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SENATE BILL NO. 1334

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on General Laws and Technology
on January 28, 2013)

(Patron Prior to Substitute—Senator Norment)

A BILL to amend and reenact § 2.2-3705.7 of the Code of Virginia, relating to the Virginia Freedom of Information Act; records exemption for the Commonwealth's Attorneys' Services Council.

Be it enacted by the General Assembly of Virginia:

1. That § 2.2-3705.7 of the Code of Virginia is amended and reenacted as follows:

§ 2.2-3705.7. Exclusions to application of chapter; records of specific public bodies and certain other limited exemptions.

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. State income, business, and estate tax returns, personal property tax returns, scholastic and confidential records held pursuant to § 58.1-3.

2. Working papers and correspondence of the Office of the Governor; Lieutenant Governor; the Attorney General; the members of the General Assembly, the Division of Legislative Services, or the Clerks of the House of Delegates and the Senate of Virginia; 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 in Virginia. 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.

As used in this subdivision:

"Office of the Governor" means the Governor; his chief of staff, counsel, director of policy, Cabinet Secretaries, and the Assistant to the Governor for Intergovernmental Affairs; and those individuals to whom the Governor has delegated his authority pursuant to § 2.2-104.

"Working papers" means those records prepared by or for an above-named public official for his personal or deliberative use.

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

4. 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 and automated systems prepared for the Department's Bid Analysis and Monitoring Program.

5. 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.

6. 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 § 30-110 or of formulating advisory opinions to members on standards of conduct, or both.

7. 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.

8. Personal information, as defined in § 2.2-3801, (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; (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; or (iv) filed with any local redevelopment and housing authority created pursuant to § 36-4 or any other local government agency concerning persons who have applied for occupancy or who have occupied affordable dwelling units established pursuant to § 15.2-2304 or 15.2-2305. However, access to one's own information shall not be denied.

9. 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.

10. 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

60 archaeological sites if, in the opinion of the public body that has the responsibility for such information,
61 disclosure of the information would jeopardize the continued existence or the integrity of the resource.
62 This exemption shall not apply to requests from the owner of the land upon which the resource is
63 located.

64 11. Records, memoranda, working papers, graphics, video or audio tapes, production models, data
65 and information of a proprietary nature produced by or for or collected by or for the State Lottery
66 Department relating to matters of a specific lottery game design, development, production, operation,
67 ticket price, prize structure, manner of selecting the winning ticket, manner of payment of prizes to
68 holders of winning tickets, frequency of drawings or selections of winning tickets, odds of winning,
69 advertising, or marketing, where such official records have not been publicly released, published,
70 copyrighted or patented. Whether released, published or copyrighted, all game-related information shall
71 be subject to public disclosure under this chapter upon the first day of sales for the specific lottery game
72 to which it pertains.

73 12. Records of the Virginia Retirement System, acting pursuant to § 51.1-124.30, or of a local
74 retirement system, acting pursuant to § 51.1-803, or of the Rector and Visitors of the University of
75 Virginia, acting pursuant to § 23-76.1, or of the Virginia College Savings Plan, acting pursuant to
76 § 23-38.77, relating to the acquisition, holding or disposition of a security or other ownership interest in
77 an entity, where such security or ownership interest is not traded on a governmentally regulated
78 securities exchange, to the extent that: (i) such records contain confidential analyses prepared for the
79 Rector and Visitors of the University of Virginia, prepared by the retirement system or the Virginia
80 College Savings Plan, or provided to the retirement system or the Virginia College Savings Plan under a
81 promise of confidentiality, of the future value of such ownership interest or the future financial
82 performance of the entity; and (ii) disclosure of such confidential analyses would have an adverse effect
83 on the value of the investment to be acquired, held or disposed of by the retirement system, the Rector
84 and Visitors of the University of Virginia, or the Virginia College Savings Plan. Nothing in this
85 subdivision shall be construed to prevent the disclosure of records relating to the identity of any
86 investment held, the amount invested, or the present value of such investment.

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

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

93 15. Records of the Virginia Commonwealth University Health System Authority pertaining to any of
94 the following: an individual's qualifications for or continued membership on its medical or teaching
95 staffs; proprietary information gathered by or in the possession of the Authority from third parties
96 pursuant to a promise of confidentiality; contract cost estimates prepared for confidential use in
97 awarding contracts for construction or the purchase of goods or services; data, records or information of
98 a proprietary nature produced or collected by or for the Authority or members of its medical or teaching
99 staffs; financial statements not publicly available that may be filed with the Authority from third parties;
100 the identity, accounts or account status of any customer of the Authority; consulting or other reports
101 paid for by the Authority to assist the Authority in connection with its strategic planning and goals; the
102 determination of marketing and operational strategies where disclosure of such strategies would be
103 harmful to the competitive position of the Authority; and data, records or information of a proprietary
104 nature produced or collected by or for employees of the Authority, other than the Authority's financial
105 or administrative records, in the conduct of or as a result of study or research on medical, scientific,
106 technical or scholarly issues, whether sponsored by the Authority alone or in conjunction with a
107 governmental body or a private concern, when such data, records or information have not been publicly
108 released, published, copyrighted or patented.

109 16. Records of the Department of Environmental Quality, the State Water Control Board, State Air
110 Pollution Control Board or the Virginia Waste Management Board relating to (i) active federal
111 environmental enforcement actions that are considered confidential under federal law and (ii)
112 enforcement strategies, including proposed sanctions for enforcement actions. Upon request, such records
113 shall be disclosed after a proposed sanction resulting from the investigation has been proposed to the
114 director of the agency. This subdivision shall not be construed to prohibit the disclosure of records
115 related to inspection reports, notices of violation, and documents detailing the nature of any
116 environmental contamination that may have occurred or similar documents.

117 17. As it pertains to any person, records related to the operation of toll facilities that identify an
118 individual, vehicle, or travel itinerary including, but not limited to, vehicle identification data, vehicle
119 enforcement system information; video or photographic images; Social Security or other identification
120 numbers appearing on driver's licenses; credit card or bank account data; home addresses; phone
121 numbers; or records of the date or time of toll facility use.

18. Records of the State Lottery Department pertaining to (i) the social security number, tax identification number, state sales tax number, home address and telephone number, personal and lottery banking account and transit numbers of a retailer, and financial information regarding the nonlottery operations of specific retail locations; and (ii) individual lottery winners, except that a winner's name, hometown, and amount won shall be disclosed.

19. Records of the Board for Branch Pilots relating to the chemical or drug testing of a person regulated by the Board, where such person has tested negative or has not been the subject of a disciplinary action by the Board for a positive test result.

20. Records, investigative notes, correspondence, and information pertaining to the planning, scheduling and performance of examinations of holder records pursuant to the Uniform Disposition of Unclaimed Property Act (§ 55-210.1 et seq.) prepared by or for the State Treasurer, his agents, employees or persons employed to perform an audit or examination of holder records.

21. Records of the Virginia Department of Emergency Management or a local governing body relating to citizen emergency response teams established pursuant to an ordinance of a local governing body, to the extent that such records reveal the name, address, including e-mail address, telephone or pager numbers, or operating schedule of an individual participant in the program.

22. Records of state or local park and recreation departments and local and regional park authorities to the extent such records contain information identifying a person under the age of 18 years, where the parent or legal guardian of such person has requested in writing that such information not be disclosed. However, nothing in this subdivision shall operate to prohibit the disclosure of information defined as directory information under regulations implementing the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, unless the public body has undertaken the parental notification and opt-out requirements provided by such regulations. Access shall not be denied to the parent, including a noncustodial parent, or guardian of such person, unless the parent's parental rights have been terminated or a court of competent jurisdiction has restricted or denied such access. For records of such persons who are emancipated, the right of access may be asserted by the subject thereof.

23. Records submitted for inclusion in the Statewide Alert Network administered by the Department of Emergency Management, to the extent that they reveal names, physical addresses, email addresses, computer or internet protocol information, telephone numbers, pager numbers, other wireless or portable communications device information, or operating schedules of individuals or agencies, where the release of such information would compromise the security of the Statewide Alert Network or individuals participating in the Statewide Alert Network.

24. Records of the Judicial Inquiry and Review Commission made confidential by § 17.1-913.

25. Records of the Virginia Retirement System acting pursuant to § 51.1-124.30, of a local retirement system acting pursuant to § 51.1-803 (hereinafter collectively referred to as the retirement system), or of the Virginia College Savings Plan, acting pursuant to § 23-38.77 relating to:

a. Internal deliberations of or decisions by the retirement system or the Virginia College Savings Plan on the pursuit of particular investment strategies, or the selection or termination of investment managers, prior to the execution of such investment strategies or the selection or termination of such managers, to the extent that disclosure of such records would have an adverse impact on the financial interest of the retirement system or the Virginia College Savings Plan; and

b. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), provided by a private entity to the retirement system or the Virginia College Savings Plan, to the extent disclosure of such records would have an adverse impact on the financial interest of the retirement system or the Virginia College Savings Plan.

For the records specified in subdivision b to be excluded from the provisions of this chapter, the entity shall make a written request to the retirement system or the Virginia College Savings Plan:

(1) Invoking such exclusion prior to or upon submission of the data or other materials for which protection from disclosure is sought;

(2) Identifying with specificity the data or other materials for which protection is sought; and

(3) Stating the reasons why protection is necessary.

The retirement system or the Virginia College Savings Plan shall determine whether the requested exclusion from disclosure meets the requirements set forth in subdivision b.

Nothing in this subdivision shall be construed to authorize the withholding of the identity or amount of any investment held or the present value and performance of all asset classes and subclasses.

26. Records of the Department of Corrections made confidential by § 53.1-233.

27. Records maintained by the Department of the Treasury or participants in the Local Government Investment Pool (§ 2.2-4600 et seq.), to the extent such records relate to information required to be provided by such participants to the Department to establish accounts in accordance with § 2.2-4602.

28. Personal information, as defined in § 2.2-3801, contained in the Veterans Care Center Resident Trust Funds concerning residents or patients of the Department of Veterans Services Care Centers,

183 except that access shall not be denied to the person who is the subject of the record.

184 29. Records maintained in connection with fundraising activities by the Veterans Services Foundation
185 pursuant to § 2.2-2716 to the extent that such records reveal the address, electronic mail address,
186 facsimile or telephone number, social security number or other identification number appearing on a
187 driver's license, or credit card or bank account data of identifiable donors, except that access shall not be
188 denied to the person who is the subject of the record. Nothing in this subdivision, however, shall be
189 construed to authorize the withholding of records relating to the amount, date, purpose, and terms of the
190 pledge or donation or the identity of the donor. The exclusion provided by this subdivision shall not
191 apply to protect from disclosure (i) the identities of sponsors providing grants to or contracting with the
192 foundation for the performance of services or other work or (ii) the terms and conditions of such grants
193 or contracts.

194 30. Names, physical addresses, telephone numbers, and email addresses contained in correspondence
195 between an individual and a member of the governing body, school board, or other public body of the
196 locality in which the individual is a resident, unless the correspondence relates to the transaction of
197 public business. However, no record that is otherwise open to inspection under this chapter shall be
198 deemed exempt by virtue of the fact that it has been attached to or incorporated within any such
199 correspondence.

200 31. *Records of the Commonwealth's Attorneys' Services Council, to the extent such records are*
201 *prepared for and utilized by the Commonwealth's Attorneys' Services Council in the training of state*
202 *prosecutors or law-enforcement personnel, where such records are not otherwise available to the public*
203 *and the release of such records would reveal confidential strategies, methods or procedures to be*
204 *employed in law-enforcement activities, or materials created for the investigation and prosecution of a*
205 *criminal case.*