

## 1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact § 2.2-3705.3 of the Code of Virginia, relating to the Virginia Freedom of*  
 3 *Information Act; record exemption for certain administrative investigations by public institutions of*  
 4 *higher education.*

5 [S 78]

6 Approved

7 **Be it enacted by the General Assembly of Virginia:**8 **1. That § 2.2-3705.3 of the Code of Virginia is amended and reenacted as follows:**9 **§ 2.2-3705.3. Exclusions to application of chapter; records relating to administrative**  
10 **investigations.**11 The following records are excluded from the provisions of this chapter but may be disclosed by the  
12 custodian in his discretion, except where such disclosure is prohibited by law:13 1. Confidential records of all investigations of applications for licenses and permits, and of all  
14 licensees and permittees, made by or submitted to the Alcoholic Beverage Control Board, the State  
15 Lottery Department, the Virginia Racing Commission, the Department of Agriculture and Consumer  
16 Services relating to investigations and applications pursuant to Article 1.1:1 (§ 18.2-340.15 et seq.) of  
17 Chapter 8 of Title 18.2, or the Private Security Services Unit of the Department of Criminal Justice  
18 Services.19 2. Records of active investigations being conducted by the Department of Health Professions or by  
20 any health regulatory board in the Commonwealth.21 3. Investigator notes, and other correspondence and information, furnished in confidence with respect  
22 to an active investigation of individual employment discrimination complaints made to the Department  
23 of Human Resource Management or, to such personnel of any local public body, including local school  
24 boards, as are responsible for conducting such investigations in confidence, *or to any public institution*  
25 *of higher education.* However, nothing in this section shall prohibit the disclosure of information taken  
26 from inactive reports in a form that does not reveal the identity of charging parties, persons supplying  
27 the information, or other individuals involved in the investigation.28 4. Records of active investigations being conducted by the Department of Medical Assistance  
29 Services pursuant to Chapter 10 (§ 32.1-323 et seq.) of Title 32.1.30 5. Investigative notes and other correspondence and information furnished in confidence with respect  
31 to an investigation or conciliation process involving an alleged unlawful discriminatory practice under  
32 the Virginia Human Rights Act (§ 2.2-3900 et seq.) or under any local ordinance adopted in accordance  
33 with the authority specified in § 2.2-524, or adopted pursuant to § 15.2-965, or adopted prior to July 1,  
34 1987, in accordance with applicable law, relating to local human rights or human relations commissions.  
35 However, nothing in this section shall prohibit the distribution of information taken from inactive reports  
36 in a form that does not reveal the identity of the parties involved or other persons supplying  
37 information.38 6. Records of studies and investigations by the State Lottery Department of (i) lottery agents, (ii)  
39 lottery vendors, (iii) lottery crimes under §§ 58.1-4014 through 58.1-4018, (iv) defects in the law or  
40 regulations that cause abuses in the administration and operation of the lottery and any evasions of such  
41 provisions, or (v) the use of the lottery as a subterfuge for organized crime and illegal gambling where  
42 such official records have not been publicly released, published or copyrighted. All studies and  
43 investigations referred to under clauses (iii), (iv), and (v) shall be open to inspection and copying upon  
44 completion of the study or investigation.45 7. Investigative notes, correspondence and information furnished in confidence, and records otherwise  
46 exempted by this chapter or any Virginia statute, provided to or produced by or for (i) the Auditor of  
47 Public Accounts; (ii) the Joint Legislative Audit and Review Commission; (iii) an appropriate authority  
48 as defined in § 2.2-3010 with respect to an allegation of wrongdoing or abuse under the Fraud and  
49 Abuse Whistle Blower Protection Act (§ 2.2-3009 et seq.); (iv) the Office of the State Inspector General  
50 with respect to an investigation initiated through the Fraud, Waste and Abuse Hotline or an investigation  
51 initiated pursuant to Chapter 3.2 (§ 2.2-307 et seq.); (v) *the auditors appointed by any public institution*  
52 *of higher education;* (vi) the committee or the auditor with respect to an investigation or audit conducted  
53 pursuant to § 15.2-825; or ~~(vi)~~ (vii) the auditors, appointed by the local governing body of any county,  
54 city, or town or a school board, who by charter, ordinance, or statute have responsibility for conducting  
55 an investigation of any officer, department, or program of such body. Records of completed  
56 investigations shall be disclosed in a form that does not reveal the identity of the complainants or

57 persons supplying information to investigators. Unless disclosure is prohibited by this section, the  
58 records disclosed shall include, but not be limited to, the agency involved, the identity of the person  
59 who is the subject of the complaint, the nature of the complaint, and the actions taken to resolve the  
60 complaint. If an investigation does not lead to corrective action, the identity of the person who is the  
61 subject of the complaint may be released only with the consent of the subject person. Local governing  
62 bodies shall adopt guidelines to govern the disclosure required by this subdivision.

63 8. Information furnished in confidence to the Department of Human Resource Management with  
64 respect to an investigation, consultation, or mediation under § 2.2-1202.1, and memoranda,  
65 correspondence and other records resulting from any such investigation, consultation or mediation.  
66 However, nothing in this section shall prohibit the distribution of information taken from inactive reports  
67 in a form that does not reveal the identity of the parties involved or other persons supplying  
68 information.

69 9. The names, addresses and telephone numbers of complainants furnished in confidence with respect  
70 to an investigation of individual zoning enforcement complaints or complaints relating to the Uniform  
71 Statewide Building Code (§ 36-97 et seq.) or the Statewide Fire Prevention Code (§ 27-94 et seq.) made  
72 to a local governing body.

73 10. Records of active investigations being conducted by the Department of Criminal Justice Services  
74 pursuant to Article 4 (§ 9.1-138 et seq.), Article 4.1 (§ 9.1-150.1 et seq.), Article 11 (§ 9.1-185 et seq.),  
75 and Article 12 (§ 9.1-186 et seq.) of Chapter 1 of Title 9.1.

76 11. Records furnished to or prepared by the Board of Education pursuant to subsection D of  
77 § 22.1-253.13:3 in connection with the review or investigation of any alleged breach in security,  
78 unauthorized alteration, or improper administration of tests by local school board employees responsible  
79 for the distribution or administration of the tests. However, this section shall not prohibit the disclosure  
80 of records to (i) a local school board or division superintendent for the purpose of permitting such board  
81 or superintendent to consider or to take personnel action with regard to an employee or (ii) any  
82 requester, after the conclusion of a review or investigation, in a form that (a) does not reveal the identity  
83 of any person making a complaint or supplying information to the Board on a confidential basis and (b)  
84 does not compromise the security of any test mandated by the Board.

85 12. Investigator notes, and other correspondence and information, furnished in confidence with  
86 respect to an active investigation conducted by or for the Board of Education related to the denial,  
87 suspension, or revocation of teacher licenses. However, this subdivision shall not prohibit the disclosure  
88 of records to a local school board or division superintendent for the purpose of permitting such board or  
89 superintendent to consider or to take personnel action with regard to an employee. Records of completed  
90 investigations shall be disclosed in a form that does not reveal the identity of any complainant or person  
91 supplying information to investigators. The records disclosed shall include information regarding the  
92 school or facility involved, the identity of the person who was the subject of the complaint, the nature  
93 of the complaint, and the actions taken to resolve the complaint. If an investigation fails to support a  
94 complaint or does not lead to corrective action, the identity of the person who was the subject of the  
95 complaint may be released only with the consent of the subject person. No personally identifiable  
96 information in the records regarding a current or former student shall be released except as permitted by  
97 state or federal law.

98 13. Records, notes and information provided in confidence and related to an investigation by the  
99 Attorney General under Article 1 (§ 3.2-4200 et seq.) or Article 3 (§ 3.2-4204 et seq.) of Chapter 42 of  
100 Title 3.2, Article 10 (§ 18.2-246.6 et seq.) of Chapter 6 or Chapter 13 (§ 18.2-512 et seq.) of Title 18.2,  
101 or Article 1 (§ 58.1-1000) of Chapter 10 of Title 58.1. However, records related to an investigation that  
102 has been inactive for more than six months shall, upon request, be disclosed provided such disclosure is  
103 not otherwise prohibited by law and does not reveal the identity of charging parties, complainants,  
104 persons supplying information, witnesses, or other individuals involved in the investigation.