

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

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*An Act to amend and reenact § 2.2-3705.6 of the Code of Virginia, relating to the Freedom of Information Act; exclusions; proprietary records and trade secrets; Virginia Telecommunication Initiative.*

[S 1492]

Approved

**Be it enacted by the General Assembly of Virginia:**

**1. That § 2.2-3705.6 of the Code of Virginia is amended and reenacted as follows:**

**§ 2.2-3705.6. Exclusions to application of chapter; proprietary records and trade secrets.**

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

2. Financial statements not publicly available filed with applications for industrial development financings in accordance with Chapter 49 (§ 15.2-4900 et seq.) of Title 15.2.

3. Proprietary information, voluntarily provided by private business pursuant to a promise of confidentiality from a public body, used by the public body for business, trade, and tourism development or retention; and memoranda, working papers, or other information related to businesses that are considering locating or expanding in Virginia, prepared by a public body, where competition or bargaining is involved and where disclosure of such information would adversely affect the financial interest of the public body.

4. Information that was filed as confidential under the Toxic Substances Information Act (§ 32.1-239 et seq.), as such Act existed prior to July 1, 1992.

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

6. 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 Surface Transportation Board or the Federal Railroad Administration with respect to data provided in confidence to the Surface Transportation Board and the Federal Railroad Administration.

7. Proprietary information 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.

8. 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.

9. 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 Transportation Equity Act for the 21st Century (P.L. 105-178) for transportation projects if disclosure of such information is exempt under the federal Freedom of Information Act or the federal Interstate Commerce Act or other laws administered by the Surface Transportation Board or the Federal Railroad Administration with respect to data provided in confidence to the Surface Transportation Board and the Federal Railroad Administration. However, the exclusion provided by this subdivision shall not apply to any wholly owned subsidiary of a public body.

10. Confidential information designated as provided in subsection F of § 2.2-4342 as trade secrets or proprietary information by any person in connection with a procurement transaction or 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 § 2.2-4317.

11. a. Memoranda, staff evaluations, or other information prepared by the responsible public entity, its staff, outside advisors, or consultants exclusively for the evaluation and negotiation of proposals filed under the Public-Private Transportation Act of 1995 (§ 33.2-1800 et seq.) or the Public-Private

57 Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.) where (i) if such information  
58 was made public prior to or after the execution of an interim or a comprehensive agreement,  
59 § 33.2-1820 or 56-575.17 notwithstanding, the financial interest or bargaining position of the public  
60 entity would be adversely affected and (ii) the basis for the determination required in clause (i) is  
61 documented in writing by the responsible public entity; and

62 b. Information provided by a private entity to a responsible public entity, affected jurisdiction, or  
63 affected local jurisdiction pursuant to the provisions of the Public-Private Transportation Act of 1995  
64 (§ 33.2-1800 et seq.) or the Public-Private Education Facilities and Infrastructure Act of 2002  
65 (§ 56-575.1 et seq.) if disclosure of such information would reveal (i) trade secrets of the private entity  
66 as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.); (ii) financial information of the private  
67 entity, including balance sheets and financial statements, that are not generally available to the public  
68 through regulatory disclosure or otherwise; or (iii) other information submitted by the private entity  
69 where if such information was made public prior to the execution of an interim agreement or a  
70 comprehensive agreement, the financial interest or bargaining position of the public or private entity  
71 would be adversely affected. In order for the information specified in clauses (i), (ii), and (iii) to be  
72 excluded from the provisions of this chapter, the private entity shall make a written request to the  
73 responsible public entity:

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

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

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

78 The responsible public entity shall determine whether the requested exclusion from disclosure is  
79 necessary to protect the trade secrets or financial information of the private entity. To protect other  
80 information submitted by the private entity from disclosure, the responsible public entity shall determine  
81 whether public disclosure prior to the execution of an interim agreement or a comprehensive agreement  
82 would adversely affect the financial interest or bargaining position of the public or private entity. The  
83 responsible public entity shall make a written determination of the nature and scope of the protection to  
84 be afforded by the responsible public entity under this subdivision. Once a written determination is made  
85 by the responsible public entity, the information afforded protection under this subdivision shall continue  
86 to be protected from disclosure when in the possession of any affected jurisdiction or affected local  
87 jurisdiction.

88 Except as specifically provided in subdivision 11 a, nothing in this subdivision shall be construed to  
89 authorize the withholding of (a) procurement records as required by § 33.2-1820 or 56-575.17; (b)  
90 information concerning the terms and conditions of any interim or comprehensive agreement, service  
91 contract, lease, partnership, or any agreement of any kind entered into by the responsible public entity  
92 and the private entity; (c) information concerning the terms and conditions of any financing arrangement  
93 that involves the use of any public funds; or (d) information concerning the performance of any private  
94 entity developing or operating a qualifying transportation facility or a qualifying project.

95 For the purposes of this subdivision, the terms "affected jurisdiction," "affected local jurisdiction,"  
96 "comprehensive agreement," "interim agreement," "qualifying project," "qualifying transportation  
97 facility," "responsible public entity," and "private entity" shall mean the same as those terms are defined  
98 in the Public-Private Transportation Act of 1995 (§ 33.2-1800 et seq.) or in the Public-Private Education  
99 Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.).

100 12. Confidential proprietary information or trade secrets, not publicly available, provided by a private  
101 person or entity pursuant to a promise of confidentiality to the Virginia Resources Authority or to a  
102 fund administered in connection with financial assistance rendered or to be rendered by the Virginia  
103 Resources Authority where, if such information were made public, the financial interest of the private  
104 person or entity would be adversely affected.

105 13. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), or confidential  
106 proprietary information that is not generally available to the public through regulatory disclosure or  
107 otherwise, provided by a (i) bidder or applicant for a franchise or (ii) franchisee under Chapter 21  
108 (§ 15.2-2100 et seq.) of Title 15.2 to the applicable franchising authority pursuant to a promise of  
109 confidentiality from the franchising authority, to the extent the information relates to the bidder's,  
110 applicant's, or franchisee's financial capacity or provision of new services, adoption of new technologies  
111 or implementation of improvements, where such new services, technologies, or improvements have not  
112 been implemented by the franchisee on a nonexperimental scale in the franchise area, and where, if such  
113 information were made public, the competitive advantage or financial interests of the franchisee would  
114 be adversely affected.

115 In order for trade secrets or confidential proprietary information to be excluded from the provisions  
116 of this chapter, the bidder, applicant, or franchisee shall (a) invoke such exclusion upon submission of  
117 the data or other materials for which protection from disclosure is sought, (b) identify the data or other

118 materials for which protection is sought, and (c) state the reason why protection is necessary.  
 119 No bidder, applicant, or franchisee may invoke the exclusion provided by this subdivision if the  
 120 bidder, applicant, or franchisee is owned or controlled by a public body or if any representative of the  
 121 applicable franchising authority serves on the management board or as an officer of the bidder,  
 122 applicant, or franchisee.

123 14. Information of a proprietary or confidential nature furnished by a supplier or manufacturer of  
 124 charitable gaming supplies to the Department of Agriculture and Consumer Services (i) pursuant to  
 125 subsection E of § 18.2-340.34 and (ii) pursuant to regulations promulgated by the Charitable Gaming  
 126 Board related to approval of electronic and mechanical equipment.

127 15. Information related to Virginia apple producer sales provided to the Virginia State Apple Board  
 128 pursuant to § 3.2-1215.

129 16. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.) of Title 59.1,  
 130 submitted by CMRS providers as defined in § 56-484.12 to the former Wireless Carrier E-911 Cost  
 131 Recovery Subcommittee created pursuant to former § 56-484.15, relating to the provision of wireless  
 132 E-911 service.

133 17. Information relating to a grant or loan application, or accompanying a grant or loan application,  
 134 to the Innovation and Entrepreneurship Investment Authority pursuant to Article 3 (§ 2.2-2233.1 et seq.)  
 135 of Chapter 22 of Title 2.2 or to the Commonwealth Health Research Board pursuant to Chapter 5.3  
 136 (§ 32.1-162.23 et seq.) of Title 32.1 if disclosure of such information would (i) reveal proprietary  
 137 business or research-related information produced or collected by the applicant in the conduct of or as a  
 138 result of study or research on medical, rehabilitative, scientific, technical, technological, or scholarly  
 139 issues, when such information has not been publicly released, published, copyrighted, or patented, and  
 140 (ii) be harmful to the competitive position of the applicant.

141 18. Confidential proprietary information and trade secrets developed and held by a local public body  
 142 (i) providing telecommunication services pursuant to § 56-265.4:4 and (ii) providing cable television  
 143 services pursuant to Article 1.1 (§ 15.2-2108.2 et seq.) of Chapter 21 of Title 15.2 if disclosure of such  
 144 information would be harmful to the competitive position of the locality.

145 In order for confidential proprietary information or trade secrets to be excluded from the provisions  
 146 of this chapter, the locality in writing shall (a) invoke the protections of this subdivision, (b) identify  
 147 with specificity the information for which protection is sought, and (c) state the reasons why protection  
 148 is necessary. However, the exemption provided by this subdivision shall not apply to any authority  
 149 created pursuant to the BVU Authority Act (§ 15.2-7200 et seq.).

150 19. Confidential proprietary information and trade secrets developed by or for a local authority  
 151 created in accordance with the Virginia Wireless Service Authorities Act (§ 15.2-5431.1 et seq.) to  
 152 provide qualifying communications services as authorized by Article 5.1 (§ 56-484.7:1 et seq.) of  
 153 Chapter 15 of Title 56, where disclosure of such information would be harmful to the competitive  
 154 position of the authority, except that information required to be maintained in accordance with  
 155 § 15.2-2160 shall be released.

156 20. Trade secrets as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.) or financial  
 157 information of a business, including balance sheets and financial statements, that are not generally  
 158 available to the public through regulatory disclosure or otherwise, provided to the Department of Small  
 159 Business and Supplier Diversity as part of an application for certification as a small, women-owned, or  
 160 minority-owned business in accordance with Chapter 16.1 (§ 2.2-1603 et seq.). In order for such trade  
 161 secrets or financial information to be excluded from the provisions of this chapter, the business shall (i)  
 162 invoke such exclusion upon submission of the data or other materials for which protection from  
 163 disclosure is sought, (ii) identify the data or other materials for which protection is sought, and (iii) state  
 164 the reasons why protection is necessary.

165 21. Information of a proprietary or confidential nature disclosed by a carrier to the State Health  
 166 Commissioner pursuant to §§ 32.1-276.5:1 and 32.1-276.7:1.

167 22. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), including, but  
 168 not limited to, financial information, including balance sheets and financial statements, that are not  
 169 generally available to the public through regulatory disclosure or otherwise, and revenue and cost  
 170 projections supplied by a private or nongovernmental entity to the State Inspector General for the  
 171 purpose of an audit, special investigation, or any study requested by the Office of the State Inspector  
 172 General in accordance with law.

173 In order for the information specified in this subdivision to be excluded from the provisions of this  
 174 chapter, the private or nongovernmental entity shall make a written request to the State Inspector  
 175 General:

- 176 a. Invoking such exclusion upon submission of the data or other materials for which protection from
- 177 disclosure is sought;
- 178 b. Identifying with specificity the data or other materials for which protection is sought; and

179 c. Stating the reasons why protection is necessary.

180 The State Inspector General shall determine whether the requested exclusion from disclosure is  
181 necessary to protect the trade secrets or financial information of the private entity. The State Inspector  
182 General shall make a written determination of the nature and scope of the protection to be afforded by it  
183 under this subdivision.

184 23. Information relating to a grant application, or accompanying a grant application, submitted to the  
185 Tobacco Region Revitalization Commission that would (i) reveal (a) trade secrets as defined in the  
186 Uniform Trade Secrets Act (§ 59.1-336 et seq.), (b) financial information of a grant applicant that is not  
187 a public body, including balance sheets and financial statements, that are not generally available to the  
188 public through regulatory disclosure or otherwise, or (c) research-related information produced or  
189 collected by the applicant in the conduct of or as a result of study or research on medical, rehabilitative,  
190 scientific, technical, technological, or scholarly issues, when such information has not been publicly  
191 released, published, copyrighted, or patented, and (ii) be harmful to the competitive position of the  
192 applicant; and memoranda, staff evaluations, or other information prepared by the Commission or its  
193 staff exclusively for the evaluation of grant applications. The exclusion provided by this subdivision  
194 shall apply to grants that are consistent with the powers of and in furtherance of the performance of the  
195 duties of the Commission pursuant to § 3.2-3103.

196 In order for the information specified in this subdivision to be excluded from the provisions of this  
197 chapter, the applicant shall make a written request to the Commission:

198 a. Invoking such exclusion upon submission of the data or other materials for which protection from  
199 disclosure is sought;

200 b. Identifying with specificity the data, information or other materials for which protection is sought;  
201 and

202 c. Stating the reasons why protection is necessary.

203 The Commission shall determine whether the requested exclusion from disclosure is necessary to  
204 protect the trade secrets, financial information, or research-related information of the applicant. The  
205 Commission shall make a written determination of the nature and scope of the protection to be afforded  
206 by it under this subdivision.

207 24. a. Information held by the Commercial Space Flight Authority relating to rate structures or  
208 charges for the use of projects of, the sale of products of, or services rendered by the Authority if  
209 disclosure of such information would adversely affect the financial interest or bargaining position of the  
210 Authority or a private entity providing the information to the Authority; or

211 b. Information provided by a private entity to the Commercial Space Flight Authority if disclosure of  
212 such information would (i) reveal (a) trade secrets of the private entity as defined in the Uniform Trade  
213 Secrets Act (§ 59.1-336 et seq.); (b) financial information of the private entity, including balance sheets  
214 and financial statements, that are not generally available to the public through regulatory disclosure or  
215 otherwise; or (c) other information submitted by the private entity and (ii) adversely affect the financial  
216 interest or bargaining position of the Authority or private entity.

217 In order for the information specified in clauses (a), (b), and (c) of subdivision 24 b to be excluded  
218 from the provisions of this chapter, the private entity shall make a written request to the Authority:

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

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

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

223 The Authority shall determine whether the requested exclusion from disclosure is necessary to protect  
224 the trade secrets or financial information of the private entity. To protect other information submitted by  
225 the private entity from disclosure, the Authority shall determine whether public disclosure would  
226 adversely affect the financial interest or bargaining position of the Authority or private entity. The  
227 Authority shall make a written determination of the nature and scope of the protection to be afforded by  
228 it under this subdivision.

229 25. Information of a proprietary nature furnished by an agricultural landowner or operator to the  
230 Department of Conservation and Recreation, the Department of Environmental Quality, the Department  
231 of Agriculture and Consumer Services, or any political subdivision, agency, or board of the  
232 Commonwealth pursuant to §§ 10.1-104.7, 10.1-104.8, and 10.1-104.9, other than when required as part  
233 of a state or federal regulatory enforcement action.

234 26. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), provided to the  
235 Department of Environmental Quality pursuant to the provisions of § 10.1-1458. In order for such trade  
236 secrets to be excluded from the provisions of this chapter, the submitting party shall (i) invoke this  
237 exclusion upon submission of the data or materials for which protection from disclosure is sought, (ii)  
238 identify the data or materials for which protection is sought, and (iii) state the reasons why protection is  
239 necessary.

240 27. Information of a proprietary nature furnished by a licensed public-use airport to the Department  
241 of Aviation for funding from programs administered by the Department of Aviation or the Virginia  
242 Aviation Board, where if such information was made public, the financial interest of the public-use  
243 airport would be adversely affected.

244 In order for the information specified in this subdivision to be excluded from the provisions of this  
245 chapter, the public-use airport shall make a written request to the Department of Aviation:

246 a. Invoking such exclusion upon submission of the data or other materials for which protection from  
247 disclosure is sought;

248 b. Identifying with specificity the data or other materials for which protection is sought; and

249 c. Stating the reasons why protection is necessary.

250 28. Information relating to a grant or loan application, or accompanying a grant or loan application,  
251 submitted to the Virginia Research Investment Committee established pursuant to Article 8 (§ 23.1-3130  
252 et seq.) of Chapter 31 of Title 23.1, to the extent that such records would (i) reveal (a) trade secrets as  
253 defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.); (b) financial information of a party to a  
254 grant or loan application that is not a public body, including balance sheets and financial statements, that  
255 are not generally available to the public through regulatory disclosure or otherwise; or (c)  
256 research-related information produced or collected by a party to the application in the conduct of or as a  
257 result of study or research on medical, rehabilitative, scientific, technical, technological, or scholarly  
258 issues, when such information has not been publicly released, published, copyrighted, or patented, and  
259 (ii) be harmful to the competitive position of a party to a grant or loan application; and memoranda,  
260 staff evaluations, or other information prepared by the Committee or its staff, or a reviewing entity  
261 pursuant to subsection D of § 23.1-3133, exclusively for the evaluation of grant or loan applications,  
262 including any scoring or prioritization documents prepared for and forwarded to the Committee pursuant  
263 to subsection D of § 23.1-3133.

264 In order for the information submitted by the applicant and specified in this subdivision to be  
265 excluded from the provisions of this chapter, the applicant shall make a written request to the  
266 Committee:

267 a. Invoking such exclusion upon submission of the data or other materials for which protection from  
268 disclosure is sought;

269 b. Identifying with specificity the data, information, or other materials for which protection is sought;  
270 and

271 c. Stating the reasons why protection is necessary.

272 The Virginia Research Investment Committee shall determine whether the requested exclusion from  
273 disclosure is necessary to protect the trade secrets, financial information, or research-related information  
274 of the party to the application. The Committee shall make a written determination of the nature and  
275 scope of the protection to be afforded by it under this subdivision.

276 29. Proprietary information, voluntarily provided by a private business pursuant to a promise of  
277 confidentiality from a public body, used by the public body for a solar services agreement, where  
278 disclosure of such information would (i) reveal (a) trade secrets of the private business as defined in the  
279 Uniform Trade Secrets Act (§ 59.1-336 et seq.); (b) financial information of the private business,  
280 including balance sheets and financial statements, that are not generally available to the public through  
281 regulatory disclosure or otherwise; or (c) other information submitted by the private business and (ii)  
282 adversely affect the financial interest or bargaining position of the public body or private business.

283 In order for the information specified in clauses (i)(a), (b), and (c) to be excluded from the  
284 provisions of this chapter, the private business shall make a written request to the public body:

285 a. Invoking such exclusion upon submission of the data or other materials for which protection from  
286 disclosure is sought;

287 b. Identifying with specificity the data or other materials for which protection is sought; and

288 c. Stating the reasons why protection is necessary.

289 30. Information contained in engineering and construction drawings and plans submitted for the sole  
290 purpose of complying with the Building Code in obtaining a building permit if disclosure of such  
291 information would identify specific trade secrets or other information that would be harmful to the  
292 competitive position of the owner or lessee. However, such information shall be exempt only until the  
293 building is completed. Information relating to the safety or environmental soundness of any building  
294 shall not be exempt from disclosure.

295 31. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), including, but  
296 not limited to, financial information, including balance sheets and financial statements that are not  
297 generally available to the public through regulatory disclosure or otherwise, and revenue and cost  
298 projections supplied by a private or nongovernmental entity to the Virginia Department of Transportation  
299 for the purpose of an audit, special investigation, or any study requested by the Virginia Department of  
300 Transportation in accordance with law.

301 In order for the records specified in this subdivision to be excluded from the provisions of this  
302 chapter, the private or nongovernmental entity shall make a written request to the Department:

303 a. Invoking such exclusion upon submission of the data or other materials for which protection from  
304 disclosure is sought;

305 b. Identifying with specificity the data or other materials for which protection is sought; and

306 c. Stating the reasons why protection is necessary.

307 The Virginia Department of Transportation shall determine whether the requested exclusion from  
308 disclosure is necessary to protect trade secrets or financial records of the private entity. The Virginia  
309 Department of Transportation shall make a written determination of the nature and scope of the  
310 protection to be afforded by it under this subdivision.

311 32. *Information related to a grant application, or accompanying a grant application, submitted to the*  
312 *Department of Housing and Community Development that would (i) reveal (a) trade secrets, (b)*  
313 *financial information of a grant applicant that is not a public body, including balance sheets and*  
314 *financial statements, that are not generally available to the public through regulatory disclosure or*  
315 *otherwise, or (c) research-related information produced or collected by the applicant in the conduct of*  
316 *or as a result of study or research on medical, rehabilitative, scientific, technical, technological, or*  
317 *scholarly issues, when such information has not been publicly released, published, copyrighted, or*  
318 *patented, and (ii) be harmful to the competitive position of the applicant. The exclusion provided by this*  
319 *subdivision shall only apply to grants administered by the Department, the Director of the Department,*  
320 *or pursuant to § 36-139, Article 26 (§ 2.2-2484 et seq.) of Chapter 24, or the Virginia*  
321 *Telecommunication Initiative as authorized by the appropriations act.*

322 In order for the information submitted by the applicant and specified in this subdivision to be  
323 excluded from the provisions of this chapter, the applicant shall make a written request to the  
324 Department:

325 a. Invoking such exclusion upon submission of the data or other materials for which protection from  
326 disclosure is sought;

327 b. Identifying with specificity the data, information, or other materials for which protection is sought;  
328 and

329 c. Stating the reasons why protection is necessary.

330 The Department shall determine whether the requested exclusion from disclosure is necessary to  
331 protect the trade secrets or confidential proprietary information of the applicant. The Department shall  
332 make a written determination of the nature and scope of the protection to be afforded by it under this  
333 subdivision.