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

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

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

A. Public bodies 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 public institutions of higher education where such evaluation will necessarily involve discussion of the performance of specific individuals. Any teacher shall be permitted to be present during a closed meeting in which there is a discussion or consideration of a disciplinary matter that involves the teacher and some student and the student involved in the matter 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 or any other matters that would involve the disclosure of information contained in a scholastic record concerning any student of any Virginia 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 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 acquisition of real property for a public purpose, or of the disposition of publicly held real property, where discussion in an open meeting would adversely affect the 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. Discussion or consideration of the investment 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. Consultation with legal counsel and briefings by staff members or consultants pertaining to actual or probable litigation, 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 that 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 subdivision shall be construed to permit the closure of a meeting merely because an attorney representing the public body is in attendance or is consulted on a matter.

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

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

10. Discussion or consideration of honorary degrees or special awards.

11. Discussion or consideration of tests, examinations, or other records excluded from this chapter pursuant to subdivision 4 of § 2.2-3705.1.

12. Discussion, consideration, or review by the appropriate House or Senate committees of possible

disciplinary action against a member arising out of the possible inadequacy of the disclosure statement filed by the member, provided the member may request in writing that the committee meeting not be conducted in a closed meeting.

13. Discussion of strategy with respect to the negotiation of a hazardous waste siting agreement or to consider the terms, conditions, and provisions of a hazardous waste siting agreement if the governing body in open meeting finds that an open meeting will have an adverse effect upon the negotiating position of the governing body or the establishment of the terms, conditions and provisions of the siting agreement, or both. All discussions with the applicant or its representatives may be conducted in a closed meeting.

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

15. Discussion or consideration of medical and mental health records excluded from this chapter pursuant to subdivision 1 of § 2.2-3705.5.

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

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

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

19. Discussion of plans to protect public safety as it relates to terrorist activity and briefings by staff members, legal counsel, or law-enforcement or emergency service officials concerning actions taken to respond to such activity or a related threat to public safety; or discussion of reports or plans related to the security of any governmental facility, building or structure, or the safety of persons using such facility, building or structure.

20. Discussion by the Board of the Virginia Retirement System, acting pursuant to § 51.1-124.30, or of any local retirement system, acting pursuant to § 51.1-803, or of the Rector and Visitors of the University of Virginia, acting pursuant to § 23-76.1, or by the Board of the Virginia College Savings Plan, acting pursuant to § 23-38.80, regarding the acquisition, holding or disposition of a security or other ownership interest in an entity, where such security or ownership interest is not traded on a governmentally regulated securities exchange, to the extent that such discussion (i) concerns confidential analyses prepared for the Rector and Visitors of the University of Virginia, prepared by the retirement system or by the Virginia College Savings Plan or provided to the retirement system or the Virginia College Savings Plan under a promise of confidentiality, of the future value of such ownership interest or the future financial performance of the entity, and (ii) would have an adverse effect on the value of the investment to be acquired, held or disposed of by the retirement system, the Rector and Visitors of the University of Virginia, or the Virginia College Savings Plan. Nothing in this subdivision shall be construed to prevent the disclosure of information relating to the identity of any investment held, the amount invested or the present value of such investment.

21. Those portions of meetings in which individual child death cases are discussed by the State Child Fatality Review team established pursuant to § 32.1-283.1, and those portions of meetings in which individual child death cases are discussed by a regional or local child fatality review team established pursuant to § 32.1-283.2, and those portions of meetings in which individual death cases are discussed by family violence fatality review teams established pursuant to § 32.1-283.3.

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

23. In the case of the Virginia Commonwealth University Health System Authority, discussion or

consideration of any of the following: the acquisition 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 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.

24. Those portions of the meetings of the Health Practitioners' Monitoring 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.

25. Meetings or portions of meetings of the Board of the Virginia College Savings Plan wherein personal information, as defined in § 2.2-3801, 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 or savings trust account agreements pursuant to Chapter 4.9 (§ 23-38.75 et seq.) of Title 23 is discussed.

26. Discussion or consideration, by the Wireless Carrier E-911 Cost Recovery Subcommittee created pursuant to § 56-484.15, of trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), submitted by CMRS providers as defined in § 56-484.12, related to the provision of wireless E-911 service.

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

28. Discussion or consideration of records excluded from this chapter pursuant to subdivision 11 of § 2.2-3705.6 by a responsible public entity or an affected local jurisdiction, as those terms are defined in § 56-557, or any independent review panel appointed to review information and advise the responsible public entity concerning such records.

29. Discussion of the award of a public contract involving the expenditure of public funds, including interviews of bidders or offerors, and discussion of the terms or scope of such contract, where discussion in an open session would adversely affect the bargaining position or negotiating strategy of the public body.

30. Discussion or consideration of grant or loan application records excluded from this chapter pursuant to subdivision 17 of § 2.2-3705.6 by (i) the Commonwealth Health Research Board or (ii) the Innovation and Entrepreneurship Investment Authority or the Research and Technology Investment Advisory Committee appointed to advise the Innovation and Entrepreneurship Investment Authority.

31. Discussion or consideration by the Commitment Review Committee of records excluded from this chapter pursuant to subdivision 9 of § 2.2-3705.2 relating to individuals subject to commitment as sexually violent predators under Chapter 9 (§ 37.2-900 et seq.) of Title 37.2.

32. [Expired.]

33. Discussion or consideration of confidential proprietary records and trade secrets excluded from this chapter pursuant to subdivision 18 of § 2.2-3705.6.

34. Discussion or consideration by a local authority created in accordance with the Virginia Wireless Service Authorities Act (§ 15.2-5431.1 et seq.) of confidential proprietary records and trade secrets excluded from this chapter pursuant to subdivision 19 of § 2.2-3705.6.

35. Discussion or consideration by the State Board of Elections or local electoral boards of voting security matters made confidential pursuant to § 24.2-625.1.

36. Discussion or consideration by the Forensic Science Board or the Scientific Advisory Committee created pursuant to Article 2 (§ 9.1-1109 et seq.) of Chapter 11 of Title 9.1 of records excluded from this chapter pursuant to subdivision F 4 A 2 a of § 2.2-3706.

37. Discussion or consideration by the Brown v. Board of Education Scholarship Program Awards Committee of records or confidential matters excluded from this chapter pursuant to subdivision 3 of § 2.2-3705.4, and meetings of the Committee to deliberate concerning the annual maximum scholarship award, review and consider scholarship applications and requests for scholarship award renewal, and cancel, rescind, or recover scholarship awards.

38. Discussion or consideration by the Virginia Port Authority of records excluded from this chapter pursuant to subdivision 1 of § 2.2-3705.6.

39. Discussion or consideration by the Board of Trustees of the Virginia Retirement System acting pursuant to § 51.1-124.30, by the Investment Advisory Committee appointed pursuant to § 51.1-124.26,

305 by any local retirement system, acting pursuant to § 51.1-803, by the Board of the Virginia College
306 Savings Plan acting pursuant to § 23-38.80, or by the Virginia College Savings Plan's Investment
307 Advisory Committee appointed pursuant to § 23-38.79:1 of records excluded from this chapter pursuant
308 to subdivision 25 of § 2.2-3705.7.

309 40. Discussion or consideration of records excluded from this chapter pursuant to subdivision 3 of
310 § 2.2-3705.6.

311 41. Discussion or consideration by the Board of Education of records relating to the denial,
312 suspension, or revocation of teacher licenses excluded from this chapter pursuant to subdivision 13 of
313 § 2.2-3705.3.

314 42. Those portions of meetings of the Virginia Military Advisory Council or any commission created
315 by executive order for the purpose of studying and making recommendations regarding preventing
316 closure or realignment of federal military and national security installations and facilities located in
317 Virginia and relocation of such facilities to Virginia, or a local or regional military affairs organization
318 appointed by a local governing body, during which there is discussion of records excluded from this
319 chapter pursuant to subdivision 12 of § 2.2-3705.2.

320 43. Discussion or consideration by the Board of Trustees of the Veterans Services Foundation of
321 records excluded from this chapter pursuant to subdivision 29 of § 2.2-3705.7.

322 44. Discussion or consideration by the Virginia Tobacco Indemnification and Community
323 Revitalization Commission of records excluded from this chapter pursuant to subdivision 23 of
324 § 2.2-3705.6.

325 45. Discussion or consideration by the board of directors of the Commercial Space Flight Authority
326 of records excluded from this chapter pursuant to subdivision 24 of § 2.2-3705.6.

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

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

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

337 E. This section shall not be construed to (i) require the disclosure of any contract between the
338 Department of Health Professions and an impaired practitioner entered into pursuant to Chapter 25.1
339 (§ 54.1-2515 et seq.) of Title 54.1 or (ii) require the board of directors of any authority created pursuant
340 to the Industrial Development and Revenue Bond Act (§ 15.2-4900 et seq.), or any public body
341 empowered to issue industrial revenue bonds by general or special law, to identify a business or industry
342 to which subdivision A 5 applies. However, such business or industry shall be identified as a matter of
343 public record at least 30 days prior to the actual date of the board's authorization of the sale or issuance
344 of such bonds.

345 **§ 15.2-1713.1. Local "Crime Stoppers" programs; confidentiality.**

346 A. As used in this section, a "Crime Stoppers," "crime solvers," "crime line," or other similarly
347 named organization is defined as a private, nonprofit Virginia corporation governed by a civilian
348 volunteer board of directors that is operated on a local or statewide level that (i) offers anonymity to
349 persons providing information to the organization, (ii) accepts and expends donations for cash rewards to
350 persons who report to the organization information about alleged criminal activity and that the
351 organization forwards to the appropriate law-enforcement agency, and (iii) is established as a cooperative
352 alliance between the news media, the community, and law-enforcement officials.

353 B. Evidence of a communication or any information contained therein between a person submitting a
354 report of an alleged criminal act to a "Crime Stoppers" organization and the person who accepted the
355 report on behalf of the organization is not admissible in a court proceeding. Law-enforcement agencies
356 receiving information concerning alleged criminal activity from a "Crime Stoppers" organization shall
357 maintain confidentiality pursuant to ~~subsection E~~ subdivision A 3 of § 2.2-3706.