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SENATE BILL NO. 858

Offered January 17, 2018

A BILL to amend and reenact § 2.2-3705.7 of the Code of Virginia, relating to the Virginia Freedom of Information Act; exclusion; certain information held by the board of visitors of The College of William and Mary in Virginia.

Patron—Mason

Referred to Committee on General Laws and Technology

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 exclusions.**

The following information contained in a public record is excluded from the mandatory disclosure provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law. Redaction of information excluded under this section from a public record shall be conducted in accordance with § 2.2-3704.01.

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

2. Working papers and correspondence of the Office of the Governor, the Lieutenant Governor, or the Attorney General; the members of the General Assembly, the Division of Legislative Services, or the Clerks of the House of Delegates or 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 the Commonwealth. However, no information that is otherwise open to inspection under this chapter shall be deemed excluded by virtue of the fact that it has been attached to or incorporated within any working paper or correspondence. Further, information publicly available or not otherwise subject to an exclusion under this chapter or other provision of law that has been aggregated, combined, or changed in format without substantive analysis or revision shall not be deemed working papers. Nothing in this subdivision shall be construed to authorize the withholding of any resumes or applications submitted by persons who are appointed by the Governor pursuant to § 2.2-106 or 2.2-107.

As used in this subdivision:

"Members of the General Assembly" means each member of the Senate of Virginia and the House of Delegates and their legislative aides when working on behalf of such member.

"Office of the Governor" means the Governor; the Governor's chief of staff, counsel, director of policy, and Cabinet Secretaries; 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 a public official identified in this subdivision for his personal or deliberative use.

3. Information contained in library records that can be used to identify (i) both (a) any library patron who has borrowed material from a library and (b) the material such patron borrowed or (ii) any library patron under 18 years of age. For the purposes of clause (ii), access shall not be denied to the parent, including a noncustodial parent, or guardian of such library patron.

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. Information 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 charged or 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

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59 who have applied for occupancy of or have occupied housing financed, owned or otherwise assisted by
60 the Virginia Housing Development Authority; (ii) concerning persons participating in or persons on the
61 waiting list for federally funded rent-assistance programs; (iii) filed with any local redevelopment and
62 housing authority created pursuant to § 36-4 concerning persons participating in or persons on the
63 waiting list for housing assistance programs funded by local governments or by any such authority; or
64 (iv) filed with any local redevelopment and housing authority created pursuant to § 36-4 or any other
65 local government agency concerning persons who have applied for occupancy or who have occupied
66 affordable dwelling units established pursuant to § 15.2-2304 or 15.2-2305. However, access to one's
67 own information shall not be denied.

68 9. Information regarding the siting of hazardous waste facilities, except as provided in § 10.1-1441, if
69 disclosure of such information would have a detrimental effect upon the negotiating position of a
70 governing body or on the establishment of the terms, conditions, and provisions of the siting agreement.

71 10. Information on the site-specific location of rare, threatened, endangered, or otherwise imperiled
72 plant and animal species, natural communities, caves, and significant historic and archaeological sites if,
73 in the opinion of the public body that has the responsibility for such information, disclosure of the
74 information would jeopardize the continued existence or the integrity of the resource. This exclusion
75 shall not apply to requests from the owner of the land upon which the resource is located.

76 11. Memoranda, graphics, video or audio tapes, production models, data, and information of a
77 proprietary nature produced by or for or collected by or for the Virginia Lottery relating to matters of a
78 specific lottery game design, development, production, operation, ticket price, prize structure, manner of
79 selecting the winning ticket, manner of payment of prizes to holders of winning tickets, frequency of
80 drawings or selections of winning tickets, odds of winning, advertising, or marketing, where such
81 information not been publicly released, published, copyrighted, or patented. Whether released, published,
82 or copyrighted, all game-related information shall be subject to public disclosure under this chapter upon
83 the first day of sales for the specific lottery game to which it pertains.

84 12. Information held by the Virginia Retirement System, acting pursuant to § 51.1-124.30, or a local
85 retirement system, acting pursuant to § 51.1-803, or by a local finance board or board of trustees of a
86 trust established by one or more local public bodies to invest funds for post-retirement benefits other
87 than pensions, acting pursuant to Article 8 (§ 15.2-1544 et seq.) of Chapter 15 of Title 15.2, or by the
88 board of visitors of the University of Virginia, acting pursuant to § 23.1-2210, *or by the board of*
89 *visitors of The College of William and Mary in Virginia, acting pursuant to § 23.1-2803*, or by the
90 Virginia College Savings Plan, acting pursuant to § 23.1-704, relating to the acquisition, holding, or
91 disposition of a security or other ownership interest in an entity, where such security or ownership
92 interest is not traded on a governmentally regulated securities exchange, if disclosure of such
93 information would (i) reveal confidential analyses prepared for the board of visitors of the University of
94 Virginia, *prepared for the board of visitors of The College of William and Mary in Virginia*, prepared
95 by the retirement system, a local finance board or board of trustees, or the Virginia College Savings
96 Plan, or provided to the retirement system, a local finance board or board of trustees, or the Virginia
97 College Savings Plan under a promise of confidentiality of the future value of such ownership interest or
98 the future financial performance of the entity and (ii) have an adverse effect on the value of the
99 investment to be acquired, held, or disposed of by the retirement system, a local finance board or board
100 of trustees, the board of visitors of the University of Virginia, *the board of visitors of The College of*
101 *William and Mary in Virginia*, or the Virginia College Savings Plan. Nothing in this subdivision shall be
102 construed to prevent the disclosure of information relating to the identity of any investment held, the
103 amount invested, or the present value of such investment.

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

107 14. Information held by the Virginia Commonwealth University Health System Authority pertaining
108 to any of the following: an individual's qualifications for or continued membership on its medical or
109 teaching staffs; proprietary information gathered by or in the possession of the Authority from third
110 parties pursuant to a promise of confidentiality; contract cost estimates prepared for confidential use in
111 awarding contracts for construction or the purchase of goods or services; information of a proprietary
112 nature produced or collected by or for the Authority or members of its medical or teaching staffs;
113 financial statements not publicly available that may be filed with the Authority from third parties; the
114 identity, accounts, or account status of any customer of the Authority; consulting or other reports paid
115 for by the Authority to assist the Authority in connection with its strategic planning and goals; the
116 determination of marketing and operational strategies where disclosure of such strategies would be
117 harmful to the competitive position of the Authority; and information of a proprietary nature produced
118 or collected by or for employees of the Authority, other than the Authority's financial or administrative
119 records, in the conduct of or as a result of study or research on medical, scientific, technical, or
120 scholarly issues, whether sponsored by the Authority alone or in conjunction with a governmental body

or a private concern, when such information has not been publicly released, published, copyrighted, or patented. This exclusion shall also apply when such information is in the possession of Virginia Commonwealth University.

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

16. Information related to the operation of toll facilities that identifies an individual, vehicle, or travel itinerary, including vehicle identification data or vehicle enforcement system information; video or photographic images; Social Security or other identification numbers appearing on driver's licenses; credit card or bank account data; home addresses; phone numbers; or records of the date or time of toll facility use.

17. Information held by the Virginia Lottery 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.

18. Information held by 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.

19. 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 or his agents or employees or persons employed to perform an audit or examination of holder records.

20. Information held by 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 that reveal the name, address, including e-mail address, telephone or pager numbers, or operating schedule of an individual participant in the program.

21. Information held by state or local park and recreation departments and local and regional park authorities concerning identifiable individuals under the age of 18 years. However, nothing in this subdivision shall operate to prevent 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 such information of persons who are emancipated, the right of access may be asserted by the subject thereof. Any parent or emancipated person who is the subject of the information may waive, in writing, the protections afforded by this subdivision. If the protections are so waived, the public body shall open such information for inspection and copying.

22. Information submitted for inclusion in the Statewide Alert Network administered by the Department of Emergency Management that 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.

23. Information held by the Judicial Inquiry and Review Commission made confidential by § 17.1-913.

24. Information held by the Virginia Retirement System acting pursuant to § 51.1-124.30, a local retirement system acting pursuant to § 51.1-803 (hereinafter collectively referred to as the retirement system), or the Virginia College Savings Plan, acting pursuant to § 23.1-704 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, if disclosure of such information 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 if disclosure of such records

182 would have an adverse impact on the financial interest of the retirement system or the Virginia College
183 Savings Plan.

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

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

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

189 (3) Stating the reasons why protection is necessary.

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

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

194 25. Information held by the Department of Corrections made confidential by § 53.1-233.

195 26. Information maintained by the Department of the Treasury or participants in the Local
196 Government Investment Pool (§ 2.2-4600 et seq.) and required to be provided by such participants to the
197 Department to establish accounts in accordance with § 2.2-4602.

198 27. Personal information, as defined in § 2.2-3801, contained in the Veterans Care Center Resident
199 Trust Funds concerning residents or patients of the Department of Veterans Services Care Centers,
200 except that access shall not be denied to the person who is the subject of the information.

201 28. Information maintained in connection with fundraising activities by the Veterans Services
202 Foundation pursuant to § 2.2-2716 that reveal the address, electronic mail address, facsimile or telephone
203 number, social security number or other identification number appearing on a driver's license, or credit
204 card or bank account data of identifiable donors, except that access shall not be denied to the person
205 who is the subject of the information. Nothing in this subdivision, however, shall be construed to
206 prevent the disclosure of information relating to the amount, date, purpose, and terms of the pledge or
207 donation or the identity of the donor, unless the donor has requested anonymity in connection with or as
208 a condition of making a pledge or donation. The exclusion provided by this subdivision shall not apply
209 to protect from disclosure (i) the identities of sponsors providing grants to or contracting with the
210 foundation for the performance of services or other work or (ii) the terms and conditions of such grants
211 or contracts.

212 29. Information prepared for and utilized by the Commonwealth's Attorneys' Services Council in the
213 training of state prosecutors or law-enforcement personnel, where such information is not otherwise
214 available to the public and the disclosure of such information would reveal confidential strategies,
215 methods, or procedures to be employed in law-enforcement activities or materials created for the
216 investigation and prosecution of a criminal case.

217 30. Information provided to the Department of Aviation by other entities of the Commonwealth in
218 connection with the operation of aircraft where the information would not be subject to disclosure by the
219 entity providing the information. The entity providing the information to the Department of Aviation
220 shall identify the specific information to be protected and the applicable provision of this chapter that
221 excludes the information from mandatory disclosure.

222 31. Information created or maintained by or on the behalf of the judicial performance evaluation
223 program related to an evaluation of any individual justice or judge made confidential by § 17.1-100.

224 32. Information reflecting the substance of meetings in which (i) individual sexual assault cases are
225 discussed by any sexual assault team established pursuant to § 15.2-1627.4 or (ii) individual child abuse
226 or neglect cases or sex offenses involving a child are discussed by multidisciplinary child abuse teams
227 established pursuant to § 15.2-1627.5. The findings of any such team may be disclosed or published in
228 statistical or other aggregated form that does not disclose the identity of specific individuals.

229 33. Information contained in the strategic plan, marketing plan, or operational plan prepared by the
230 Virginia Economic Development Partnership Authority pursuant to § 2.2-2237.1 regarding target
231 companies, specific allocation of resources and staff for marketing activities, and specific marketing
232 activities that would reveal to the Commonwealth's competitors for economic development projects the
233 strategies intended to be deployed by the Commonwealth, thereby adversely affecting the financial
234 interest of the Commonwealth. The executive summaries of the strategic plan, marketing plan, and
235 operational plan shall not be redacted or withheld pursuant to this subdivision.