



# **The Virginia Freedom of Information Act: A Guide for School Board Members and School Administrators**

Published by the  
Virginia School Boards Association  
Charlottesville, Virginia  
© July 2021



## **About VSBA**

The Virginia School Boards Association is a private, voluntary, nonpartisan, self-supporting organization whose primary mission is the advancement of education through the unique American tradition of local citizen control of, and accountability for, the Commonwealth's public schools. In this way, education policy is decided by local school boards that are directly accountable to the community. VSBA promotes the quality of education through services to local school boards. It represents school boards' interests before the legislature, state agencies, Congress, and other state and national regulatory bodies.

Membership of the VSBA includes all local school boards of Virginia. Founded in 1906, VSBA represents the Commonwealth's school boards which, in turn, govern the schools attended by 100% of the public school children in Virginia.

The mission of the VSBA is to provide member boards with services, training and advocacy so that they may exercise effective leadership in public school governance on behalf of public education for all the children of the Commonwealth.



**VSBA**

**Virginia School Boards Association**

Leadership • Advocacy • Support

# **The Virginia Freedom of Information Act: A Guide for School Board Members and School Administrators**

## **Editors**

Gina G. Patterson, Executive Director

Elizabeth E. Ewing, Esq., Director, Legal & Policy Services

## **Introduction**

The Virginia Freedom of Information Act (the Act) was created in 1968 to ensure that Virginia citizens have access to government records and meetings. Since then the Act has been reviewed and amended numerous times. The Act governs the notice and conduct of school board meetings as well as the disclosure, upon request, of school division records. The law also requires school board members to read and become familiar with the Act and contains training requirements for FOIA Officers and elected school board members.

This Guide is intended to help Virginia school board members comply with this legal mandate as well as help school administrators and employees understand the provisions of the Act relating to school divisions to ensure compliance with it.

TABLE OF CONTENTS

I.	Intent of the Virginia Freedom of Information Act .....	1
II.	FOIA Officers .....	1
III.	Notice of the Act.....	1
IV.	Training Requirements .....	2
V.	Does the Act Apply to You? .....	2
VI.	Meetings to be Public.....	2
	A. Definition.....	2
	B. Notice .....	2
	C. Recording the Meeting.....	3
	D. Minutes .....	3
	E. Electronic Meetings and Remote Participation .....	3
	F. The Transaction of Public Business .....	4
	G. Closed Meetings .....	5
VII.	Public Records.....	7
	A. Disclosure of Public Records.....	7
	B. Costs for Producing Requested Records.....	8
	C. New Records .....	9
	D. Means of Providing Records (What Format?).....	9
	E. Exemptions from Disclosure .....	9
	F. Records Deemed Open .....	12
VIII.	Email and Other Electronic Communication Issues .....	12
IX.	Enforcement of the Act .....	13
	A. In the Courts .....	13
	B. Virginia Freedom of Information Advisory Council.....	14
	C. Relevant Advisory Opinions .....	14
X.	Conclusion .....	15
	Virginia Freedom of Information Act (Va. Code § 2.2-3700 and following) .....	17-81
	Appendix (Sample policies, regulations, and forms) .....	A-1-A-25

## I. INTENT OF THE VIRGINIA FREEDOM OF INFORMATION ACT

*Code of Virginia § 2.2-3700*

The Virginia Freedom of Information Act (FOIA or the Act) “ensures the people of the Commonwealth ready access to public records in the custody of a public body or its officers and employees, and free entry to meetings of public bodies wherein the business of the people is being conducted [because] [t]he affairs of government are not intended to be conducted in an atmosphere of secrecy since at all times the public is to be the beneficiary of any action taken at any level of government...” Furthermore, **the Act includes an express presumption that school board records and meetings are open unless an exemption is properly invoked.** Not only is there a presumption of openness, but also “any exemption from public access to records or meetings shall be **narrowly construed** (emphasis added).” Moreover, other provisions of the Act shall be liberally construed to promote an increased awareness by all persons of governmental activities and afford every opportunity to citizens to witness the operations of government.

Based on this legislative intent, the general rule is to disclose records and to open meetings unless there is a law prohibiting such disclosure or openness or an exemption in the Act permitting the withholding of records. Note that the Act does not require closed meetings or prohibit the disclosure of records; however, other federal laws or other state laws may (e.g., student records).

The second overriding intent of the Act is to create a spirit of cooperation between the school board and the public. Therefore, when a request for information is made, the school board and school employees “shall make reasonable efforts to reach an agreement with a requester concerning the production of the records requested.”

## II. FOIA Officers

*Code of Virginia § 2.2-3704.2*

Every public body must designate and publicly identify one or more FOIA officers. FOIA officers serve as a point of contact for members of the public in requesting public records and coordinate the public body's compliance with the Act.

The school board is required to make the name and contact information of its FOIA Officer(s) available in a way reasonably calculated to provide notice to the public, including posting at the school board office, posting on its website or including the information in its publications.

FOIA officers must possess specific knowledge of the provisions of FOIA and be trained at least once every two years. The training must be provided by legal counsel for the school board, the Virginia Freedom of Information Advisory Council (the FOIA Council) or through an online course offered by the FOIA Council. The name and contact information of a FOIA officers trained by the school board's legal counsel must be submitted to the FOIA Council by July 1 of the year the FOIA officer is initially trained and updated in a timely manner if any of the information changes. The FOIA Council maintains a list of FOIA Officers, including name, contact information and the name of the public body the FOIA Officer serves, on its website.

## III. NOTICE OF THE ACT

*Code of Virginia § 2.2-3702*

The superintendent or school board attorney of each school division provides a copy of the Act to every person elected, reelected, appointed or reappointed to the school board within two weeks following the election or appointment. **All school board members are required by law to read and become familiar with the provisions of the Act.**

Every school board is required to provide an explanation of the rights of people to make

requests for public records in plain English and to post that information on its website. The explanation must also include a statement of the responsibilities of the school board in complying with FOIA.

#### IV. TRAINING REQUIREMENTS

*Code of Virginia § 2.2-3704.3*

Every elected school board member must complete a training session at least once every two years. Elected board members who were in office on July 1, 2020, were required to complete their first training by December 31, 2020. After that, elected board members must complete their first training within two months of assuming office. The training must be provided by the FOIA Council (see section IX.B below) or the school board's attorney either in-person or online.

School board clerks must maintain records showing when each elected school board member completed the required training.

#### V. DOES THE ACT APPLY TO YOU?

*Code of Virginia § 2.2-3701*

The Act applies to public bodies and committees of public bodies, even when nonmembers serve on such committees. The Act defines a public body to include, among other entities, school boards, and further states that the definition "include[s] any committee, subcommittee, or other entity however designated, of the public body created to perform delegated functions of the public body or to advise the public body" even if such committee has private sector or citizen members. The Act also applies to records in the possession of the school board or its officers, employees or agents in the transaction of public business.

#### VI. MEETINGS TO BE PUBLIC

*Code of Virginia §§ 2.2-3700- 2.2-3711*

##### A. Definition

*Code of Virginia § 2.2-3701*

A meeting means the gathering, including work sessions or retreats, of at least three members or a quorum, if less than three, wherever held, regardless of whether minutes are taken or votes are cast, of any school board or committee of the school board.

Neither the gathering of employees of a public body nor the gathering or attendance of two or more members of a public body (i) at any place or function where no part of the purpose of such gathering or attendance is the discussion or transaction of any public business, and such gathering or attendance was not called or prearranged with any purpose of discussing or transacting any business of the public body, or (ii) at a public forum, candidate appearance, or debate, the purpose of which is to inform the electorate and not to transact public business or to hold discussions relating to the transaction of public business, even though the performance of the members individually or collectively in the conduct of public business may be a topic of discussion or debate at such public meeting, shall be deemed a "meeting".

##### B. Notice

###### 1. Regular Meetings

*Code of Virginia § 2.2-3707(C)*

Every school board must give notice of its meetings by posting notice in on its website, placing notice in a prominent public location at which notices are regularly posted and placing such notice in the office of the school board clerk. **The notice of all regular school board meetings must be given at least three working days prior to the meeting.** Further, if a school division has its own TV channel, it should broadcast meeting notices on that channel.

## 2. Special Meetings

*Code of Virginia § 2.2-3707(D)*

When it is necessary to hold a special or emergency meeting, notice of such meeting must be given simultaneously with the notice provided to the school board members. Such notice must be reasonable under the circumstances. For example, if you have time to get the notice published in the local newspaper (i.e. before the publication deadline), then you should do so. Also, you should post notice of special or emergency meetings at the locations described for regular meetings, although the same time requirement does not apply.

## 3. Meetings for Interviewing Superintendent Candidates

*Code of Virginia § 2.2-3712(B)*

Notice of a meeting held solely for the purpose of interviewing superintendent candidates is not required. Instead, the school board must announce, in an open meeting, that a closed meeting for this purpose will be held within fifteen days. The school board is not required to disclose the exact time, date or location of the meeting. This provision is intended to protect the privacy of superintendent candidates who may not have revealed their employment search to their current employer.

## 4. Requests for Notice of Meetings from Individuals

*Code of Virginia § 2.2-3707(E)*

Individuals may request personal, direct notification of each school board meeting. These requests must be made annually and include the requester's name, address, zip code, daytime telephone number, electronic mail address and organization, if any. The school board may respond to this type of request by (1) providing individual, direct notices before each meeting; (2) stating that the school board meets in the same place on the same day and time of every month (for example, the second Tuesday

of each month in the board room) or (3) may provide the schedule of school board meetings for the entire year at the time of the request. You should document the school board's response to this request. If a special or emergency meeting is called, you must notify the individual directly.

## 5. School Board Meeting Agendas and Agenda Packets

*Code of Virginia § 2.2-3707(F)*

At least one copy of the proposed agenda and all agenda packets and, unless exempt, all materials furnished to members of the school board for a meeting must be made available for public inspection at the same time such documents are furnished to the members of the school board.

## **C. Recording the Meeting**

*Code of Virginia § 2.2-3707(G)*

Any individual may photograph, film, record or otherwise reproduce all or any portion of an open school board meeting. The school board may adopt rules regarding the placement and use of recording equipment to prevent interference with the school board meeting. Furthermore, the school board cannot hold a meeting in any building or facility where recording is prohibited.

## **D. Minutes**

*Code of Virginia § 2.2-3707(H)*

Minutes must be recorded at all open school board meetings. Minutes are not required at deliberations of committees appointed by school boards unless a majority of the school board serves on the committee.

## **E. Electronic Meetings and Remote Participation**

*Code of Virginia § 2.2-3708.2*

The Act authorizes school boards to conduct meetings at which the public business is

discussed or transacted through electronic communication means in certain circumstances, as described below.

### 1. Individual Participation by Electronic Means

When a quorum of the board is physically assembled, an individual board member may participate in the meeting electronically if the board member notifies the chair that the member is unable to attend the meeting because of (1) a personal matter, (2) a disability or other medical condition that prevents the member's physical attendance, or (3) a family member's medical condition that requires the member to provide care for such family member, thereby preventing the member's physical attendance. When a school board member wants to participate electronically because of a personal matter, the board member must identify the nature of the personal matter with specificity. Remote participation due to personal matters is limited to two meetings each calendar year or 25 percent of the meetings held that calendar year rounded up to the next whole number, whichever is greater.

In order for individual board members to participate by electronic communication means, the board must have adopted a written policy allowing for and governing the participation of its members by electronic communication means. The policy must include an approval process for such participation. In deciding whether or not to approve a member's electronic participation, the board may not consider the identity of the board member or the matters that will be considered or voted on at the meeting. If the request is not approved, the reason for the disapproval must be recorded in the minutes of the meeting.

When a board member participates in a meeting electronically, the board must make arrangements for the voice of the remote participant to be heard by everyone present at the primary meeting location.

### 2. Declared State of Emergency

When a quorum of the board is not physically assembled at one location, a board may meet by electronic communication means when (1) the Governor has declared a state of emergency or the locality in which the board is located has declared a local state of emergency, (2) the catastrophic nature of the emergency makes it impracticable or unsafe for a quorum of the board to assemble in a single location and (3) the purpose of the meeting is to provide for the continuity of operations of the board or the discharge of its lawful purposes, duties, and responsibilities. Boards meeting through electronic communication means during a state of emergency are required to (a) make arrangements for public access to such meeting through electronic communication means, including videoconferencing if already used by the board, and (b) provide the public with the opportunity to comment at such meetings when public comment is customarily received. When a board meets electronically because of a declared emergency, it must give notice of the meeting using the best available method given the nature of the emergency and make arrangements for public access to the meeting. The public notice must be given contemporaneously with notice to the board members. The nature of the emergency, the fact that the meeting was held by electronic communication means, and the type of electronic communication means by which the meeting was held must be stated in the minutes of the meeting.

### F. **The Transaction of Public Business**

#### *Code of Virginia § 2.2-3710*

The transaction of school board business must be authorized by a vote taken at an open meeting. Voting by secret, written or electronic means is prohibited. The Act does not prohibit, however, a member **separately** contacting one or more members of the school board to determine a member's position with respect to the transaction of public business, whether such contact is done in person, by telephone or by electronic communication, provided that the

contact is done on a basis that does not constitute a meeting.

## G. Closed Meetings

*Code of Virginia §§ 2.2-3711 – 2.2-3712*

Meetings closed to the public and press are permitted under certain circumstances, but are not required. In order to conduct a closed meeting, the school board must follow the steps outlined below.

1. Select the appropriate exemption to the open meeting requirement. Closed meetings are allowed for more than 50 purposes. Listed below are some of the reasons most frequently used by school boards to close meetings.

Personnel Matters. Discussion, consideration or interviews of prospective candidates for school board employment; assignment, appointment, promotion, performance, demotion, salary, discipline or resignation of specific public officers, appointees or employees of the school board. While this exemption allows a closed meeting for the discussion of a **specific** employee, it does not permit a discussion of a general class of employees. Elected school boards may not meet in closed session to discuss compensation matters that affect the membership of the board collectively. **Also, a school board may not meet in a closed meeting to discuss the election of its chair or vice-chair.** *Opinion of the Attorney General to the Honorable Patricia S. Ticer, April 5, 1999.*

Scholastic Records. Discussion or consideration of the admission, discipline or other matters concerning any **identifiable** student or that would involve the disclosure of identifiable information contained in a record (see definition of “scholastic records” on p. 9).

Real Property. Discussion or consideration of the acquisition or disposition of real property if discussion in an open meeting would adversely affect the bargaining position or negotiating strategy of the school board.

Personal Matters. A closed meeting is permitted to protect the privacy of individuals in personal matters not related to public business. For example, one member of the school board may wish to reveal his or her health condition to the other members of the school board in a closed, rather than an open, meeting.

Litigation and Legal Briefings. Consultation with legal counsel and briefings by staff members or consultants pertaining to **actual or probable litigation** is allowed in a closed meeting if consultation in an open meeting would adversely affect the negotiating or litigating posture of the school board. Probable litigation means litigation which 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. In addition, consultation with legal counsel employed by or retained by the school board regarding **specific legal matters** requiring the provision of legal advice by such counsel is permitted in a closed meeting. The school board may not close a meeting merely because its attorney is present or is consulted on a matter.

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

Investment of Public Funds. Discussion of the investment of public funds where competition or bargaining is involved, where, if made public initially, the financial interest of the school board would be adversely affected.

Tests or Examinations. Discussion or consideration of tests, examinations or other information used, administered or prepared by the school board for purposes of evaluating (1) any student or any student’s performance (2) any employee or applicant’s qualifications or aptitude for employment, retention or promotion or (3) qualifications for any license or certificate issued by a public body.

Public Safety. Discussion of plans to protect public safety as it relates to terrorist activity or specific cybersecurity threats or vulnerabilities

and briefings by staff members, legal counsel or law-enforcement or emergency service officials concerning actions taken to respond to such matters, or a related threat to public safety, or discussion of specified exempt records where discussion in an open meeting would jeopardize the safety of any person or the security of any facility, building, structure, information technology system, or software program, or discussion of reports or plans related to the security of any government facility or the safety of persons using such facilities.

2. In an open meeting, approve a motion to conduct a closed meeting. Such motion must (1) **identify the subject matter** of the meeting (2) **state the purpose** of the meeting as authorized by law and (3) **cite the applicable legal provision** allowing a closed meeting. **These three items must be included in detail in the minutes of the open meeting.** A general reference to the Act, the applicable open meeting exemption or the subject matter of the closed meeting does not satisfy the law. A sample motion is provided below:

*“Pursuant to § 2.2-3712(A) of the Code of Virginia, I move that the Board convene in a closed meeting to consider the grievance of a high school teacher, as permitted under § 2.2-3711(A)(1) of the Code of Virginia.”*

When convening a closed meeting under the personnel or student discipline exemptions, it is not necessary to identify the specific employee or student involved.

3. During a closed meeting, the school board may discuss only those matters specifically identified in the motion to conduct the closed meeting and exempted from the open meeting requirements of the Act. The discussion of any other matter is prohibited.

4. At the conclusion of the closed meeting, the school board must immediately reconvene in an open meeting and take a recorded vote certifying that only matters lawfully exempted under the Act **and** identified in the motion were heard, discussed or considered in the closed meeting.

Such vote must be recorded in the minutes of the open meeting. Any school board member who believes there was a departure from these requirements must object prior to the vote, indicating the substance of the departure. Any objection to the certification must be included in the minutes. A sample motion and objection follow:

5. Sample motion:

*“Pursuant to section 2.2-3712(D) of the Code of Virginia, I move to certify that during the closed meeting just concluded the **BLANK** School Board discussed only matters (1) lawfully exempt from the open meeting requirements under section 2.2-3711 of the Code and (2) identified in the motion convening the closed meeting.”*

Sample objection:

*“Pursuant to section 2.2-3712(D) of the Code of Virginia, I object to the motion for certification of the closed meeting. During the closed meeting **[INSERT TOPIC]** was discussed. That topic **[SELECT APPLICABLE OPTION]** is not lawfully exempt from the open meeting requirements of FOIA **[OR]** was not identified in the motion by which the closed meeting was convened.”*

5. Following the certification, the school board must, in an open meeting, vote on any matter that was preliminarily agreed to in the closed meeting. The motion must reasonably identify the substance of such matter. Anything agreed to in a closed meeting is not effective until voted upon and passed in an open meeting.

6. Minutes are not required, but may be taken, in a closed meeting. Minutes of a closed meeting are exempt from disclosure under the Act; however, they may be discoverable in litigation or subject to subpoena.

7. A school board may permit nonmembers to attend a closed meeting if it deems such persons necessary or if their presence will aid the board

in its consideration of a topic that is a subject of the meeting. A teacher will be permitted to be present during a closed meeting in which there is a discussion 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 board chair. Students, parents/guardians and legal counsel may be present during the presentation of evidence at any closed meeting involving the admission or discipline of such student upon written request to the chair of the school board.

## VII. PUBLIC RECORDS

*Code of Virginia §§ 2.2-3701, 2.2-3704 & 2.2-3705*

The Act defines public records as all writings and recordings that consist of letters, words or numbers or their equivalent set down by handwriting, typewriting, printing, photostating, photography, magnetic impulse, optical or magneto-optical form, mechanical or electronic recording or other form of data compilation, however stored, and regardless of physical form or characteristics, prepared or owned by, or in the possession of a public body or its officers, employees or agents in the transaction of public business. **This definition is intended to be comprehensive and includes any record, regardless of how it is created or stored, including email, text messages, and voice mail recordings.**

### A. Disclosure of Public Records

*Code of Virginia §§ 2.2-3704, 2.2-3704.1*

#### 1. General Rule

Public records must be disclosed, upon proper request, unless release is specifically exempted by the Act or prohibited by another law.

A public record may be withheld from disclosure in its entirety only to the extent that an exclusion applies to the entire content of the record. Otherwise, only those portions of the public

record containing information subject to an exclusion may be withheld and all portions of the public record that are not so excluded must be disclosed.

#### 2. Who is Entitled to Access Public Records?

Citizens of the Commonwealth of Virginia and representatives of newspapers, magazines, and radio or television stations which circulate or broadcast in the Commonwealth must be provided access to public records upon request unless the requested record is specifically made exempt by the Act or disclosure is prohibited by other law. **Access to public records may be granted to non-citizens or other members of the media, but such disclosure is not required by the Act.** People incarcerated in any state, local or federal correctional facility are not entitled to access public records under the Act; however, through other laws, such people may have the right to access certain information.

#### 3. How should a request for public records be made?

A request for public records shall be made to the custodian of the records and identify the requested records with **reasonable specificity**. The custodian of the records is typically the Superintendent. The requester is not required to make reference to the Act or make the request in writing. Although the school board cannot require a request for public records to be written, it is prudent to have a form that requesters may use (see **VSBA sample policy, regulation and form in the Appendix**). **The school board may require the person requesting a public record to provide the requester's name and legal address. If the requester is unwilling or unable to complete a form, then staff can complete it as fully as possible.** The purpose of having a completed form is twofold: first, to create a record of the request and the school board's response and second, to help the school board and the requester understand exactly what is being requested. The reason behind the request for records is irrelevant to the citizen's or press' right to the requested information.

#### 4. How must the school board respond to a request for records?

The custodian of the requested records must, promptly, **and no later than five working days** after receiving the request, provide access to the requested records by inspection or by providing copies, at the option of the requester, or make one of the following responses **in writing**:

- The requested records are being withheld in their entirety. Such a response must identify with reasonable particularity the volume and subject matter of the withheld records and cite, as to each category of withheld records, the specific Code section authorizing the withholding of the records.
- The requested records will be provided in part and withheld in part because the release of part of the records is prohibited by law or the school board has exercised its discretion to withhold part of the records requested. This response must identify with reasonable particularity the subject matter of the withheld portions of the records and cite the specific Code section authorizing the withholding of records. If a portion of a requested record is withheld, the public body may delete only that portion to which an exemption applies and shall release the remainder of the record.
- The requested records could not be found or do not exist. If the school board knows that another public body has the requested records, the response must include contact information for the other public body.
- It is not practically possible to provide the requested records or to determine whether they are available within five working days. This response must specify the conditions which make the response impossible. If this response is made within five working days, the school board shall have another seven work days to provide one of the responses listed above.

The school board may petition the appropriate court for additional time to respond to a request

for records if the request (1) is for an extraordinary volume of records and (2) a response within the required time frame will prevent the school board from meeting its operational responsibilities. Before initiating this petition, the school board must make reasonable efforts to reach an agreement with the requester concerning the production of the requested records.

In addition, the Attorney General has opined that Virginia Code § 15.2-1413 does not empower a locality to modify or indefinitely extend the deadlines for responding to requests for records. The time limits for responding to requests for records in FOIA remain in place and must be complied with even during emergencies. *Opinion of the Attorney General to the Honorable Sally Hudson October 5, 2020.*

Failure of the school board to respond to a request for records is a denial of the request and is a violation of the Act.

#### **B. Costs for Producing Requested Records**

*Code of Virginia § 2.2-3704(F), (H) and (I)*

The school board may make reasonable charges for its **actual costs** incurred in accessing, duplicating, supplying or searching for any requested records. Extraneous, intermediary or surplus fees or expenses to recoup the costs associated with creating or maintaining records or transacting general school board business are prohibited. Duplicating fees may not exceed actual cost.

The FOIA Advisory Council has opined that “actual costs” cannot include a charge designed to cover the cost of fringe benefits paid for the employees involved in responding to a FOIA request. AO-05-02. “Actual costs” may include charges for the time spent by employees involved in responding to the FOIA request, based on hourly rates corresponding to the employees’ salaries. AO-21-01.

At the request of the requester, the charges for providing the requested record shall be

determined in advance. The period within which the school board must respond is tolled for the amount of time that elapses between the notice of the cost estimate and the response from the requester. If no response is received in 30 days, the request is considered to have been withdrawn.

Also, if the school board determines in advance that the charges for producing the requested record are likely to exceed \$200.00, the school board may, before continuing to process the request, require the requester to pay a deposit not to exceed the amount of the advance determination. Such deposit shall be credited toward the final cost of supplying the requested records. The time for the school board to respond to the request for records pauses at the time of the advance determination notice and resumes upon the response of the requester.

Before processing a request, the school board may require the requester to pay any amounts owed to the school board for previous requests that remain unpaid 30 days after billing.

### C. New Records

*Code of Virginia § 2.2-3704(D) & (G)*

The school board is not required to create new records (records that do not exist). The school board may, however, abstract or summarize information as agreed between the school board and the requester. When electronic or other databases combine information or contain exempt and nonexempt records, the school board may provide access to the exempt records if not prohibited by law and must provide access to the nonexempt records. The deletion of exempt information from a database or the conversion of data from one available format to another is not the creation of a new public record

### D. Means of Providing Records (What Format?)

*Code of Virginia § 2.2-3704(G)*

The school board must provide requested nonexempt records maintained in an electronic database in **any tangible medium identified by the requester if the requested medium is used by the board in the regular course of business**. This may include posting the records on a website or delivering the records through an electronic mail address provided by the requester. The school board is not required to produce records in a format it does not regularly use. The school board must make reasonable efforts to reach an agreement with the requester on how to provide the requested records.

### E. Exemptions from Disclosure

*Code of Virginia §§ 2.2-3701, 2.2-3705.1 through 2.2-3705.8 & 2.2-3706.*

There are over 100 exemptions from the mandatory disclosure requirement of the Act. However, these exemptions are permissive, not mandatory, so the records may be disclosed at the discretion of the superintendent, unless disclosure is otherwise prohibited by law. The exemptions most likely to be used by a school board are summarized below:

- Scholastic records. Scholastic records are defined in the Act as records containing information directly related to a student and maintained by (1) a public body which is an educational agency or institution or (2) by a person acting for such agency or institution. In order to be exempt from mandatory disclosure, the record must contain information concerning **identifiable individuals**. However, these records shall not be denied to the student who is the subject of the record if the student is at least 18 years old or the parent or guardian of a student who is less than 18 years old. Students shall not have access to the financial records of their parents or guardians.

Records of instructional, supervisory or administrative personnel and educational personnel ancillary thereto which are in the sole possession of the maker and which are not accessible or revealed to anyone except a substitute are not accessible by students and their parents/guardians through the Act. If a student who is 18 or older waives these protections in writing, the school board must open such records.

A student's address, phone number or email address cannot be released in response to a FOIA request or as directory information under the Family Educational Rights and Privacy Act without the written consent of the parent or eligible student.

- Personnel records. Records containing information concerning **identifiable individuals**, except that access shall not be denied to the person who is the subject of the record. Any person who is 18 or older may waive this protection in writing and if it is waived, the school board must open such records for inspection and copying.

- Licensing information. Records of application for licensure for teachers and other school personnel, including transcripts and other documents submitted in support of the application and records of an active investigation conducted by or for the BOE related to the denial, suspension, cancellation, revocation or reinstatement of teacher and other school personnel licenses including investigator notes and other correspondence and information, furnished in confidence with respect to such investigation.

- Health records. Health records are exempt from mandatory disclosure. However, such records may be personally reviewed by the individual who is the subject of the records, or the individual's parent or guardian if the individual is under 18.

- Working papers and correspondence of the superintendent. No record which is otherwise

open to inspection shall be exempt merely because it is attached to a working paper or other exempt correspondence. 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 is not considered to be working papers. Working papers are limited to records prepared by or for the superintendent for the superintendent's **personal or deliberative use**.

- Records Relating to Public Safety including (1) information concerning security plans and specific assessment components of school safety audits and (2) records that reveal, and the disclosure of which would jeopardize the safety of, any person or government facility, critical infrastructure information, vulnerability assessments, surveillance techniques or local or regional public safety communication systems.

- Threat Assessment Team Records. Records of threat assessment teams relating to the assessment or intervention with a specific individual.

- Uniformed services-connected students. Data from the identification of uniformed services-connected students is not a public record. The disclosure of such data is prohibited except as provided in the federal Family Educational Rights and Privacy Act (20 U.S.C. § 1232g). Code of Virginia § 22.1-287.04.

- Written legal advice. Written advice of the legal counsel to the school board or the officers or employees of the school board and any other records protected by the attorney-client privilege.

- Legal memoranda and other work product compiled specifically for use in **litigation** or for use in an **active administrative investigation** concerning a matter which is properly the subject of a closed meeting.

- Recommendation letters. Confidential letters and statements of recommendation placed in the records of educational agencies or institutions

regarding admission to any educational agency or institution, an application for employment or promotion or receipt of an honor.

- Library records which identify a library patron who has borrowed material from the library and the material borrowed.

- Any test or examination used, administered or prepared by any public body to evaluate (1) a student's performance; (2) the qualifications or aptitude for employment, retention or promotion of any employee or candidate for employment; or (3) qualifications for any license or certificate issued by a public body. The exempt record may include the scoring key or other documents that would jeopardize the security of the test. The test shall be made available to the public when it no longer has any potential for future use and the security of future tests or examinations will not be jeopardized. Minimum competency tests administered to public school children shall be open when the statewide scores are released or six months after their administration, whichever is earlier.

- Closed meeting records. Records created in or compiled exclusively for use in lawfully held closed meetings. No record which is otherwise open shall be deemed exempt merely because it is reviewed or discussed in a closed meeting.

- Vendor proprietary information. Software which may be in the official records of a public body, including computer programs acquired from a vendor for purposes of processing data for the school board.

- Computer software developed by or for a school board.

- Appraisals and cost estimates of real property subject to a proposed purchase, sale or lease, prior to the completion of such purchase, sale or lease.

- Computer security information. Documentation or other information which describes the design, function, operation or access control features of

any security system which is used to control access to or use of any automated data processing or telecommunications system.

- Proprietary information. Confidential information designated as trade secrets or proprietary information by any person who has submitted to the school board an application for pre-qualification to bid on public construction projects.

- Personal contact information. Personal contact information, including electronic mail addresses and telephone numbers, given to the school board or any of its members for the purpose of receiving electronic communications from the board or any of its members unless the recipient of such electronic communication indicates approval for the school board to disclose such information. However, the person who is the subject of this record may not be denied access to the information. "Personal contact information" means information given to the school board for the purpose of receiving electronic communications from the school board or any of its members including home or business address, email address or telephone number.

- Investigations of Employment Discrimination Complaints. Notes, correspondence and information, furnished in confidence with respect to an active investigation of individual employment discrimination complaint made to the division's human resources or personnel department.

- PPEA records. Confidential proprietary records that are voluntarily provided by a private entity which are filed with a school board under the Public-Private Education Facilities and Infrastructure Act (the PPEA) pursuant to a promise of confidentiality from the school board and which are used by the board for purposes related to the development of a qualifying project. Also, memoranda, working papers or other records related to proposals filed under the PPEA where, if such records were made public, the financial interest of the public or private entity

involved with such proposal or the process of competition or bargaining would be adversely affected. In order for confidential proprietary information to be excluded from the provisions of this chapter, the private entity shall (1) invoke such exclusion upon submission of the data or other materials for which protection from disclosure is sought, (2) identify the data or other materials for which protection is sought, and (3) state the reasons why protection is necessary.

## F. Records Deemed Open

*Code of Virginia §§ 2.2-3705.8 and 2.2-3707*

### Minutes

The Act deems minutes, including draft minutes, of open meetings, and other records of open meetings, to be public records. Other records of open meetings include audio and visual records.

### Employment contracts and compensation

Contracts between the school board and its officers or employees, excluding those settling employment disputes, must be open and subject to disclosure. Likewise, records of the position, job classification, official salary or rate of pay of any school board officer, official or employee over \$10,000.00 must be disclosed, upon request. Also, records of the allowance or reimbursements for expenses paid to any officer, official or employee of the school board must be open.

### Consultant reports

The non-exempt portions of a report of a consultant hired by the school board or the division superintendent are deemed open if (1) the report has been distributed or disclosed to members of the school board or (2) the school board has scheduled any action on a matter that is the subject of the consultant's report.

## VIII. EMAIL AND OTHER ELECTRONIC COMMUNICATION ISSUES

When considering the use of email and other electronic means of communication, there are two issues to consider: (1) whether your conduct is a **meeting** as defined in the Act and (2) whether you are creating **public records** which must be disclosed unless specifically exempt. While the Act puts some restrictions on conducting meetings through electronic means, it does not prohibit all communication among members when the board is not physically assembled. The use of email to transmit messages to individual board members is permissible. However, board members need to be careful that their use of email does not result in a meeting.

Whether or not the use of email constituted a meeting has been addressed by the Virginia Supreme Court in two cases. See *Hill v. Fairfax County School Board*, 284 Va. 306 (Va. 2012) and *Beck v. Shelton*, 267 Va. 483 (Va. 2004). In both cases, the court focused on the definition of "meeting" in FOIA.

FOIA defines meetings subject to the Act as "the meetings, including work sessions, when sitting physically or through electronic communication means pursuant to [Va. Code] § 2.2-3708.2 as a body or entity, or as an informal assemblage of (1) as many as three members or (2) a quorum, if less than three, of the constituent membership" of the public body. Va. Code § 2.2-3701. The court emphasized in both *Hill* and *Beck* that "[t]he term [assemblage] inherently entails the quality of simultaneity".

The court also noted in both cases that email can be used in various ways, some of which involve simultaneous communication and some of which do not. For example, when email is used in a way that is functionally similar to ordinary mail, in which there may be a significant delay before the communication is received and an additional delay in response, there is no simultaneity and no meeting exists. In contrast, if computers are used to exchange messages in

the nature of a discussion, such as occurs in chat rooms or via instant messaging, communication is virtually simultaneous.

The determination of which of those scenarios the use of email by members of a school board most closely resembles depends entirely on the facts of the particular case. The facts in both *Beck* and *Hill* established that the communication was not simultaneous and thus that there was no meeting for FOIA purposes. The court clearly indicated, however, that different facts would have resulted in different outcomes. Thus, all school board members should be very aware of how they use email and ensure that they do not engage in simultaneous communication that would constitute a meeting.

The use of two other specific types of electronic communication has also been addressed. The Virginia Freedom of Information Advisory Council (the Council) has opined that the use of an email network, or listserve, for members of a city council, the city manager and the city attorney would violate the prohibition against electronic meetings for local public bodies. The Council determined that using electronic communication such as a listserve or discussion group is “more akin to a meeting than to mere correspondence.” The Council noted that “[w]hile this conversation might not ensue as instantaneously as a face-to-face conversation, the end result would be the same exchange and discussion of ideas outside of the public’s view.” AO-1-01 January 3, 2001.

In addition, the Attorney General has opined that discussing board business using “instant messages” or a chat room with three board members or a quorum, is prohibited due to the simultaneous nature of this type of communication. *Opinion of the Attorney General to the Honorable Phillip Hamilton January 6, 1999.*

In summary, the use of email to exchange correspondence or information clearly does not violate the meeting requirements of the Act as long as that use does not result in simultaneous communication. Board members should refrain

from the use of chat rooms, discussion groups or listserves in their communications with other board members since they would likely be considered simultaneous communications in violation of the Act’s meeting requirement.

In addition to such emails between board members being permissible under the Act, with regard to the meeting rules, emails are also subject to the open records provision of the Act. Therefore, Board members should be aware that emails may be requested by a citizen of Virginia or a member of the press and may be required to be disclosed. Therefore, be aware of the form and content of your email.

## **IX. ENFORCEMENT OF THE ACT**

### **A. In the Courts**

*Code of Virginia §§ 2.2-3713, 2.2-3714 & 2.2-3715*

Any person denied the rights and privileges of the Act may file a petition in the general district court or the circuit court in the appropriate county or city. The petition will be heard by the court within seven days as long as the defendant has received a copy of the petition at least three working days prior to the filing for mandamus or injunction. However, if the petition for mandamus or injunction alleges violations of the open meetings requirements, the three-day notice to the party against whom the petition is brought is not required. The petition must allege the violation of the Act with reasonable specificity.

The petitioner is entitled to recover reasonable costs and attorney’s fees from the school board if: 1) the school board is found to have violated the Act and 2) the petitioner substantially prevails on the merits of the case, unless special circumstances exist. The court may consider a school board’s reliance on an opinion of a Virginia court or the Attorney General that supports the position the school board took.

Failure to follow the procedures of the Act is presumed to be a violation. Fines for the first knowing and willful violation are not less than

\$500 or more than \$2,000. The fine for subsequent violations is not less than \$2,000 or more than \$5,000. Any fine imposed for a willful and knowing violation of the Act is imposed on the board member, officer or employee of the school division in his individual capacity. An officer, employee or member of a school board who is alleged to have committed a willful and knowing violation of FOIA may introduce a relevant advisory opinion rendered by the FOIA Council (see below) as evidence that they did not commit the violation willfully and knowingly if the violation resulted from the person's good faith reliance on the advisory opinion.

In addition, if a court finds that any officer, employee or member of a school board failed to provide public records as required by FOIA because the person altered or destroyed the records with the intent to avoid the Act, the court may impose a civil penalty of up to \$100 per record altered or destroyed on the person in his or her individual capacity.

Also, if a court finds that a public body voted to certify a closed meeting and the certification was not in accordance with FOIA, the court may impose on the public body a civil penalty of up to \$1,000. In determining whether a civil penalty is appropriate, the court shall consider mitigating factors such as reliance on opinions of the Attorney General, court cases, and published opinions of the FOIA Council.

## **B. Virginia Freedom of Information Advisory Council**

*Code of Virginia § 30-178 et seq.*

The Virginia Freedom of Information Advisory Council (the Council) was created by the General Assembly in 2000 to "encourage and facilitate compliance with the [Virginia] Freedom of Information Act." The Council is comprised of fourteen members including representatives from local government, the press, the Senate, the House of Delegates, the Attorney General's Office, the Library of Virginia, the Division of

Legislative Services and citizens of the Commonwealth.

The Council provides training and educational information on the requirements of the Act to the members and staff of public bodies and other interested parties. In addition, the Council provides advisory opinions regarding the Act to any person or public body. Local school boards must cooperate with and provide assistance to the Council upon request. However, information provided by any state or local government body will not be released by the Council unless the public body consents.

## **C. Relevant Advisory Opinions**

Since its creation in 2000, the Council has issued numerous opinions regarding compliance with the Act. Some of the Council's opinions relevant to school boards are listed below:

- Records of the payment of money pursuant to a settlement agreement between a public body and a former employee of that body must be produced pursuant to FOIA. AO-01-21, January 21, 2021.
- A member of a public body who wishes to participate electronically in a meeting where a quorum of the body is physically assembled must specify whether the request is due to a personal matter or to a disability or medical condition. In addition, each public body must decide what limits it wants to place on participation under both the personal matters and the disability or medical condition provisions. It is up to each public body to decide whether it will seek specific information as to the nature of a disability or medical condition from members who want to use that provision and whether the public body's policy will attempt to restrict participation based on the information provided. AO-04-20, October. 7, 2020.
- A public body must give notice of the date, time and location of its meetings. The time that must be noticed is the true time at which the meeting begins. Thus, when a notice announced that a

meeting would start at 7 pm but the meeting actually started with a closed session at 6 pm, the notice of the meeting should have stated that the meeting started at 6 pm. AO-06-07, June 8, 2007.

- A public body may charge for non-legal staff time spent redacting exempt portions of a requested record. AO-02-07, March 14, 2007.

- A motion to go into closed session must (1) identify the subject matter, (2) state the purpose of the closed meeting and (3) refer to the specific subsection of FOIA which permits the board to go into closed session. AO-24-04, December 2, 2004.

- A verbal request for information is sufficient under FOIA; there is no requirement that a FOIA request be in writing. The custodian of the records may ask that the request be made in writing but cannot refuse to honor a request because it is verbal or require that a request be made in writing. AO-18-04, August 31, 2004.

- FOIA guarantees citizens the right to attend meetings and witness the operations of government, not the right to participate in those meetings. AO-22-03, July 21, 2003.

- Failure to respond to a request for public records is a violation of FOIA. AO-12-03, May 14, 2003.

- When a school board receives a request for documents which had previously been assembled for another requester, the board may charge the second requester for copying and retrieving the file but cannot charge for the time originally spent locating the documents and compiling the file. AO-08-03, April 3, 2003.

- A local public body may use a straw poll in a closed meeting to narrow a list of candidates for appointment. “[I]f a public body has properly convened in closed session, it may, while still in closed session, reach a tentative agreement about the topic of business. However, the substance of that agreement will not become

effective until it is identified at an open meeting, and voted on by the membership.” AO-15-02, November 12, 2002.

- A two-person committee of the school board appointed by the board to provide budget suggestions to the full board is a public body subject to the meeting provisions of the Act. AO-20-01, March 19, 2001.

- The Virginia School Boards Association (VSBA) is not a public body under the Freedom of Information Act, and therefore, its meetings are not public meetings. Three or more members of a school board may gather at a VSBA meeting without violating the Act as long as they do not discuss or transact business. Materials provided by the VSBA to members attending a meeting may become public records if the members use them to “formulate or discuss policy of the individual school board”. AO-10-00, December 12, 2000.

- A parent requesting a religious exemption to compulsory attendance does not have the right to “record” the closed meeting. Such decision is left to the discretion of the school board. AO-19-00, December 15, 2000.

- Draft copies of public records must be disclosed. A master list of the date and time of classes to be offered, even if it is subject to revision, must be disclosed upon request. AO-3-00, October 2, 2000.

The Council’s Advisory opinions are available at <http://foiacouncil.dls.virginia.gov/foiacouncil.htm>.

## **X. CONCLUSION**

The key to compliance with the Virginia Freedom of Information Act is threefold: (1) remember the purpose of the Act is to ensure ready access to records in the custody of public officials and free entry to meetings of public bodies where the business of the people is being conducted and to promote an increased awareness of governmental activities and afford every

opportunity for the public to witness the operations of government since at all times the public is to be the beneficiary of any action taken at any level of government; (2) presume school board meetings and records are open unless specifically exempted or prohibited by law; and (3) always try to reach an agreement with the requester of public records.

**Virginia Freedom of Information Act  
Va. Code § 2.2-3700 and following  
(Effective, July 1, 2021)**

**§ 2.2-3700. Short title; policy.**

A. This chapter may be cited as "The Virginia Freedom of Information Act."

B. By enacting this chapter, the General Assembly ensures the people of the Commonwealth ready access to public records in the custody of a public body or its officers and employees, and free entry to meetings of public bodies wherein the business of the people is being conducted. The affairs of government are not intended to be conducted in an atmosphere of secrecy since at all times the public is to be the beneficiary of any action taken at any level of government. Unless a public body or its officers or employees specifically elect to exercise an exemption provided by this chapter or any other statute, every meeting shall be open to the public and all public records shall be available for inspection and copying upon request. All public records and meetings shall be presumed open, unless an exemption is properly invoked.

The provisions of this chapter shall be liberally construed to promote an increased awareness by all persons of governmental activities and afford every opportunity to citizens to witness the operations of government. Any exemption from public access to records or meetings shall be narrowly construed and no record shall be withheld or meeting closed to the public unless specifically made exempt pursuant to this chapter or other specific provision of law. This chapter shall not be construed to discourage the free discussion by government officials or employees of public matters with the citizens of the Commonwealth.

All public bodies and their officers and employees shall make reasonable efforts to reach an agreement with a requester concerning the production of the records requested.

Any ordinance adopted by a local governing body that conflicts with the provisions of this chapter shall be void.

**§ 2.2-3701. Definitions.**

As used in this chapter, unless the context requires a different meaning:

"Closed meeting" means a meeting from which the public is excluded.

"Electronic communication" means the use of technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities to transmit or receive information.

"Emergency" means an unforeseen circumstance rendering the notice required by this chapter impossible or impracticable and which circumstance requires immediate action.

"Information" as used in the exclusions established by §§ 2.2-3705.1 through 2.2-3705.7, means the content within a public record that references a specifically identified subject matter, and shall not be interpreted to require the production of information that is not embodied in a public record.

"Meeting" or "meetings" means the meetings including work sessions, when sitting physically, or through electronic communication means pursuant to § 2.2-3708.2, as a body or entity, or as an informal assemblage of (i) as many as three members or (ii) a quorum, if less than three, of the constituent membership, wherever held, with or without minutes being taken, whether or not votes are cast, of any public body. Neither the gathering of employees of a public body nor the gathering or attendance of two or more members of a public body (a) at any place or function where no part of the purpose of such gathering or attendance is the discussion or transaction of any public business, and such gathering or attendance was not called or prearranged with any purpose of discussing or transacting any business of the public body, or (b) at a public forum, candidate appearance, or

debate, the purpose of which is to inform the electorate and not to transact public business or to hold discussions relating to the transaction of public business, even though the performance of the members individually or collectively in the conduct of public business may be a topic of discussion or debate at such public meeting, shall be deemed a "meeting" subject to the provisions of this chapter.

"Open meeting" or "public meeting" means a meeting at which the public may be present.

"Public body" means any legislative body, authority, board, bureau, commission, district or agency of the Commonwealth or of any political subdivision of the Commonwealth, including cities, towns and counties, municipal councils, governing bodies of counties, school boards and planning commissions; governing boards of public institutions of higher education; and other organizations, corporations or agencies in the Commonwealth supported wholly or principally by public funds. It shall include (i) the Virginia Birth-Related Neurological Injury Compensation Program and its board of directors established pursuant to Chapter 50 (§ 38.2-5000et seq.) of Title 38.2 and (ii) any committee, subcommittee, or other entity however designated, of the public body created to perform delegated functions of the public body or to advise the public body. It shall not exclude any such committee, subcommittee or entity because it has private sector or citizen members. Corporations organized by the Virginia Retirement System are "public bodies" for purposes of this chapter.

For the purposes of the provisions of this chapter applicable to access to public records, constitutional officers and private police departments as defined in § 9.1-101 shall be considered public bodies and, except as otherwise expressly provided by law, shall have the same obligations to disclose public records as other custodians of public records.

"Public records" means all writings and recordings that consist of letters, words or numbers, or their equivalent, set down by

handwriting, typewriting, printing, photostating, photography, magnetic impulse, optical or magneto-optical form, mechanical or electronic recording or other form of data compilation, however stored, and regardless of physical form or characteristics, prepared or owned by, or in the possession of a public body or its officers, employees or agents in the transaction of public business.

"Regional public body" means a unit of government organized as provided by law within defined boundaries, as determined by the General Assembly, which unit includes two or more localities.

"Scholastic records" means those records containing information directly related to a student or an applicant for admission and maintained by a public body that is an educational agency or institution or by a person acting for such agency or institution.

"Trade secret" means the same as that term is defined in the Uniform Trade Secrets Act (§ 59.1-336et seq.).

#### **§ 2.2-3702. Notice of chapter.**

Any person elected, reelected, appointed or reappointed to any body not excepted from this chapter shall (i) be furnished by the public body's administrator or legal counsel with a copy of this chapter within two weeks following election, reelection, appointment or reappointment and (ii) read and become familiar with the provisions of this chapter.

#### **§ 2.2-3703. Public bodies and records to which chapter inapplicable; voter registration and election records; access by persons incarcerated in a state, local, or federal correctional facility.**

A. The provisions of this chapter shall not apply to:

1. The Virginia Parole Board, except that (i) information from the Virginia Parole Board

providing the number of inmates considered by the Board for discretionary parole, the number of inmates granted or denied parole, and the number of parolees returned to the custody of the Department of Corrections solely as a result of a determination by the Board of a violation of parole shall be open to inspection and available for release, on a monthly basis, as provided by § 2.2-3704; (ii) all guidance documents, as defined in § 2.2-4101, shall be public records and subject to the provisions of this chapter; and (iii) all records concerning the finances of the Virginia Parole Board shall be public records and subject to the provisions of this chapter. The information required by clause (i) shall be furnished by offense, sex, race, age of the inmate, and the locality in which the conviction was obtained, upon the request of the party seeking the information. The information required by clause (ii) shall include all documents establishing the policy of the Board or any change in or clarification of such policy with respect to grant, denial, deferral, revocation, or supervision of parole or geriatric release or the process for consideration thereof, and shall be clearly and conspicuously posted on the Board's website. However, such information shall not include any portion of any document reflecting the application of any policy or policy change or clarification of such policy to an individual inmate;

2. Petit juries and grand juries;

3. Family assessment and planning teams established pursuant to § 2.2-5207;

4. Sexual assault response teams established pursuant to § 15.2-1627.4, except that records relating to (i) protocols and policies of the sexual assault response team and (ii) guidelines for the community's response established by the sexual assault response team shall be public records and subject to the provisions of this chapter;

5. Multidisciplinary child sexual abuse response teams established pursuant to § 15.2-1627.5;

6. The Virginia State Crime Commission; and

7. The records maintained by the clerks of the courts of record, as defined in § 1-212, for which clerks are custodians under § 17.1-242, and courts not of record, as defined in § 16.1-69.5, for which clerks are custodians under § 16.1-69.54, including those transferred for storage, maintenance, or archiving. Such records shall be requested in accordance with the provisions of §§ 16.1-69.54:1 and 17.1-208, as appropriate. However, other records maintained by the clerks of such courts shall be public records and subject to the provisions of this chapter.

B. Public access to voter registration and election records shall be governed by the provisions of Title 24.2 and this chapter. The provisions of Title 24.2 shall be controlling in the event of any conflict.

C. No provision of this chapter or Chapter 21 (§ 30-178et seq.) of Title 30 shall be construed to afford any rights to any person (i) incarcerated in a state, local or federal correctional facility, whether or not such facility is (a) located in the Commonwealth or (b) operated pursuant to the Corrections Private Management Act (§ 53.1-261et seq.) or (ii) civilly committed pursuant to the Sexually Violent Predators Act (§ 37.2-900et seq.). However, this subsection shall not be construed to prevent such persons from exercising their constitutionally protected rights, including, but not limited to, their right to call for evidence in their favor in a criminal prosecution.

**§ 2.2-3703.1. Disclosure pursuant to court order or subpoena.**

Nothing contained in this chapter shall have any bearing upon disclosures required to be made pursuant to any court order or subpoena. No discretionary exemption from mandatory disclosure shall be construed to make records covered by such discretionary exemption privileged under the rules of discovery, unless disclosure is otherwise prohibited by law.

**§ 2.2-3704. Public records to be open to inspection; procedure for requesting records and responding to request; charges; transfer of records for storage, etc.**

A. Except as otherwise specifically provided by law, all public records shall be open to citizens of the Commonwealth, representatives of newspapers and magazines with circulation in the Commonwealth, and representatives of radio and television stations broadcasting in or into the Commonwealth during the regular office hours of the custodian of such records. Access to such records shall be provided by the custodian in accordance with this chapter by inspection or by providing copies of the requested records, at the option of the requester. The custodian may require the requester to provide his name and legal address. The custodian of such records shall take all necessary precautions for their preservation and safekeeping.

B. A request for public records shall identify the requested records with reasonable specificity. The request need not make reference to this chapter in order to invoke the provisions of this chapter or to impose the time limits for response by a public body. Any public body that is subject to this chapter and that is the custodian of the requested records shall promptly, but in all cases within five working days of receiving a request, provide the requested records to the requester or make one of the following responses in writing:

1. The requested records are being entirely withheld. Such response shall identify with reasonable particularity the volume and subject matter of withheld records, and cite, as to each category of withheld records, the specific Code section that authorizes the withholding of the records.

2. The requested records are being provided in part and are being withheld in part. Such response shall identify with reasonable particularity the subject matter of withheld portions, and cite, as to each category of withheld records, the specific Code section that authorizes the withholding of the records.

3. The requested records could not be found or do not exist. However, if the public body that received the request knows that another public body has the requested records, the response shall include contact information for the other public body.

4. It is not practically possible to provide the requested records or to determine whether they are available within the five-work-day period. Such response shall specify the conditions that make a response impossible. If the response is made within five working days, the public body shall have an additional seven work days or, in the case of a request for criminal investigative files pursuant to § 2.2-3706.1, 60 work days in which to provide one of the four preceding responses.

C. Any public body may petition the appropriate court for additional time to respond to a request for records when the request is for an extraordinary volume of records or requires an extraordinarily lengthy search, and a response by the public body within the time required by this chapter will prevent the public body from meeting its operational responsibilities. Before proceeding with the petition, however, the public body shall make reasonable efforts to reach an agreement with the requester concerning the production of the records requested.

D. Subject to the provisions of subsection G, no public body shall be required to create a new record if the record does not already exist. However, a public body may abstract or summarize information under such terms and conditions as agreed between the requester and the public body.

E. Failure to respond to a request for records shall be deemed a denial of the request and shall constitute a violation of this chapter.

F. A public body may make reasonable charges not to exceed its actual cost incurred in accessing, duplicating, supplying, or searching for the requested records. No public body shall impose any extraneous, intermediary, or surplus

fees or expenses to recoup the general costs associated with creating or maintaining records or transacting the general business of the public body. Any duplicating fee charged by a public body shall not exceed the actual cost of duplication. The public body may also make a reasonable charge for the cost incurred in supplying records produced from a geographic information system at the request of anyone other than the owner of the land that is the subject of the request. However, such charges shall not exceed the actual cost to the public body in supplying such records, except that the public body may charge, on a pro rata per acre basis, for the cost of creating topographical maps developed by the public body, for such maps or portions thereof, which encompass a contiguous area greater than 50 acres. All charges for the supplying of requested records shall be estimated in advance at the request of the citizen. The period within which the public body shall respond under this section shall be tolled for the amount of time that elapses between notice of the cost estimate and the response of the requester. If the public body receives no response from the requester within 30 days of sending the cost estimate, the request shall be deemed to be withdrawn.

G. Public records maintained by a public body in an electronic data processing system, computer database, or any other structured collection of data shall be made available to a requester at a reasonable cost, not to exceed the actual cost in accordance with subsection F. When electronic or other databases are combined or contain exempt and nonexempt records, the public body may provide access to the exempt records if not otherwise prohibited by law, but shall provide access to the nonexempt records as provided by this chapter.

Public bodies shall produce nonexempt records maintained in an electronic database in any tangible medium identified by the requester, including, where the public body has the capability, the option of posting the records on a website or delivering the records through an electronic mail address provided by the

requester, if that medium is used by the public body in the regular course of business. No public body shall be required to produce records from an electronic database in a format not regularly used by the public body. However, the public body shall make reasonable efforts to provide records in any format under such terms and conditions as agreed between the requester and public body, including the payment of reasonable costs. The excision of exempt fields of information from a database or the conversion of data from one available format to another shall not be deemed the creation, preparation, or compilation of a new public record.

H. In any case where a public body determines in advance that charges for producing the requested records are likely to exceed \$200, the public body may, before continuing to process the request, require the requester to pay a deposit not to exceed the amount of the advance determination. The deposit shall be credited toward the final cost of supplying the requested records. The period within which the public body shall respond under this section shall be tolled for the amount of time that elapses between notice of the advance determination and the response of the requester.

I. Before processing a request for records, a public body may require the requester to pay any amounts owed to the public body for previous requests for records that remain unpaid 30 days or more after billing.

J. In the event a public body has transferred possession of public records to any entity, including but not limited to any other public body, for storage, maintenance, or archiving, the public body initiating the transfer of such records shall remain the custodian of such records for purposes of responding to requests for public records made pursuant to this chapter and shall be responsible for retrieving and supplying such public records to the requester. In the event a public body has transferred public records for storage, maintenance, or archiving and such transferring public body is no longer in existence, any public body that is a successor to the

transferring public body shall be deemed the custodian of such records. In the event no successor entity exists, the entity in possession of the public records shall be deemed the custodian of the records for purposes of compliance with this chapter, and shall retrieve and supply such records to the requester. Nothing in this subsection shall be construed to apply to records transferred to the Library of Virginia for permanent archiving pursuant to the duties imposed by the Virginia Public Records Act (§ 42.1-76et seq.). In accordance with § 42.1-79, the Library of Virginia shall be the custodian of such permanently archived records and shall be responsible for responding to requests for such records made pursuant to this chapter.

**§ 2.2-3704.01. Records containing both excluded and non excluded information; duty to redact.**

No provision of this chapter is intended, nor shall it be construed or applied, to authorize a public body to withhold a public record in its entirety on the grounds that some portion of the public record is excluded from disclosure by this chapter or by any other provision of law. A public record may be withheld from disclosure in its entirety only to the extent that an exclusion from disclosure under this chapter or other provision of law applies to the entire content of the public record. Otherwise, only those portions of the public record containing information subject to an exclusion under this chapter or other provision of law may be withheld, and all portions of the public record that are not so excluded shall be disclosed

**§ 2.2-3704.1. Posting of notice of rights and responsibilities by state and local public bodies; assistance by the Freedom of Information Advisory Council**

A. All state public bodies subject to the provisions of this chapter, any county or city, any town with a population of more than 250, and any school board shall make available the following information to the public upon request

and shall post a link to such information on the homepage of their respective official public government websites:

1. A plain English explanation of the rights of a requester under this chapter, the procedures to obtain public records from the public body, and the responsibilities of the public body in complying with this chapter. For purposes of this section, "plain English" means written in nontechnical, readily understandable language using words of common everyday usage and avoiding legal terms and phrases or other terms and words of art whose usage or special meaning primarily is limited to a particular field or profession;
2. Contact information for the FOIA officer designated by the public body pursuant to § 2.2-3704.2to (i) assist a requester in making a request for records or (ii) respond to requests for public records;
3. A general description, summary, list, or index of the types of public records maintained by such public body;
4. A general description, summary, list, or index of any exemptions in law that permit or require such public records to be withheld from release;
5. Any policy the public body has concerning the type of public records it routinely withholds from release as permitted by this chapter or other law; and
6. The following statement: "A public body may make reasonable charges not to exceed its actual cost incurred in accessing, duplicating, supplying, or searching for the requested records. No public body shall impose any extraneous, intermediary, or surplus fees or expenses to recoup the general costs associated with creating or maintaining records or transacting the general business of the public body. Any duplicating fee charged by a public body shall not exceed the actual cost of duplication. All charges for the supplying of requested records shall be estimated in advance

at the request of the citizen as set forth in subsection F of § 2.2-3704 of the Code of Virginia."

B. Any state public body subject to the provisions of this chapter and any county or city, and any town with a population of more than 250, shall post a link on its official public government website to the online public comment form on the Freedom of Information Advisory Council's website to enable any requester to comment on the quality of assistance provided to the requester by the public body.

C. The Freedom of Information Advisory Council, created pursuant to § 30-178, shall assist in the development and implementation of the provisions of subsection A, upon request.

#### **§ 2.2-3704.2. Public bodies to designate FOIA officer**

A. All state public bodies, including state authorities, that are subject to the provisions of this chapter and all local public bodies and regional public bodies that are subject to the provisions of this chapter shall designate and publicly identify one or more Freedom of Information Act officers (FOIA officer) whose responsibility is to serve as a point of contact for members of the public in requesting public records and to coordinate the public body's compliance with the provisions of this chapter.

B. For such state public bodies, the name and contact information of the public body's FOIA officer to whom members of the public may direct requests for public records and who will oversee the public body's compliance with the provisions of this chapter shall be made available to the public upon request and be posted on the respective public body's official public government website at the time of designation and maintained thereafter on such website for the duration of the designation.

C. For such local public bodies and regional public bodies, the name and contact information of the public body's FOIA officer to whom

members of the public may direct requests for public records and who will oversee the public body's compliance with the provisions of this chapter shall be made available in a way reasonably calculated to provide notice to the public, including posting at the public body's place of business, posting on its official public government website, or including such information in its publications.

D. For the purposes of this section, local public bodies shall include constitutional officers.

E. Any such FOIA officer shall possess specific knowledge of the provisions of this chapter and be trained at least once during each consecutive period of two calendar years commencing with the date on which he last completed a training session by legal counsel for the public body or the Virginia Freedom of Information Advisory Council (the Council) or through an online course offered by the Council. Any such training shall document that the training required by this subsection has been fulfilled.

F. The name and contact information of a FOIA officer trained by legal counsel of a public body shall be (i) submitted to the Council by July 1 of the year a FOIA officer is initially trained on a form developed by the Council for that purpose and (ii) updated in a timely manner in the event of any changes to such information.

G. The Council shall maintain on its website a listing of all FOIA officers, including name, contact information, and the name of the public body such FOIA officers serve.

#### **§ 2.2-3704.3. Training for local officials.**

A. The Virginia Freedom of Information Advisory Council (the Council) or the local government attorney shall provide in-person or online training sessions for local elected officials and the executive directors and members of industrial development authorities and economic development authorities, as created by the Industrial Development and Revenue Bond Act

(§ 15.2-4900et seq.), on the provisions of this chapter.

B. Each local elected official and the executive director and members of each industrial development authority and economic development authority, as created by the Industrial Development and Revenue Bond Act, shall complete a training session described in subsection A within two months after assuming the local elected office and thereafter at least once during each consecutive period of two calendar years commencing with the date on which he last completed a training session, for as long as he holds such office. No penalty shall be imposed on a local elected official or an executive director or member of an industrial development authority or an economic development authority for failing to complete a training session.

C. The clerk of each governing body or school board shall maintain records indicating the names of elected officials and executive directors and members of industrial development authorities and economic development authorities subject to the training requirements in subsection B and the dates on which each such official completed training sessions satisfying such requirements. Such records shall be maintained for five years in the office of the clerk of the respective governing body or school board.

D. For purposes of this section, "local elected officials" shall include constitutional officers.

### **§ 2.2-3705. Repealed.**

Repealed by Acts 2004, c. 690.

### **§ 2.2-3705.1. Exclusions to application of chapter; exclusions of general application to public bodies.**

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. Personnel information concerning identifiable individuals, except that access shall not be denied to the person who is the subject thereof. Any person who is the subject of such information and who is 18 years of age or older may waive, in writing, the protections afforded by this subdivision. If the protections are so waived, such information shall be disclosed. 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.

No provision of this chapter or any provision of Chapter 38 (§ 2.2-3800et seq.) shall be construed as denying public access to (i) contracts between a public body and its officers or employees, other than contracts settling public employee employment disputes held confidential as personnel records under § 2.2-3705.1; (ii) records of the name, position, job classification, official salary, or rate of pay of, and records of the allowances or reimbursements for expenses paid to, any officer, official, or employee of a public body; or (iii) the compensation or benefits paid by any corporation organized by the Virginia Retirement System or its officers or employees. The provisions of this subdivision, however, shall not require public access to records of the official salaries or rates of pay of public employees whose annual rate of pay is \$10,000 or less.

2. Written advice of legal counsel to state, regional or local public bodies or the officers or employees of such public bodies, and any other information protected by the attorney-client privilege.

3. Legal memoranda and other work product compiled specifically for use in litigation or for use in an active administrative investigation concerning a matter that is properly the subject of a closed meeting under § 2.2-3711.

4. Any test or examination used, administered or prepared by any public body for purposes of evaluation of (i) any student or any student's performance, (ii) any employee or employment seeker's qualifications or aptitude for employment, retention, or promotion, or (iii) qualifications for any license or certificate issued by a public body.

As used in this subdivision, "test or examination" shall include (a) any scoring key for any such test or examination and (b) any other document that would jeopardize the security of the test or examination.

Nothing contained in this subdivision shall prohibit the release of test scores or results as provided by law, or limit access to individual records as provided by law. However, the subject of such employment tests shall be entitled to review and inspect all records relative to his performance on such employment tests.

When, in the reasonable opinion of such public body, any such test or examination no longer has any potential for future use, and the security of future tests or examinations will not be jeopardized, the test or examination shall be made available to the public. However, minimum competency tests administered to public school children shall be made available to the public contemporaneously with statewide release of the scores of those taking such tests, but in no event shall such tests be made available to the public later than six months after the administration of such tests.

5. Records recorded in or compiled exclusively for use in closed meetings lawfully held pursuant to § 2.2-3711. However, no record that is otherwise open to inspection under this chapter shall be deemed exempt by virtue of the fact that it has been reviewed or discussed in a closed meeting.

6. Vendor proprietary information software that may be in the public records of a public body. For the purpose of this subdivision, "vendor proprietary information software" means

computer programs acquired from a vendor for purposes of processing data for agencies or political subdivisions of the Commonwealth.

7. Computer software developed by or for a state agency, public institution of higher education in the Commonwealth, or political subdivision of the Commonwealth.

8. Appraisals and cost estimates of real property subject to a proposed purchase, sale, or lease, prior to the completion of such purchase, sale, or lease.

9. Information concerning reserves established in specific claims administered by the Department of the Treasury through its Division of Risk Management as provided in Article 5 (§ 2.2-1832et seq.) of Chapter 18, or by any county, city, or town; and investigative notes, correspondence and information furnished in confidence with respect to an investigation of a claim or a potential claim against a public body's insurance policy or self-insurance plan. However, nothing in this subdivision shall prevent the disclosure of information taken from inactive reports upon expiration of the period of limitations for the filing of a civil suit.

10. Personal contact information furnished to a public body or any of its members for the purpose of receiving electronic communications from the public body or any of its members, unless the recipient of such electronic communications indicates his approval for the public body to disclose such information. However, access shall not be denied to the person who is the subject of the record. As used in this subdivision, "personal contact information" means the information provided to the public body or any of its members for the purpose of receiving electronic communications from the public body or any of its members and includes home or business (i) address, (ii) email address, or (iii) telephone number or comparable number assigned to any other electronic communication device.

11. Communications and materials required to be kept confidential pursuant to § 2.2-4119 of the Virginia Administrative Dispute Resolution Act (§ 2.2-4115 et seq.).

12. Information relating to the negotiation and award of a specific contract where competition or bargaining is involved and where the release of such information would adversely affect the bargaining position or negotiating strategy of the public body. Such information shall not be withheld after the public body has made a decision to award or not to award the contract. In the case of procurement transactions conducted pursuant to the Virginia Public Procurement Act (§ 2.2-4300 et seq.), the provisions of this subdivision shall not apply, and any release of information relating to such transactions shall be governed by the Virginia Public Procurement Act.

13. Account numbers or routing information for any credit card, debit card, or other account with a financial institution of any person or public body. However, access shall not be denied to the person who is the subject of the information. For the purposes of this subdivision, "financial institution" means any organization authorized to do business under state or federal laws relating to financial institutions, including, without limitation, banks and trust companies, savings banks, savings and loan companies or associations, and credit unions.

#### **§ 2.2-3705.2. Exclusions to application of chapter; records relating to public safety.**

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. Confidential information, including victim identity, provided to or obtained by staff in a rape crisis center or a program for battered spouses.

2. Information that describes the design, function, operation, or access control features of any security system, whether manual or automated, which is used to control access to or use of any automated data processing or telecommunications system.

3. Information that would disclose the security aspects of a system safety program plan adopted pursuant to Federal Transit Administration regulations by the Commonwealth's designated Rail Fixed Guideway Systems Safety Oversight agency; and information in the possession of such agency, the release of which would jeopardize the success of an ongoing investigation of a rail accident or other incident threatening railway safety.

4. Information concerning security plans and specific assessment components of school safety audits, as provided in § 22.1-279.8.

Nothing in this subdivision shall be construed to prevent the disclosure of information relating to the effectiveness of security plans after (i) any school building or property has been subjected to fire, explosion, natural disaster, or other catastrophic event or (ii) any person on school property has suffered or been threatened with any personal injury.

5. Information concerning the mental health assessment of an individual subject to commitment as a sexually violent predator under Chapter 9 (§ 37.2-900 et seq.) of Title 37.2 held by the Commitment Review Committee; except that in no case shall information identifying the victims of a sexually violent predator be disclosed.

6. Subscriber data provided directly or indirectly by a communications services provider to a public body that operates a 911 or E-911 emergency dispatch system or an emergency notification or reverse 911 system if the data is in a form not made available by the communications services provider to the public generally. Nothing in this subdivision shall

prevent the disclosure of subscriber data generated in connection with specific calls to a 911 emergency system, where the requester is seeking to obtain public records about the use of the system in response to a specific crime, emergency or other event as to which a citizen has initiated a 911 call.

For the purposes of this subdivision:

"Communications services provider" means the same as that term is defined in § 58.1-647.

"Subscriber data" means the name, address, telephone number, and any other information identifying a subscriber of a communications services provider.

7. Subscriber data collected by a local governing body in accordance with the Enhanced Public Safety Telephone Services Act (§ 56-484.12et seq.) and other identifying information of a personal, medical, or financial nature provided to a local governing body in connection with a 911 or E-911 emergency dispatch system or an emergency notification or reverse 911 system if such records are not otherwise publicly available.

Nothing in this subdivision shall prevent the disclosure of subscriber data generated in connection with specific calls to a 911 emergency system, where the requester is seeking to obtain public records about the use of the system in response to a specific crime, emergency or other event as to which a citizen has initiated a 911 call.

For the purposes of this subdivision:

"Communications services provider" means the same as that term is defined in § 58.1-647.

"Subscriber data" means the name, address, telephone number, and any other information identifying a subscriber of a communications services provider.

8. Information held by the Virginia Military Advisory Council or any commission created by executive order for the purpose of studying and making recommendations regarding preventing closure or realignment of federal military and national security installations and facilities located in Virginia and relocation of such facilities to Virginia, or a local or regional military affairs organization appointed by a local governing body, that would (i) reveal strategies under consideration or development by the Council or such commission or organizations to prevent the closure or realignment of federal military installations located in Virginia or the relocation of national security facilities located in Virginia, to limit the adverse economic effect of such realignment, closure, or relocation, or to seek additional tenant activity growth from the Department of Defense or federal government or (ii) disclose trade secrets provided to the Council or such commission or organizations in connection with their work.

In order to invoke the trade secret protection provided by clause(ii), the submitting entity shall, in writing and at the time of submission (a) invoke this exclusion, (b) identify with specificity the information for which such protection is sought, and (c) state the reason why such protection is necessary. Nothing in this subdivision shall be construed to prevent the disclosure of all or part of any record, other than a trade secret that has been specifically identified as required by this subdivision, after the Department of Defense or federal agency has issued a final, unappealable decision, or in the event of litigation, a court of competent jurisdiction has entered a final, unappealable order concerning the closure, realignment, or expansion of the military installation or tenant activities, or the relocation of the national security facility, for which records are sought.

9. Information, as determined by the State Comptroller, that describes the design, function, operation, or implementation of internal controls over the Commonwealth's financial processes and systems, and the assessment of risks and vulnerabilities of those controls, including the

annual assessment of internal controls mandated by the State Comptroller, if disclosure of such information would jeopardize the security of the Commonwealth's financial assets. However, records relating to the investigation of and findings concerning the soundness of any fiscal process shall be disclosed in a form that does not compromise internal controls. Nothing in this subdivision shall be construed to prohibit the Auditor of Public Accounts or the Joint Legislative Audit and Review Commission from reporting internal control deficiencies discovered during the course of an audit.

10. Information relating to the Statewide Agencies Radio System (STARS) or any other similar local or regional public safety communications system that (i) describes the design, function, programming, operation, or access control features of the overall system, components, structures, individual networks, and subsystems of the STARS or any other similar local or regional communications system or (ii) relates to radio frequencies assigned to or utilized by STARS or any other similar local or regional communications system, code plugs, circuit routing, addressing schemes, talk groups, fleet maps, encryption, or programming maintained by or utilized by STARS or any other similar local or regional public safety communications system.

11. Information concerning a salaried or volunteer Fire/EMS company or Fire/EMS department if disclosure of such information would reveal the telephone numbers for cellular telephones, pagers, or comparable portable communication devices provided to its personnel for use in the performance of their official duties.

12. Information concerning the disaster recovery plans or the evacuation plans in the event of fire, explosion, natural disaster, or other catastrophic event for hospitals and nursing homes regulated by the Board of Health pursuant to Chapter 5 (§ 32.1-123et seq.) of Title 32.1 provided to the Department of Health. Nothing in this subdivision shall be construed to prevent the disclosure of information relating to the effectiveness of

executed evacuation plans after the occurrence of fire, explosion, natural disaster, or other catastrophic event.

13. Records received by the Department of Criminal Justice Services pursuant to §§ 9.1-184, 22.1-79.4, and 22.1-279.8 or for purposes of evaluating threat assessment teams established by a public institution of higher education pursuant to § 23.1-805 or by a private nonprofit institution of higher education, to the extent such records reveal security plans, walk-through checklists, or vulnerability and threat assessment components.

14. Information contained in (i) engineering, architectural, or construction drawings; (ii) operational, procedural, tactical planning, or training manuals; (iii) staff meeting minutes; or (iv) other records that reveal any of the following, the disclosure of which would jeopardize the safety or security of any person; governmental facility, building, or structure or persons using such facility, building, or structure; or public or private commercial office, multifamily residential, or retail building or its occupants:

a. Critical infrastructure information or the location or operation of security equipment and systems of any public building, structure, or information storage facility, including ventilation systems, fire protection equipment, mandatory building emergency equipment or systems, elevators, electrical systems, telecommunications equipment and systems, or utility equipment and systems;

b. Vulnerability assessments, information not lawfully available to the public regarding specific cybersecurity threats or vulnerabilities, or security plans and measures of an entity, facility, building structure, information technology system, or software program;

c. Surveillance techniques, personnel deployments, alarm or security systems or technologies, or operational or transportation plans or protocols; or

d. Interconnectivity, network monitoring, network operation centers, master sites, or systems related to the Statewide Agencies Radio System (STARS) or any other similar local or regional public safety communications system.

The same categories of records of any person or entity submitted to a public body for the purpose of antiterrorism response planning or cybersecurity planning or protection may be withheld from disclosure if such person or entity in writing (a) invokes the protections of this subdivision, (b) identifies with specificity the records or portions thereof for which protection is sought, and (c) states with reasonable particularity why the protection of such records from public disclosure is necessary to meet the objective of anti terrorism, cybersecurity planning or protection, or critical infrastructure information security and resilience. Such statement shall be a public record and shall be disclosed upon request.

Any public body receiving a request for records excluded under clauses (a) and (b) of this subdivision 14 shall notify the Secretary of Public Safety and Homeland Security or his designee of such request and the response made by the public body in accordance with § 2.2-3704.

Nothing in this subdivision 14 shall prevent the disclosure of records relating to (1) the structural or environmental soundness of any such facility, building, or structure or (2) an inquiry into the performance of such facility, building, or structure after it has been subjected to fire, explosion, natural disaster, or other catastrophic event.

As used in this subdivision, "critical infrastructure information" means the same as that term is defined in 6 U.S.C. § 131.

15. Information held by the Virginia Commercial Space Flight Authority that is categorized as classified or sensitive but unclassified, including national security, defense, and foreign policy information, provided that such information is

exempt under the federal Freedom of Information Act, 5 U.S.C. § 552.

**§ 2.2-3705.3. Exclusions to application of chapter; records relating to administrative investigations.**

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. Information relating to investigations of applicants for licenses and permits, and of all licensees and permittees, made by or submitted to the Virginia Alcoholic Beverage Control Authority, the Virginia Lottery, the Virginia Racing Commission, the Department of Agriculture and Consumer Services relating to investigations and applications pursuant to Article 1.1:1 (§ 18.2-340.15et seq.) of Chapter 8 of Title 18.2, or the Private Security Services Unit of the Department of Criminal Justice Services.

2. Records of active investigations being conducted by the Department of Health Professions or by any health regulatory board in the Commonwealth pursuant to § 54.1-108.

3. Investigator notes, and other correspondence and information, furnished in confidence with respect to an active investigation of individual employment discrimination complaints made to the Department of Human Resource Management, to such personnel of any local public body, including local school boards, as are responsible for conducting such investigations in confidence, or to any public institution of higher education. However, nothing in this subdivision shall prevent the disclosure of information taken from inactive reports in a form that does not reveal the identity of charging parties, persons supplying the information, or other individuals involved in the investigation.

4. Records of active investigations being conducted by the Department of Medical Assistance Services pursuant to Chapter 10 (§ 32.1-323et seq.) of Title 32.1.

5. Investigative notes and other correspondence and information furnished in confidence with respect to an investigation or conciliation process involving an alleged unlawful discriminatory practice under the Virginia Human Rights Act (§ 2.2-3900et seq.) or under any local ordinance adopted in accordance with the authority specified in § 2.2-524, or adopted pursuant to § 15.2-965, or adopted prior to July 1, 1987, in accordance with applicable law, relating to local human rights or human relations commissions. However, nothing in this subdivision shall prevent the distribution of information taken from inactive reports in a form that does not reveal the identity of the parties involved or other persons supplying information.

6. Information relating to studies and investigations by the Virginia Lottery of (i) lottery agents, (ii) lottery vendors, (iii) lottery crimes under §§ 58.1-4014through 58.1-4018, (iv) defects in the law or regulations that cause abuses in the administration and operation of the lottery and any evasions of such provisions, or (v) the use of the lottery as a subterfuge for organized crime and illegal gambling where such information has not been publicly released, published or copyrighted. All studies and investigations referred to under clauses (iii), (iv), and (v) shall be open to inspection and copying upon completion of the study or investigation.

7. Investigative notes, correspondence and information furnished in confidence, and records otherwise exempted by this chapter or any Virginia statute, provided to or produced by or for (i) the Auditor of Public Accounts; (ii) the Joint Legislative Audit and Review Commission; (iii) an appropriate authority as defined in § 2.2-3010with respect to an allegation of wrongdoing or abuse under the Fraud and Abuse Whistle Blower Protection Act (§ 2.2-3009et seq.); (iv) the Office of the State Inspector General with respect to an investigation initiated through the

Fraud, Waste and Abuse Hotline or an investigation initiated pursuant to Chapter 3.2 (§ 2.2-307et seq.); (v) internal auditors appointed by the head of a state agency or by any public institution of higher education; (vi) the committee or the auditor with respect to an investigation or audit conducted pursuant to § 15.2-825; or (vii) the auditors, appointed by the local governing body of any county, city, or town or a school board, who by charter, ordinance, or statute have responsibility for conducting an investigation of any officer, department, or program of such body. Information contained in completed investigations shall be disclosed in a form that does not reveal the identity of the complainants or persons supplying information to investigators. Unless disclosure is excluded by this subdivision, the information disclosed shall include the agency involved, the identity of the person who is the subject of the complaint, the nature of the complaint, and the actions taken to resolve the complaint. If an investigation does not lead to corrective action, the identity of the person who is the subject of the complaint may be released only with the consent of the subject person. Local governing bodies shall adopt guidelines to govern the disclosure required by this subdivision.

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

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

10. Information furnished to or prepared by the Board of Education pursuant to subsection D of § 22.1-253.13:3in connection with the review or investigation of any alleged breach in security,

unauthorized alteration, or improper administration of tests by local school board employees responsible for the distribution or administration of the tests. However, this section shall not prohibit the disclosure of such information to (i) a local school board or division superintendent for the purpose of permitting such board or superintendent to consider or to take personnel action with regard to an employee or (ii) any requester, after the conclusion of a review or investigation, in a form that (a) does not reveal the identity of any person making a complaint or supplying information to the Board on a confidential basis and (b) does not compromise the security of any test mandated by the Board.

11. Information contained in (i) an application for licensure or renewal of a license for teachers and other school personnel, including transcripts or other documents submitted in support of an application, and (ii) an active investigation conducted by or for the Board of Education related to the denial, suspension, cancellation, revocation, or reinstatement of teacher and other school personnel licenses including investigator notes and other correspondence and information, furnished in confidence with respect to such investigation. However, this subdivision shall not prohibit the disclosure of such (a) application information to the applicant at his own expense or (b) investigation information to a local school board or division superintendent for the purpose of permitting such board or superintendent to consider or to take personnel action with regard to an employee. Information contained in completed investigations shall be disclosed in a form that does not reveal the identity of any complainant or person supplying information to investigators. The completed investigation information disclosed shall include information regarding the school or facility involved, the identity of the person who was the subject of the complaint, the nature of the complaint, and the actions taken to resolve the complaint. If an investigation fails to support a complaint or does not lead to corrective action, the identity of the person who was the subject of the complaint may be released only with the

consent of the subject person. No personally identifiable information regarding a current or former student shall be released except as permitted by state or federal law.

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

13. Records of active investigations being conducted by the Department of Behavioral Health and Developmental Services pursuant to Chapter 4 (§ 37.2-400et seq.) of Title 37.2

**§ 2.2-3705.4. Exclusions to application of chapter; educational records and certain records of educational institutions.**

A. 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 as provided in subsection B or where such disclosure is otherwise 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. Scholastic records containing information concerning identifiable individuals, except that such access shall not be denied to the person who is the subject thereof, or the parent or legal guardian of the student. However, no student shall have access to (i) financial records of a parent or guardian or (ii) records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto, that are

in the sole possession of the maker thereof and that are not accessible or revealed to any other person except a substitute.

The parent or legal guardian of a student may prohibit, by written request, the release of any individual information regarding that student until the student reaches the age of 18 years. For scholastic records of students under the age of 18 years, the right of access may be asserted only by his legal guardian or parent, including a noncustodial parent, unless such parent's parental rights have been terminated or a court of competent jurisdiction has restricted or denied such access. For scholastic records of students who are emancipated or attending a public institution of higher education in the Commonwealth, the right of access may be asserted by the student.

Any person who is the subject of any scholastic record and who is 18 years of age or older may waive, in writing, the protections afforded by this subdivision. If the protections are so waived, such records shall be disclosed.

2. Confidential letters and statements of recommendation placed in the records of educational agencies or institutions respecting (i) admission to any educational agency or institution, (ii) an application for employment or promotion, or (iii) receipt of an honor or honorary recognition.

3. Information held by the Brown v. Board of Education Scholarship Committee that would reveal personally identifiable information, including scholarship applications, personal financial information, and confidential correspondence and letters of recommendation.

4. Information of a proprietary nature produced or collected by or for faculty or staff of public institutions of higher education, other than the institutions' financial or administrative records, in the conduct of or as a result of study or research on medical, scientific, technical or scholarly issues, whether sponsored by the institution alone or in conjunction with a governmental body

or a private concern, where such information has not been publicly released, published, copyrighted or patented.

5. Information held by the University of Virginia or the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, that contain 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 be harmful to the competitive position of the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be.

6. Personal information, as defined in § 2.2-3801, provided to the Board of the Virginia College Savings Plan 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 7 (§ 23.1-700et seq.) of Title 23.1, including personal information related to (i) qualified beneficiaries as that term is defined in § 23.1-700, (ii) designated survivors, or (iii) authorized individuals. Nothing in this subdivision shall be construed to prevent disclosure or publication of information in a statistical or other form that does not identify individuals or provide personal information. Individuals shall be provided access to their own personal information.

For purposes of this subdivision:

"Authorized individual" means an individual who may be named by the account owner to receive information regarding the account but who does not have any control or authority over the account.

"Designated survivor" means the person who will assume account ownership in the event of the account owner's death.

7. Information maintained in connection with fundraising activities by or for a public institution of higher education that would reveal (i) personal fundraising strategies relating to identifiable donors or prospective donors or (ii) wealth assessments; estate, financial, or tax planning information; health-related information; employment, familial, or marital status information; electronic mail addresses, facsimile or telephone numbers; birth dates or social security numbers of identifiable donors or prospective donors. The exclusion provided by this subdivision shall not apply to protect from disclosure (a) information relating to the amount, date, purpose, and terms of the pledge or donation or the identity of the donor or (b) the identities of sponsors providing grants to or contracting with the institution for the performance of research services or other work or the terms and conditions of such grants or contracts. For purposes of clause (a), the identity of the donor may be withheld if (1) the donor has requested anonymity in connection with or as a condition of making a pledge or donation and (2) the pledge or donation does not impose terms or conditions directing academic decision-making.

8. Information held by a threat assessment team established by a local school board pursuant to § 22.1-79.4 or by a public institution of higher education pursuant to § 23.1-805 relating to the assessment or intervention with a specific individual. However, in the event an individual who has been under assessment commits an act, or is prosecuted for the commission of an act that has caused the death of, or caused serious bodily injury, including any felony sexual assault, to another person, such information of the threat assessment team concerning the individual under assessment shall be made available as provided by this chapter, with the exception of any criminal history records obtained pursuant to § 19.2-389 or 19.2-389.1, health records obtained pursuant to § 32.1-

127.1:03, or scholastic records as defined in § 22.1-289. The public body providing such information shall remove personally identifying information of any person who provided information to the threat assessment team under a promise of confidentiality.

9. Records provided to the Governor or the designated reviewers by a qualified institution, as those terms are defined in § 23.1-1239, related to a proposed memorandum of understanding, or proposed amendments to a memorandum of understanding, submitted pursuant to Chapter 12.1 (§ 23.1-1239 et seq.) of Title 23.1. A memorandum of understanding entered into pursuant to such chapter shall be subject to public disclosure after it is agreed to and signed by the Governor.

B. The custodian of a scholastic record shall not release the address, phone number, or email address of a student in response to a request made under this chapter without written consent. For any student who is (i) 18 years of age or older, (ii) under the age of 18 and emancipated, or (iii) attending an institution of higher education, written consent of the student shall be required. For any other student, written consent of the parent or legal guardian of such student shall be required.

#### **§2.2-3705.5. Exclusions to application of chapter; health and social services records.**

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. Health records, except that such records may be personally reviewed by the individual who is the subject of such records, as provided in subsection F of § 32.1-127.1:03.

Where the person who is the subject of health records is confined in a state or local correctional facility, the administrator or chief medical officer of such facility may assert such confined person's right of access to the health records if the administrator or chief medical officer has reasonable cause to believe that such confined person has an infectious disease or other medical condition from which other persons so confined need to be protected. Health records shall only be reviewed and shall not be copied by such administrator or chief medical officer. The information in the health records of a person so confined shall continue to be confidential and shall not be disclosed by the administrator or chief medical officer of the facility to any person except the subject or except as provided by law.

Where the person who is the subject of health records is under the age of 18, his right of access may be asserted only by his guardian or his parent, including a noncustodial parent, unless such parent's parental rights have been terminated, a court of competent jurisdiction has restricted or denied such access, or a parent has been denied access to the health record in accordance with § 20-124.6. In instances where the person who is the subject thereof is an emancipated minor, a student in a public institution of higher education, or is a minor who has consented to his own treatment as authorized by § 16.1-338 or 54.1-2969, the right of access may be asserted by the subject person.

For the purposes of this chapter, statistical summaries of incidents and statistical data concerning abuse of individuals receiving services compiled by the Commissioner of Behavioral Health and Developmental Services shall be disclosed. No such summaries or data shall include any information that identifies specific individuals receiving services.

2. Applications for admission to examinations or for licensure and scoring records maintained by the Department of Health Professions or any board in that department on individual licensees or applicants; information required to be provided

to the Department of Health Professions by certain licensees pursuant to § 54.1-2506.1; information held by the Health Practitioners' Monitoring Program Committee within the Department of Health Professions that identifies any practitioner who may be, or who is actually, impaired to the extent that disclosure is prohibited by § 54.1-2517; and information relating to the prescribing and dispensing of covered substances to recipients and any abstracts from such information that are in the possession of the Prescription Monitoring Program (Program) pursuant to Chapter 25.2 (§ 54.1-2519 et seq.) of Title 54.1 and any material relating to the operation or security of the Program.

3. Reports, documentary evidence, and other information as specified in §§ 51.5-122 and 51.5-184 and Chapter 1 (§ 63.2-100 et seq.) of Title 63.2 and information and statistical registries required to be kept confidential pursuant to Chapter 1 (§ 63.2-100 et seq.) of Title 63.2.

4. Investigative notes; proprietary information not published, copyrighted or patented; information obtained from employee personnel records; personally identifiable information regarding residents, clients or other recipients of services; other correspondence and information furnished in confidence to the Department of Education in connection with an active investigation of an applicant or licensee pursuant to Chapter 14.1 (§ 22.1-289.02 et seq.) of Title 22.1; other correspondence and information furnished in confidence to the Department of Social Services in connection with an active investigation of an applicant or licensee pursuant to Chapters 17 (§ 63.2-1700 et seq.) and 18 (§ 63.2-1800 et seq.) of Title 63.2; and information furnished to the Office of the Attorney General in connection with an investigation or litigation pursuant to Article 19.1 (§ 8.01-216.1 et seq.) of Chapter 3 of Title 8.01 and Chapter 9 (§ 32.1-310 et seq.) of Title 32.1. However, nothing in this subdivision shall prevent the disclosure of information from the records of completed investigations in a form that does not reveal the identity of complainants,

persons supplying information, or other individuals involved in the investigation.

5. Information collected for the designation and verification of trauma centers and other specialty care centers within the Statewide Emergency Medical Services System and Services pursuant to Article 2.1 (§ 32.1-111.1et seq.) of Chapter 4 of Title 32.1.

6. Reports and court documents relating to involuntary admission required to be kept confidential pursuant to § 37.2-818.

7. Information acquired (i) during a review of any child death conducted by the State Child Fatality Review Team established pursuant to § 32.1-283.1or by a local or regional child fatality review team to the extent that such information is made confidential by § 32.1-283.2; (ii) during a review of any death conducted by a family violence fatality review team to the extent that such information is made confidential by § 32.1-283.3; (iii) during a review of any adult death conducted by the Adult Fatality Review Team to the extent made confidential by § 32.1-283.5or by a local or regional adult fatality review team to the extent that such information is made confidential by § 32.1-283.6; (iv) by a local or regional overdose fatality review team to the extent that such information is made confidential by § 32.1-283.7; (v) during a review of any death conducted by the Maternal Mortality Review Team to the extent that such information is made confidential by 32.1-283.8; or (vi) during a review of any death conducted by the Developmental Disabilities Mortality Review Committee to the extent that such information is made confidential by § 37.2-314.1.

8. Patient level data collected by the Board of Health and not yet processed, verified, and released, pursuant to § 32.1-276.9, to the Board by the nonprofit organization with which the Commissioner of Health has contracted pursuant to § 32.1-276.4.

9. Information relating to a grant application, or accompanying a grant application, submitted to

the Commonwealth Neurotrauma Initiative Advisory Board pursuant to Article 12 (§ 51.5-178et seq.) of Chapter 14 of Title 51.5 that would (i) reveal (a) medical or mental health records or other data identifying individual patients or (b) proprietary business or research-related information produced or collected by the applicant in the conduct of or as a result of study or research on medical, rehabilitative, scientific, technical, or scholarly issues, when such information has not been publicly released, published, copyrighted, or patented, and (ii) be harmful to the competitive position of the applicant.

10. Any information copied, recorded, or received by the Commissioner of Health in the course of an examination, investigation, or review of a managed care health insurance plan licensee pursuant to §§ 32.1-137.4and 32.1-137.5, including books, records, files, accounts, papers, documents, and any or all computer or other recordings.

11. Records of the Virginia Birth-Related Neurological Injury Compensation Program required to be kept confidential pursuant to § 38.2-5002.2.

12. Information held by the State Health Commissioner relating to the health of any person subject to an order of quarantine or an order of isolation pursuant to Article 3.02 (§ 32.1-48.05et seq.) of Chapter 2 of Title 32.1. However, nothing in this subdivision shall be construed to prevent the disclosure of statistical summaries, abstracts, or other information in aggregate form.

13. The names and addresses or other contact information of persons receiving transportation services from a state or local public body or its designee under Title II of the Americans with Disabilities Act, (42 U.S.C. § 12131 et seq.) or funded by Temporary Assistance for Needy Families (TANF)created under § 63.2-600.

14. Information held by certain health care committees and entities that may be withheld

from discovery as privileged communications pursuant to § 8.01-581.17.

15. Data and information specified in § 37.2-308.01 relating to proceedings provided for in Article 16 (§ 16.1-335et seq.) of Chapter 11 of Title 16.1 and Chapter 8 (§ 37.2-800et seq.) of Title 37.2.

16. Records of and information held by the Emergency Department Care Coordination Program required to be kept confidential pursuant to § 32.1-372.

**§2.2 3705.6. (Effective until October 1, 2021) 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 (§ 15.2-4900et 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 (§ 32.1-239et 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 (§ 32.1-331.12et 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 Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.) where (i) if such information was made public prior to or after the execution of an interim or a comprehensive agreement, § 33.2-1820 or 56-575.17 notwithstanding, the financial interest or bargaining position of the public entity would be adversely affected and (ii) the basis for the determination required in clause (i) is documented in writing by the responsible public entity; and

b. Information provided by a private entity to a responsible public entity, affected jurisdiction, or affected local jurisdiction pursuant to the provisions of the Public-Private Transportation Act of 1995 (§ 33.2-1800 et seq.) or the Public-Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.) if disclosure of such information would reveal (i) trade secrets of the private entity; (ii) financial information of the private entity, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise; or (iii) other information

submitted by the private entity where if such information was made public prior to the execution of an interim agreement or a comprehensive agreement, the financial interest or bargaining position of the public or private entity would be adversely affected. In order for the information specified in clauses (i), (ii), and (iii) to be excluded from the provisions of this chapter, the private entity shall make a written request to the responsible public entity:

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

Except as specifically provided in subdivision 11 a, nothing in this subdivision shall be construed to authorize the withholding of (a) procurement records as required by § 33.2-1820 or 56-575.17; (b) information concerning the terms and conditions of any interim or comprehensive agreement, service contract, lease, partnership,

or any agreement of any kind entered into by the responsible public entity and the private entity; (c) information concerning the terms and conditions of any financing arrangement that involves the use of any public funds; or (d) information concerning the performance of any private entity developing or operating a qualifying transportation facility or a qualifying project.

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

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

13. Trade secrets or confidential proprietary information that is not generally available to the public through regulatory disclosure or otherwise, provided by a (i) bidder or applicant for a franchise or (ii) franchisee under Chapter 21 (§ 15.2-2100et seq.) of Title 15.2 to the applicable franchising authority pursuant to a promise of confidentiality from the franchising authority, to the extent the information relates to the bidder's, applicant's, or franchisee's financial capacity or provision of new services, adoption of new technologies or implementation of improvements, where such new services, technologies, or improvements have not been implemented by the franchisee on a nonexperimental scale in the franchise area, and where, if such information were made public, the

competitive advantage or financial interests of the franchisee would be adversely affected.

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

No bidder, applicant, or franchisee may invoke the exclusion provided by this subdivision if the bidder, applicant, or franchisee is owned or controlled by a public body or if any representative of the applicable franchising authority serves on the management board or as an officer of the bidder, applicant, or franchisee.

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

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

16. Trade secrets submitted by CMRS providers as defined in § 56-484.12 to the former Wireless Carrier E-911 Cost Recovery Subcommittee created pursuant to former § 56-484.15, relating to the provision of wireless E-911 service.

17. Information relating to a grant or loan application, or accompanying a grant or loan application, to the Commonwealth Health Research Board pursuant to Chapter 5.3 (§ 32.1-162.23et seq.) of Title 32.1 if disclosure of such information would (i) reveal proprietary business or research-related information produced or collected by the applicant in the conduct of or as a result of study or research on medical,

rehabilitative, scientific, technical, technological, or scholarly issues, when such information has not been publicly released, published, copyrighted, or patented, and (ii) be harmful to the competitive position of the applicant.

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

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

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

20. Trade secrets or financial information of a business, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise, provided to the Department of Small Business and Supplier Diversity as part of an application for certification as a small, women-owned, or minority-owned business in accordance with Chapter 16.1 (§ 2.2-1603 et seq.). In order for such trade secrets or financial information to be excluded from the provisions of

this chapter, the business shall (i) invoke such exclusion upon submission of the data or other materials for which protection from disclosure is sought, (ii) identify the data or other materials for which protection is sought, and (iii) state the reasons why protection is necessary.

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

22. Trade secrets, including, but not limited to, financial information, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise, and revenue and cost projections supplied by a private or nongovernmental entity to the State Inspector General for the purpose of an audit, special investigation, or any study requested by the Office of the State Inspector General in accordance with law.

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

- a. Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;
- b. Identifying with specificity the data or other materials for which protection is sought; and
- c. Stating the reasons why protection is necessary.

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

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

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

- a. Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;
- b. Identifying with specificity the data, information or other materials for which protection is sought; and
- c. Stating the reasons why protection is necessary.

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

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

b. Information provided by a private entity to the Commercial Space Flight Authority if disclosure of such information would (i) reveal (a) trade secrets of the private entity; (b) financial information of the private entity, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise; or (c) other information submitted by the private entity and (ii) adversely affect the financial interest or bargaining position of the Authority or private entity.

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

- (1) Invoking such exclusion 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 Authority shall determine whether the requested exclusion from disclosure is necessary to protect the trade secrets or financial information of the private entity. To protect other information submitted by the private entity from disclosure, the Authority shall determine whether public disclosure would adversely affect the financial interest or bargaining position of the Authority or private entity. The Authority shall make a written

determination of the nature and scope of the protection to be afforded by it under this subdivision.

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

26. Trade secrets provided to the Department of Environmental Quality pursuant to the provisions of § 10.1-1458. In order for such trade secrets to be excluded from the provisions of this chapter, the submitting party shall (i) invoke this exclusion upon submission of the data or materials for which protection from disclosure is sought, (ii) identify the data or materials for which protection is sought, and (iii) state the reasons why protection is necessary.

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

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

- a. Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;
- b. Identifying with specificity the data or other materials for which protection is sought; and
- c. Stating the reasons why protection is necessary.

28. Information relating to a grant, loan, or investment application, or accompanying a grant, loan, or investment application, submitted to the Commonwealth of Virginia Innovation Partnership Authority (the Authority) established pursuant to Article 11 (§ 2.2-2351et seq.) of Chapter 22, an advisory committee of the Authority, or any other entity designated by the Authority to review such applications, to the extent that such records would (i) reveal (a) trade secrets; (b) financial information of a party to a grant, loan, or investment application that is not a public body, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise; or (c) research-related information produced or collected by a party to the application in the conduct of or as a result of study or research on medical, rehabilitative, scientific, technical, technological, or scholarly issues, when such information has not been publicly released, published, copyrighted, or patented, and (ii) be harmful to the competitive position of a party to a grant, loan, or investment application; and memoranda, staff evaluations, or other information prepared by the Authority or its staff, or a reviewing entity designated by the Authority, exclusively for the evaluation of grant, loan, or investment applications, including any scoring or prioritization documents prepared for and forwarded to the Authority.

29. Proprietary information, voluntarily provided by a private business pursuant to a promise of confidentiality from a public body, used by the public body for a solar services or carbon sequestration agreement, where disclosure of such information would (i) reveal (a) trade secrets of the private business; (b) financial information of the private business, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise; or (c) other information submitted by the private business and (ii) adversely affect the financial interest or bargaining position of the public body or private business.

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

- a. Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;
- b. Identifying with specificity the data or other materials for which protection is sought; and
- c. Stating the reasons why protection is necessary.

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

31. Trade secrets, including, but not limited to, financial information, including balance sheets and financial statements that are not generally available to the public through regulatory disclosure or otherwise, and revenue and cost projections supplied by a private or nongovernmental entity to the Virginia Department of Transportation for the purpose of an audit, special investigation, or any study requested by the Virginia Department of Transportation in accordance with law.

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

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

- b. Identifying with specificity the data or other materials for which protection is sought; and
- c. Stating the reasons why protection is necessary.

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

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

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

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

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

c. Stating the reasons why protection is necessary.

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

33. Financial and proprietary records submitted with a loan application to a locality for the preservation or construction of affordable housing that is related to a competitive application to be submitted to either the U.S. Department of Housing and Urban Development (HUD) or the Virginia Housing Development Authority (VHDA), when the release of such records would adversely affect the bargaining or competitive position of the applicant. Such records shall not be withheld after they have been made public by HUD or VHDA.

**§2.2-3705.6. (Effective October 1, 2021, until January 1, 2022) 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 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 (§ 32.1-331.12et 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 § 2.2-4342as 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 (§ 33.2-1800et seq.) or the Public-Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1et seq.) where (i) if such information was made public prior to or after the execution of an interim or a comprehensive agreement, § 33.2-1820or 56-575.17notwithstanding, the financial interest or bargaining position of the public entity would be adversely affected and (ii) the basis for the determination required in clause (i) is

documented in writing by the responsible public entity; and

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

(1) Invoking such exclusion 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 responsible public entity shall determine whether the requested exclusion from disclosure is necessary to protect the trade secrets or financial information of the private entity. To protect other information submitted by the private entity from disclosure, the responsible public entity shall determine whether public disclosure prior to the execution of an interim agreement or a comprehensive agreement would adversely affect the financial interest or bargaining position of the public or private entity. The responsible public entity shall make a written determination

of the nature and scope of the protection to be afforded by the responsible public entity under this subdivision. Once a written determination is made by the responsible public entity, the information afforded protection under this subdivision shall continue to be protected from disclosure when in the possession of any affected jurisdiction or affected local jurisdiction.

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

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

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

13. Trade secrets or confidential proprietary information that is not generally available to the

public through regulatory disclosure or otherwise, provided by a (i) bidder or applicant for a franchise or (ii) franchisee under Chapter 21 (§ 15.2-2100 et seq.) of Title 15.2 to the applicable franchising authority pursuant to a promise of confidentiality from the franchising authority, to the extent the information relates to the bidder's, applicant's, or franchisee's financial capacity or provision of new services, adoption of new technologies or implementation of improvements, where such new services, technologies, or improvements have not been implemented by the franchisee on a nonexperimental scale in the franchise area, and where, if such information were made public, the competitive advantage or financial interests of the franchisee would be adversely affected.

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

No bidder, applicant, or franchisee may invoke the exclusion provided by this subdivision if the bidder, applicant, or franchisee is owned or controlled by a public body or if any representative of the applicable franchising authority serves on the management board or as an officer of the bidder, applicant, or franchisee.

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

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

16. Trade secrets submitted by CMRS providers as defined in § 56-484.12 to the former Wireless Carrier E-911 Cost Recovery Subcommittee created pursuant to former § 56-484.15, relating to the provision of wireless E-911 service.

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

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

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

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

position of the authority, except that information required to be maintained in accordance with § 15.2-2160 shall be released.

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

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

22. Trade secrets, including, but not limited to, financial information, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise, and revenue and cost projections supplied by a private or nongovernmental entity to the State Inspector General for the purpose of an audit, special investigation, or any study requested by the Office of the State Inspector General in accordance with law.

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

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

- b. Identifying with specificity the data or other materials for which protection is sought; and
- c. Stating the reasons why protection is necessary.

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

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

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

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

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

- c. Stating the reasons why protection is necessary.

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

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

b. Information provided by a private entity to the Commercial Space Flight Authority if disclosure of such information would (i) reveal (a) trade secrets of the private entity; (b) financial information of the private entity, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise; or (c) other information submitted by the private entity and (ii) adversely affect the financial interest or bargaining position of the Authority or private entity.

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

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

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

26. Trade secrets provided to the Department of Environmental Quality pursuant to the provisions of § 10.1-1458. In order for such trade secrets to be excluded from the provisions of this chapter, the submitting party shall (i) invoke this exclusion upon submission of the data or materials for which protection from disclosure is sought, (ii) identify the data or materials for which protection is sought, and (iii) state the reasons why protection is necessary.

27. Information of a proprietary nature furnished by a licensed public-use airport to the Department of Aviation for funding from programs administered by the Department of Aviation or the Virginia Aviation Board, where if such information was made public, the financial

interest of the public-use airport would be adversely affected.

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

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

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

c. Stating the reasons why protection is necessary.

28. Information relating to a grant, loan, or investment application, or accompanying a grant, loan, or investment application, submitted to the Commonwealth of Virginia Innovation Partnership Authority (the Authority) established pursuant to Article 11 (§ 2.2-2351et seq.) of Chapter 22, an advisory committee of the Authority, or any other entity designated by the Authority to review such applications, to the extent that such records would (i) reveal (a) trade secrets; (b) financial information of a party to a grant, loan, or investment application that is not a public body, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise; or (c) research-related information produced or collected by a party to the application in the conduct of or as a result of study or research on medical, rehabilitative, scientific, technical, technological, or scholarly issues, when such information has not been publicly released, published, copyrighted, or patented, and (ii) be harmful to the competitive position of a party to a grant, loan, or investment application; and memoranda, staff evaluations, or other information prepared by the Authority or its staff, or a reviewing entity designated by the Authority, exclusively for the evaluation of grant, loan, or investment applications, including any scoring or prioritization documents prepared for and forwarded to the Authority.

29. Proprietary information, voluntarily provided by a private business pursuant to a promise of confidentiality from a public body, used by the public body for a solar services or carbon sequestration agreement, where disclosure of such information would (i) reveal (a) trade secrets of the private business; (b) financial information of the private business, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise; or (c) other information submitted by the private business and (ii) adversely affect the financial interest or bargaining position of the public body or private business.

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

- a. Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;
- b. Identifying with specificity the data or other materials for which protection is sought; and
- c. Stating the reasons why protection is necessary.

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

31. Trade secrets, including, but not limited to, financial information, including balance sheets and financial statements that are not generally available to the public through regulatory disclosure or otherwise, and revenue and cost

projections supplied by a private or nongovernmental entity to the Virginia Department of Transportation for the purpose of an audit, special investigation, or any study requested by the Virginia Department of Transportation in accordance with law.

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

- a. Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;
- b. Identifying with specificity the data or other materials for which protection is sought; and
- c. Stating the reasons why protection is necessary.

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

32. Information related to a grant application, or accompanying a grant application, submitted to the Department of Housing and Community Development that would (i) reveal (a) trade secrets, (b) financial information of a grant applicant that is not a public body, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise, or (c) research-related information produced or collected by the applicant in the conduct of or as a result of study or research on medical, rehabilitative, scientific, technical, technological, or scholarly issues, when such information has not been publicly released, published, copyrighted, or patented, and (ii) be harmful to the competitive position of the applicant. The

exclusion provided by this subdivision shall only apply to grants administered by the Department, the Director of the Department, or pursuant to § 36-139, Article 26 (§ 2.2-2484et seq.) of Chapter 24, or the Virginia Telecommunication Initiative as authorized by the appropriations act.

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

- a. Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;
- b. Identifying with specificity the data, information, or other materials for which protection is sought; and
- c. Stating the reasons why protection is necessary.

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

33. Financial and proprietary records submitted with a loan application to a locality for the preservation or construction of affordable housing that is related to a competitive application to be submitted to either the U.S. Department of Housing and Urban Development (HUD) or the Virginia Housing Development Authority (VHDA), when the release of such records would adversely affect the bargaining or competitive position of the applicant. Such records shall not be withheld after they have been made public by HUD or VHDA.

**§2.2-3705.6. (Effective January 1, 2022) 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 (§ 15.2-4900et 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 (§ 32.1-239et 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 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 (§ 32.1-331.12et 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 § 2.2-4342as 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 (§ 33.2-1800et seq.) or the Public-Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1et seq.) where (i) if such information was made public prior to or after the execution of an interim or a comprehensive agreement, § 33.2-1820or 56-575.17notwithstanding, the financial interest or bargaining position of the public entity would be adversely affected and (ii) the basis for the determination required in clause (i) is documented in writing by the responsible public entity; and

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

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

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

For the purposes of this subdivision, the terms "affected jurisdiction," "affected local jurisdiction," "comprehensive agreement," "interim agreement," "qualifying project," "qualifying transportation facility," "responsible public entity," and "private entity" shall mean the same as

those terms are defined in the Public-Private Transportation Act of 1995 (§ 33.2-1800 et seq.) or in the Public-Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.).

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

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

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

No bidder, applicant, or franchisee may invoke the exclusion provided by this subdivision if the bidder, applicant, or franchisee is owned or

controlled by a public body or if any representative of the applicable franchising authority serves on the management board or as an officer of the bidder, applicant, or franchisee.

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

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

16. Trade secrets submitted by CMRS providers as defined in § 56-484.12 to the former Wireless Carrier E-911 Cost Recovery Subcommittee created pursuant to former § 56-484.15, relating to the provision of wireless E-911 service.

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

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

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

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

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

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

22. Trade secrets, including, but not limited to, financial information, including balance sheets and financial statements, that are not generally

available to the public through regulatory disclosure or otherwise, and revenue and cost projections supplied by a private or nongovernmental entity to the State Inspector General for the purpose of an audit, special investigation, or any study requested by the Office of the State Inspector General in accordance with law.

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

- a. Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;
- b. Identifying with specificity the data or other materials for which protection is sought; and
- c. Stating the reasons why protection is necessary.

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

23. Information relating to a grant application, or accompanying a grant application, submitted to the Tobacco Region Revitalization Commission that would (i) reveal (a) trade secrets, (b) financial information of a grant applicant that is not a public body, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise, or (c) research-related information produced or collected by the applicant in the conduct of or as a result of study or research on medical, rehabilitative, scientific, technical, technological, or scholarly issues, when such information has not been publicly released, published, copyrighted, or patented,

and (ii) be harmful to the competitive position of the applicant; and memoranda, staff evaluations, or other information prepared by the Commission or its staff exclusively for the evaluation of grant applications. The exclusion provided by this subdivision shall apply to grants that are consistent with the powers of and in furtherance of the performance of the duties of the Commission pursuant to § 3.2-3103.

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

- a. Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;
- b. Identifying with specificity the data, information or other materials for which protection is sought; and
- c. Stating the reasons why protection is necessary.

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

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

b. Information provided by a private entity to the Commercial Space Flight Authority if disclosure of such information would (i) reveal (a) trade secrets of the private entity; (b) financial

information of the private entity, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise; or (c) other information submitted by the private entity and (ii) adversely affect the financial interest or bargaining position of the Authority or private entity.

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

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

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

26. Trade secrets provided to the Department of Environmental Quality pursuant to the provisions of § 10.1-1458. In order for such trade secrets to be excluded from the provisions of this chapter, the submitting party shall (i) invoke this exclusion upon submission of the data or materials for which protection from disclosure is sought, (ii) identify the data or materials for which protection is sought, and (iii) state the reasons why protection is necessary.

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

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

- a. Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;
- b. Identifying with specificity the data or other materials for which protection is sought; and
- c. Stating the reasons why protection is necessary.

28. Information relating to a grant, loan, or investment application, or accompanying a grant, loan, or investment application, submitted to the Commonwealth of Virginia Innovation Partnership Authority (the Authority) established pursuant to Article 11 (§ 2.2-2351et seq.) of Chapter 22, an advisory committee of the Authority, or any other entity designated by the Authority to review such applications, to the extent that such records would (i) reveal (a) trade secrets; (b) financial information of a party to a grant, loan, or investment application that is not a public body, including balance sheets and financial statements, that are not generally

available to the public through regulatory disclosure or otherwise; or (c) research-related information produced or collected by a party to the application in the conduct of or as a result of study or research on medical, rehabilitative, scientific, technical, technological, or scholarly issues, when such information has not been publicly released, published, copyrighted, or patented, and (ii) be harmful to the competitive position of a party to a grant, loan, or investment application; and memoranda, staff evaluations, or other information prepared by the Authority or its staff, or a reviewing entity designated by the Authority, exclusively for the evaluation of grant, loan, or investment applications, including any scoring or prioritization documents prepared for and forwarded to the Authority.

29. Proprietary information, voluntarily provided by a private business pursuant to a promise of confidentiality from a public body, used by the public body for a solar services or carbon sequestration agreement, where disclosure of such information would (i) reveal (a) trade secrets of the private business; (b) financial information of the private business, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise; or (c) other information submitted by the private business and (ii) adversely affect the financial interest or bargaining position of the public body or private business.

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

- a. Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;
- b. Identifying with specificity the data or other materials for which protection is sought; and
- c. Stating the reasons why protection is necessary.

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

31. Trade secrets, including, but not limited to, financial information, including balance sheets and financial statements that are not generally available to the public through regulatory disclosure or otherwise, and revenue and cost projections supplied by a private or nongovernmental entity to the Virginia Department of Transportation for the purpose of an audit, special investigation, or any study requested by the Virginia Department of Transportation in accordance with law.

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

- a. Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;
- b. Identifying with specificity the data or other materials for which protection is sought; and
- c. Stating the reasons why protection is necessary.

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

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

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

- a. Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;
- b. Identifying with specificity the data, information, or other materials for which protection is sought; and
- c. Stating the reasons why protection is necessary.

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

33. Financial and proprietary records submitted with a loan application to a locality for the preservation or construction of affordable housing that is related to a competitive application to be submitted to either the U.S. Department of Housing and Urban Development (HUD) or the Virginia Housing Development Authority (VHDA), when the release of such records would adversely affect the bargaining or competitive position of the applicant. Such records shall not be withheld after they have been made public by HUD or VHDA.

34. Information of a proprietary or confidential nature disclosed by a health carrier or pharmacy benefits manager pursuant to §38.2-3407.15:6, a wholesale distributor pursuant to §54.1-3436.1, or a manufacturer pursuant to §54.1-3442.02.

#### **§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 or accessed material or resources from a library and (b) the material or resources such patron borrowed or accessed 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 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. Information regarding the siting of hazardous waste facilities, except as provided in § 10.1-

1441, if disclosure of such information 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. Information on the site-specific location of rare, threatened, endangered, or otherwise imperiled plant and animal species, natural communities, caves, and significant historic and archaeological sites if, in the opinion of the public body that has the responsibility for such information, disclosure of the information would jeopardize the continued existence or the integrity of the resource. This exclusion shall not apply to requests from the owner of the land upon which the resource is located.

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

12. Information held by the Virginia Retirement System, acting pursuant to § 51.1-124.30, or a local retirement system, acting pursuant to § 51.1-803, or by a local finance board or board of trustees of a trust established by one or more local public bodies to invest funds for post-retirement benefits other than pensions, acting pursuant to Article 8 (§ 15.2-1544et seq.) of Chapter 15 of Title 15.2, or by the board of visitors of the University of Virginia, acting pursuant to § 23.1-2210, or by the board of visitors of The College of William and Mary in

Virginia, acting pursuant to § 23.1-2803, or by the Virginia College Savings Plan, acting pursuant to § 23.1-704, relating to 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, if disclosure of such information would (i) reveal confidential analyses prepared for the board of visitors of the University of Virginia, prepared for the board of visitors of The College of William and Mary in Virginia, prepared by the retirement system, a local finance board or board of trustees, or the Virginia College Savings Plan, or provided to the retirement system, a local finance board or board of trustees, 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) have an adverse effect on the value of the investment to be acquired, held, or disposed of by the retirement system, a local finance board or board of trustees, the board of visitors of the University of Virginia, the board of visitors of The College of William and Mary in 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.

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

14. Information held by the Virginia Commonwealth University Health System Authority pertaining to any of the following: an individual's qualifications for or continued membership on its medical or teaching staffs; proprietary information gathered by or in the possession of the Authority from third parties pursuant to a promise of confidentiality; contract cost estimates prepared for confidential use in awarding contracts for construction or the

purchase of goods or services; information of a proprietary nature produced or collected by or for the Authority or members of its medical or teaching staffs; financial statements not publicly available that may be filed with the Authority from third parties; the identity, accounts, or account status of any customer of the Authority; consulting or other reports paid for by the Authority to assist the Authority in connection with its strategic planning and goals; the determination of marketing and operational strategies where disclosure of such strategies would be harmful to the competitive position of the Authority; and information of a proprietary nature produced or collected by or for employees of the Authority, other than the Authority's financial or administrative records, in the conduct of or as a result of study or research on medical, scientific, technical, or 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. If the value of the prize won by the winner exceeds \$10 million, the information described in clause (ii) shall not be disclosed unless the winner consents in writing to such disclosure.

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 Virginia Disposition of Unclaimed Property Act (§ 55.1-2500et 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 federal 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 § 23.1-704relating 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 provided by a private entity to the retirement system or the Virginia College Savings Plan if 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 prevent the disclosure of the identity or amount of any investment held or the present value and performance of all asset classes and subclasses.

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

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

27. 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, except that access shall not be denied to the person who is the subject of the information.

28. Information maintained in connection with fundraising activities by the Veterans Services Foundation pursuant to § 2.2-2716 that reveal the address, electronic mail address, facsimile or telephone number, social security number or other identification number appearing on a driver's license or other document issued under Chapter 3 (§ 46.2-300et seq.) of Title 46.2 or the comparable law of another jurisdiction, or credit card or bank account data of identifiable donors, except that access shall not be denied to the person who is the subject of the information. Nothing in this subdivision, however, shall be construed to prevent the disclosure of information relating to the amount, date, purpose, and terms of the pledge or donation or the identity of the donor, unless the donor has requested anonymity in connection with or as a condition of making a pledge or donation. The exclusion provided by this subdivision shall not apply to protect from disclosure (i) the identities of sponsors providing grants to or contracting with the foundation for the performance of services or other work or (ii) the terms and conditions of such grants or contracts.

29. Information prepared for and utilized by the Commonwealth's Attorneys' Services Council in the training of state prosecutors or law-enforcement personnel, where such information is not otherwise available to the public and the disclosure of such information would reveal confidential strategies, methods, or procedures to be employed in law-enforcement activities or

materials created for the investigation and prosecution of a criminal case.

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

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

32. Information reflecting the substance of meetings in which (i) individual sexual assault cases are discussed by any sexual assault response team established pursuant to § 15.2-1627.4, (ii) individual child abuse or neglect cases or sex offenses involving a child are discussed by multidisciplinary child sexual abuse response teams established pursuant to § 15.2-1627.5, or (iii) individual cases of abuse, neglect, or exploitation of adults as defined in § 63.2-1603 are discussed by multidisciplinary teams established pursuant to §§ 15.2-1627.5 and 63.2-1605. The findings of any such team may be disclosed or published in statistical or other aggregated form that does not disclose the identity of specific individuals.

33. Information contained in the strategic plan, marketing plan, or operational plan prepared by the Virginia Economic Development Partnership Authority pursuant to § 2.2-2237.1 regarding target companies, specific allocation of resources and staff for marketing activities, and specific marketing activities that would reveal to the Commonwealth's competitors for economic development projects the strategies intended to be deployed by the Commonwealth, thereby adversely affecting the financial interest of the Commonwealth. The executive summaries of the

strategic plan, marketing plan, and operational plan shall not be redacted or withheld pursuant to this subdivision.

34. Information discussed in a closed session of the Physical Therapy Compact Commission or the Executive Board or other committees of the Commission for purposes set forth in subsection E of § 54.1-3491.

35. Information held by the Commonwealth of Virginia Innovation Partnership Authority (the Authority), an advisory committee of the Authority, or any other entity designated by the Authority, relating to (i) internal deliberations or decisions by the Authority on the pursuit of particular investment strategies prior to the execution of such investment strategies and (ii) trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336et seq.), provided by a private entity to the Authority, if such disclosure of records pursuant to clause (i) or (ii) would have an adverse impact on the financial interest of the Authority or a private entity.

36. Personal information provided to or obtained by the Virginia Lottery in connection with the voluntary exclusion program administered pursuant to § 58.1-4015.1.

37. Personal information provided to or obtained by the Virginia Lottery concerning the identity of any person reporting prohibited conduct pursuant to § 58.1-4043.

#### **§2.2-3705.8. Limitation on record exclusions.**

Nothing in this chapter shall be construed as denying public access to the nonexempt portions of a report of a consultant hired by or at the request of a local public body or the mayor or chief executive or administrative officer of such public body if (i) the contents of such report have been distributed or disclosed to members of the local public body or (ii) the local public body has scheduled any action on a matter that is the subject of the consultant's report.

#### **§2.2-3706. Disclosure of law enforcement and criminal records; limitations.**

A. Records required to be released. All public bodies engaged in criminal law-enforcement activities shall provide the following records when requested in accordance with the provisions of this chapter:

1. 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;

2. 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; and

3. Records of completed unattended death investigations to the parent or spouse of the decedent or, if there is no living parent or spouse, to the most immediate family member of the decedent, provided the person is not a person of interest or a suspect. For the purposes of this subdivision, "unattended death" means a death determined to be a suicide, accidental or natural death where no criminal charges will be initiated, and "immediate family" means the decedent's personal representative or, if no personal representative has qualified, the decedent's next of kin in order of intestate succession as set forth in § 64.2-200.

B. Discretionary releases. The following records are 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:

1. Criminal investigative files, defined as 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

not required to be disclosed in accordance with § 2.2-3706.1;

2. Reports submitted in confidence to (i) state and local law-enforcement agencies, (ii) investigators authorized pursuant to Chapter 3.2 (§ 2.2-307et seq.), and (iii) campus police departments of public institutions of higher education established pursuant to Article 3 (§ 23.1-809et seq.) of Chapter 8 of Title 23.1;

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

4. All records of persons imprisoned in penal institutions in the Commonwealth provided such records relate to the imprisonment;

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

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

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

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

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

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

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

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

D. Noncriminal records. Public bodies (i) engaged in emergency medical services, (ii) engaged in fire protection services, (iii) engaged in criminal law-enforcement activities, or (iv) engaged in processing calls for service or other communications to an emergency 911 system or any other equivalent reporting system may withhold those portions of noncriminal incident or other noncriminal investigative reports or materials that contain identifying information of a

personal, medical, or financial nature where the release of such information would jeopardize the safety or privacy of any person. Access to personnel records of persons employed by a law-enforcement agency shall be governed by the provisions of subdivision B 9 of this section and subdivision 1 of § 2.2-3705.1, as applicable.

E. 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.

F. 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.

**§2.2-3706.1. Disclosure of law-enforcement records; criminal incident information and certain criminal investigative files; limitations.**

A. For purposes of this section:

"Immediate family" means the decedent's personal representative or, if no personal representative has qualified, the decedent's next of kin in order of intestate succession as set forth in § 64.2-200.

"Ongoing" refers to a case in which the prosecution has not been finally adjudicated, the investigation continues to gather evidence for a possible future criminal case, and such case would be jeopardized by the premature release of evidence.

B. All public bodies engaged in criminal law-enforcement activities shall provide the following records and information when requested in accordance with the provisions of this chapter:

1. Criminal incident information relating to felony offenses contained in any report, notes, electronic communication, or other document, including filings through an incident-based reporting system, which shall include:

- a. A general description of the criminal activity reported;
- b. The date and time the alleged crime was committed;
- c. The general location where the alleged crime was committed;
- d. The identity of the investigating officer or other point of contact;
- e. A description of any injuries suffered or property damaged or stolen; and
- f. Any diagrams related to the alleged crime or the location where the alleged crime was committed, except that any diagrams described in subdivision 14 of § 2.2-3705.2 and information therein shall be excluded from mandatory disclosure, but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law.

A verbal response as agreed to by the requester and the public body is sufficient to satisfy the requirements of this subdivision 1; and

2. Criminal investigative files, defined as any documents and information, including complaints, court orders, memoranda, notes, initial incident reports, filings through any incident-based reporting system, diagrams, maps, photographs, correspondence, reports, witness statements, or evidence, relating to a criminal investigation or proceeding that is not ongoing.

C. The provisions of subsection B shall not apply if the release of such information:

1. Would interfere with a particular ongoing criminal investigation or proceeding in a particularly identifiable manner;
2. Would deprive a person of a right to a fair trial or an impartial adjudication;

3. Would constitute an unwarranted invasion of personal privacy;

4. Would disclose (i) the identity of a confidential source or (ii) in the case of a record compiled by a law-enforcement agency in the course of a criminal investigation, information furnished only by a confidential source;

5. Would disclose law-enforcement investigative techniques and procedures, if such disclosure could reasonably be expected to risk circumvention of the law; or

6. Would endanger the life or physical safety of any individual.

Nothing in this subsection shall be construed to authorize the withholding of those portions of such information that are unlikely to cause any effect listed herein.

D. Nothing in this section shall prohibit the disclosure of current anonymized, aggregate location and demographic data collected pursuant to § 52-30.2 or similar data documenting law-enforcement officer encounters with members of the public.

No photographic, audio, video, or other record depicting a victim or allowing for a victim to be readily identified, except for transcripts of recorded interviews between a victim and law enforcement, shall be released pursuant to subdivision B 2 to anyone except (i) the victim; (ii) members of the immediate family of the victim, if the victim is deceased; or (iii) the parent or guardian of the victim, if the victim is a minor.

E. In the event of a conflict between this section as it relates to requests made under this section and other provisions of law, the other provisions of law, including court sealing orders, that restrict disclosure of criminal investigative files, as defined in subsection B, shall control.

### **§2.2-3707. Meetings to be public; notice of meetings; recordings; minutes.**

A. All meetings of public bodies shall be open, except as provided in §§ 2.2-3707.01 and 2.2-3711.

B. No meeting shall be conducted through telephonic, video, electronic or other electronic communication means where the members are not physically assembled to discuss or transact public business, except as provided in § 2.2-3708.2 or as may be specifically provided in Title 54.1 for the summary suspension of professional licenses.

C. Every public body shall give notice of the date, time, and location of its meetings by:

1. Posting such notice on its official public government website, if any;

2. Placing such notice in a prominent public location at which notices are regularly posted; and

3. Placing such notice at the office of the clerk of the public body or, in the case of a public body that has no clerk, at the office of the chief administrator.

All state public bodies subject to the provisions of this chapter shall also post notice of their meetings on a central, publicly available electronic calendar maintained by the Commonwealth. Publication of meeting notices by electronic means by other public bodies shall be encouraged.

The notice shall be posted at least three working days prior to the meeting.

D. Notice, reasonable under the circumstance, of special, emergency, or continued meetings shall be given contemporaneously with the notice provided to the members of the public body conducting the meeting.

E. Any person may annually file a written request for notification with a public body. The request shall include the requester's name, address, zip code, daytime telephone number, electronic mail address, if available, and organization, if any. The public body receiving such request shall provide notice of all meetings directly to each such person. Without objection by the person, the public body may provide electronic notice of all meetings in response to such requests.

F. At least one copy of the proposed agenda and all agenda packets and, unless exempt, all materials furnished to members of a public body for a meeting shall be made available for public inspection at the same time such documents are furnished to the members of the public body. The proposed agendas for meetings of state public bodies where at least one member has been appointed by the Governor shall state whether or not public comment will be received at the meeting and, if so, the approximate point during the meeting when public comment will be received.

G. Any person may photograph, film, record or otherwise reproduce any portion of a meeting required to be open. The public body conducting the meeting may adopt rules governing the placement and use of equipment necessary for broadcasting, photographing, filming or recording a meeting to prevent interference with the proceedings, but shall not prohibit or otherwise prevent any person from photographing, filming, recording, or otherwise reproducing any portion of a meeting required to be open. No public body shall conduct a meeting required to be open in any building or facility where such recording devices are prohibited.

H. Minutes shall be recorded at all open meetings. However, minutes shall not be required to be taken at deliberations of (i) standing and other committees of the General Assembly; (ii) legislative interim study commissions and committees, including the Virginia Code Commission; (iii) study committees or commissions appointed by the Governor; or (iv) study commissions or study committees, or

any other committees or subcommittees appointed by the governing bodies or school boards of counties, cities and towns, except where the membership of any such commission, committee or subcommittee includes a majority of the governing body of the county, city or town or school board.

Minutes, including draft minutes, and all other records of open meetings, including audio or audio/visual records shall be deemed public records and subject to the provisions of this chapter.

Minutes shall be in writing and shall include (a) the date, time, and location of the meeting; (b) the members of the public body recorded as present and absent; and (c) a summary of the discussion on matters proposed, deliberated or decided, and a record of any votes taken. In addition, for electronic communication meetings conducted in accordance with § 2.2-3708.2, minutes of state public bodies shall include (1) the identity of the members of the public body at each remote location identified in the notice who participated in the meeting through electronic communication means, (2) the identity of the members of the public body who were physically assembled at the primary or central meeting location, and (3) the identity of the members of the public body who were not present at the locations identified in clauses (1) and (2) but who monitored such meeting through electronic communication means.

#### **§2.2-3707.01. Meetings of the General Assembly.**

A. Except as provided in subsection B, public access to any meeting of the General Assembly or a portion thereof shall be governed by rules established by the Joint Rules Committee and approved by a majority vote of each house at the next regular session of the General Assembly. At least 60 days before the adoption of such rules, the Joint Rules Committee shall (i) hold regional public hearings on such proposed rules and (ii) provide a copy of such proposed rules to the

Virginia Freedom of Information Advisory Council.

B. Floor sessions of either house of the General Assembly; meetings, including work sessions, of any standing or interim study committee of the General Assembly; meetings, including work sessions, of any subcommittee of such standing or interim study committee; and joint committees of conference of the General Assembly; or a quorum of any such committees or subcommittees, shall be open and governed by this chapter.

C. Meetings of the respective political party caucuses of either house of the General Assembly, including meetings conducted by telephonic or other electronic communication means, without regard to (i) whether the General Assembly is in or out of regular or special session or (ii) whether such caucuses invite staff or guests to participate in their deliberations, shall not be deemed meetings for the purposes of this chapter.

D. No regular, special, or reconvened session of the General Assembly held pursuant to Article IV, Section 6 of the Constitution of Virginia shall be conducted using electronic communication means pursuant to

**§2.2-3707.1. Posting of minutes for state boards and commissions.**

All boards, commissions, councils, and other public bodies created in the executive branch of state government and subject to the provisions of this chapter shall post minutes of their meetings on such body's official public government website and on a central electronic calendar maintained by the Commonwealth. Draft minutes of meetings shall be posted as soon as possible but no later than 10 working days after the conclusion of the meeting. Final approved meeting minutes shall be posted within three working days of final approval of the minutes.

**§2.2-3708, §2.2-3708.1. Repealed.**

Repealed by Acts 2018, c. 55, cl. 2.

**§2.2-3708.2. Meetings held through electronic communication means.**

A. The following provisions apply to all public bodies:

1. Subject to the requirements of subsection C, all public bodies may conduct any meeting wherein the public business is discussed or transacted through electronic communication means if, on or before the day of a meeting, a member of the public body holding the meeting notifies the chair of the public body that:

a. Such member is unable to attend the meeting due to (i) a temporary or permanent disability or other medical condition that prevents the member's physical attendance or (ii) a family member's medical condition that requires the member to provide care for such family member, thereby preventing the member's physical attendance; or

b. Such member is unable to attend the meeting due to a personal matter and identifies with specificity the nature of the personal matter. Participation by a member pursuant to this subdivision b is limited each calendar year to two meetings or 25 percent of the meetings held per calendar year rounded up to the next whole number, whichever is greater.

2. If participation by a member through electronic communication means is approved pursuant to subdivision 1, the public body holding the meeting shall record in its minutes the remote location from which the member participated; however, the remote location need not be open to the public. If participation is approved pursuant to subdivision 1 a, the public body shall also include in its minutes the fact that the member participated through electronic communication means due to (i) a temporary or permanent disability or other medical condition that prevented the member's physical

attendance or (ii) a family member's medical condition that required the member to provide care for such family member, thereby preventing the member's physical attendance. If participation is approved pursuant to subdivision 1 b, the public body shall also include in its minutes the specific nature of the personal matter cited by the member.

If a member's participation from a remote location pursuant to subdivision 1 b is disapproved because such participation would violate the policy adopted pursuant to subsection C, such disapproval shall be recorded in the minutes with specificity.

3. Any public body, or any joint meetings thereof, may meet by electronic communication means without a quorum of the public body physically assembled at one location when the Governor has declared a state of emergency in accordance with § 44-146.17 or the locality in which the public body is located has declared a local state of emergency pursuant to § 44-146.21, provided that (i) the catastrophic nature of the declared emergency makes it impracticable or unsafe to assemble a quorum in a single location and (ii) the purpose of the meeting is to provide for the continuity of operations of the public body or the discharge of its lawful purposes, duties, and responsibilities. The public body convening a meeting in accordance with this subdivision shall:

a. Give public notice using the best available method given the nature of the emergency, which notice shall be given contemporaneously with the notice provided to members of the public body conducting the meeting;

b. Make arrangements for public access to such meeting through electronic communication means, including video conferencing if already used by the public body;

c. Provide the public with the opportunity to comment at those meetings of the public body when public comment is customarily received; and

d. Otherwise comply with the provisions of this chapter.

The nature of the emergency, the fact that the meeting was held by electronic communication means, and the type of electronic communication means by which the meeting was held shall be stated in the minutes.

The provisions of this subdivision 3 shall be applicable only for the duration of the emergency declared pursuant to § 44-146.17 or 44-146.21.

B. The following provisions apply to regional public bodies:

1. Subject to the requirements in subsection C, regional public bodies may also conduct any meeting wherein the public business is discussed or transacted through electronic communication means if, on the day of a meeting, a member of a regional public body notifies the chair of the public body that such member's principal residence is more than 60 miles from the meeting location identified in the required notice for such meeting.

2. If participation by a member through electronic communication means is approved pursuant to this subsection, the public body holding the meeting shall record in its minutes the remote location from which the member participated; however, the remote location need not be open to the public.

If a member's participation from a remote location is disapproved because such participation would violate the policy adopted pursuant to subsection C, such disapproval shall be recorded in the minutes with specificity.

C. Participation by a member of a public body in a meeting through electronic communication means pursuant to subdivisions A 1 and 2 and subsection B shall be authorized only if the following conditions are met:

1. The public body has adopted a written policy allowing for and governing participation of its members by electronic communication means,

including an approval process for such participation, subject to the express limitations imposed by this section. Once adopted, the policy shall be applied strictly and uniformly, without exception, to the entire membership and without regard to the identity of the member requesting remote participation or the matters that will be considered or voted on at the meeting;

2. A quorum of the public body is physically assembled at one primary or central meeting location; and

3. The public body makes arrangements for the voice of the remote participant to be heard by all persons at the primary or central meeting location.

D. The following provisions apply to state public bodies:

1. Except as provided in subsection D of § 2.2-3707.01, state public bodies may also conduct any meeting wherein the public business is discussed or transacted through electronic communication means, provided that (i) a quorum of the public body is physically assembled at one primary or central meeting location, (ii) notice of the meeting has been given in accordance with subdivision 2, and (iii) members of the public are provided a substantially equivalent electronic communication means through which to witness the meeting. For the purposes of this subsection, "witness" means observe or listen.

If a state public body holds a meeting through electronic communication means pursuant to this subsection, it shall also hold at least one meeting annually where members in attendance at the meeting are physically assembled at one location and where no members participate by electronic communication means.

2. Notice of any regular meeting held pursuant to this subsection shall be provided at least three working days in advance of the date scheduled for the meeting. Notice, reasonable under the

circumstance, of special, emergency, or continued meetings held pursuant to this section shall be given contemporaneously with the notice provided to members of the public body conducting the meeting. For the purposes of this subsection, "continued meeting" means a meeting that is continued to address an emergency or to conclude the agenda of a meeting for which proper notice was given.

The notice shall include the date, time, place, and purpose for the meeting; shall identify the primary or central meeting location and any remote locations that are open to the public pursuant to subdivision 4; shall include notice as to the electronic communication means by which members of the public may witness the meeting; and shall include a telephone number that may be used to notify the primary or central meeting location of any interruption in the telephonic or video broadcast of the meeting. Any interruption in the telephonic or video broadcast of the meeting shall result in the suspension of action at the meeting until repairs are made and public access is restored.

3. A copy of the proposed agenda and agenda packets and, unless exempt, all materials that will be distributed to members of a public body for a meeting shall be made available for public inspection at the same time such documents are furnished to the members of the public body conducting the meeting.

4. Public access to the remote locations from which additional members of the public body participate through electronic communication means shall be encouraged but not required. However, if three or more members are gathered at the same remote location, then such remote location shall be open to the public.

5. If access to remote locations is afforded, (i) all persons attending the meeting at any of the remote locations shall be afforded the same opportunity to address the public body as persons attending at the primary or central location and (ii) a copy of the proposed agenda and agenda packets and, unless exempt, all

materials that will be distributed to members of the public body for the meeting shall be made available for inspection by members of the public attending the meeting at any of the remote locations at the time of the meeting.

6. The public body shall make available to the public at any meeting conducted in accordance with this subsection a public comment form prepared by the Virginia Freedom of Information Advisory Council in accordance with § 30-179.

7. Minutes of all meetings held by electronic communication means shall be recorded as required by § 2.2-3707. Votes taken during any meeting conducted through electronic communication means shall be recorded by name in roll-call fashion and included in the minutes. For emergency meetings held by electronic communication means, the nature of the emergency shall be stated in the minutes.

8. Any authorized state public body that meets by electronic communication means pursuant to this subsection shall make a written report of the following to the Virginia Freedom of Information Advisory Council by December 15 of each year:

a. The total number of meetings held that year in which there was participation through electronic communication means;

b. The dates and purposes of each such meeting;

c. A copy of the agenda for each such meeting;

d. The primary or central meeting location of each such meeting;

e. The types of electronic communication means by which each meeting was held;

f. If possible, the number of members of the public who witnessed each meeting through electronic communication means;

g. The identity of the members of the public body recorded as present at each meeting, and

whether each member was present at the primary or central meeting location or participated through electronic communication means;

h. The identity of any members of the public body who were recorded as absent at each meeting and any members who were recorded as absent at a meeting but who monitored the meeting through electronic communication means;

i. If members of the public were granted access to a remote location from which a member participated in a meeting through electronic communication means, the number of members of the public at each such remote location;

j. A summary of any public comment received about the process of conducting a meeting through electronic communication means; and

k. A written summary of the public body's experience conducting meetings through electronic communication means, including its logistical and technical experience.

E. Nothing in this section shall be construed to prohibit the use of interactive audio or video means to expand public participation.

**§2.2-3709. Expired.**

Expired.

**§2.2-3710. Transaction of public business other than by votes at meetings prohibited.**

A. Unless otherwise specifically provided by law, no vote of any kind of the membership, or any part thereof, of any public body shall be taken to authorize the transaction of any public business, other than a vote taken at a meeting conducted in accordance with the provisions of this chapter. No public body shall vote by secret or written ballot, and unless expressly provided by this chapter, no public body shall vote by telephone or other electronic communication means.

B. Notwithstanding the foregoing, nothing contained herein shall be construed to prohibit (i) separately contacting the membership, or any part thereof, of any public body for the purpose of ascertaining a member's position with respect to the transaction of public business, whether such contact is done in person, by telephone or by electronic communication, provided the contact is done on a basis that does not constitute a meeting as defined in this chapter or (ii) the House of Delegates or the Senate of Virginia from adopting rules relating to the casting of votes by members of standing committees. Nothing in this subsection shall operate to exclude any public record from the provisions of this chapter.

**§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. Nothing in this subdivision, however, shall be construed to authorize a closed meeting by a local governing body or an elected school board to discuss compensation matters that affect the membership of such body or board collectively.

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 public institution of higher education in the Commonwealth 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. 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. Consultation with legal counsel employed or retained by a public body regarding specific legal matters requiring the provision of legal advice by such counsel. 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.

9. Discussion or consideration by governing boards of public institutions of higher education of matters relating to gifts, bequests and fundraising activities, and of 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 the Commonwealth 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 (a) 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 (b) 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.

10. Discussion or consideration by the boards of trustees of the Virginia Museum of Fine Arts, the Virginia Museum of Natural History, the Jamestown-Yorktown Foundation, the Fort Monroe Authority, and The Science Museum of

Virginia of matters relating to specific gifts, bequests, and grants from private sources.

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

12. Discussion or consideration of tests, examinations, or other information used, administered, or prepared by a public body and subject to the exclusion in subdivision 4 of § 2.2-3705.1.

13. 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.

14. 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.

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

16. Discussion or consideration of medical and mental health records subject to the exclusion in subdivision 1 of § 2.2-3705.5.

17. Deliberations of the Virginia 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 Virginia Lottery matters related to proprietary

lottery game information and studies or investigations excluded from disclosure under subdivision 6 of § 2.2-3705.3 and subdivision 11 of § 2.2-3705.7.

18. Those portions of meetings in which the State Board of Local and Regional Jails 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 or specific cybersecurity threats or vulnerabilities and briefings by staff members, legal counsel, or law-enforcement or emergency service officials concerning actions taken to respond to such matters or a related threat to public safety; discussion of information subject to the exclusion in subdivision 2 or 14 of § 2.2-3705.2, where discussion in an open meeting would jeopardize the safety of any person or the security of any facility, building, structure, information technology system, or software program; 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 by a local finance board or board of trustees of a trust established by one or more local public bodies to invest funds for postemployment benefits other than pensions, acting pursuant to Article 8 (§ 15.2-1544 et seq.) of Chapter 15 of Title 15.2, or by the board of visitors of the University of Virginia, acting pursuant to § 23.1-2210, or by the Board of the Virginia College Savings Plan, acting pursuant to § 23.1-706, 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 board of visitors of the University of Virginia, prepared by the retirement system, or a local finance board or board of trustees, or the Virginia College Savings Plan or provided to the retirement system, a local finance board or board of trustees, 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, a local finance board or board of trustees, the board of 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, 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, those portions of meetings in which individual death cases are discussed by family violence fatality review teams established pursuant to § 32.1-283.3, those portions of meetings in which individual adult death cases are discussed by the state Adult Fatality Review Team established pursuant to § 32.1-283.5, those portions of meetings in which individual adult death cases are discussed by a local or regional adult fatality review team established pursuant to § 32.1-283.6, those portions of meetings in which individual death cases are discussed by overdose fatality review teams established pursuant to § 32.1-283.7, those portions of meetings in which individual maternal death cases are discussed by the Maternal Mortality Review Team pursuant to § 32.1-283.8,

and those portions of meetings in which individual death cases of persons with developmental disabilities are discussed by the Developmental Disabilities Mortality Review Committee established pursuant to § 37.2-314.1.

22. Those portions of meetings of the board of visitors of the University of Virginia 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. Discussion or consideration by the Virginia Commonwealth University Health System Authority or the board of visitors of Virginia Commonwealth University of any of the following: the acquisition or disposition by the Authority of real property, equipment, or technology software or hardware and related goods or services, where disclosure would adversely affect the bargaining position or negotiating strategy of the Authority; matters relating to gifts or bequests to, and fund-raising activities of, the Authority; grants and contracts for services or work to be performed by the Authority; marketing or operational strategies plans of the Authority where disclosure of such strategies or plans would adversely affect the competitive position of the Authority; and members of the Authority's medical and teaching

staffs and qualifications for appointments thereto.

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 (§ 54.1-2515et 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 7 (§ 23.1-700et seq.) of Title 23.1 is discussed.

26. Discussion or consideration, by the former Wireless Carrier E-911 Cost Recovery Subcommittee created pursuant to former § 56-484.15, of trade secrets 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 information subject to the exclusion in subdivision 11 of § 2.2-3705.6 by a responsible public entity or an affected locality or public entity, as those terms are defined in § 33.2-1800, 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 information subject to the exclusion in subdivision 17 of § 2.2-3705.6 by the Commonwealth Health Research Board.

31. Discussion or consideration by the Commitment Review Committee of information subject to the exclusion in subdivision 5 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. Discussion or consideration of confidential proprietary information and trade secrets developed and held by a local public body providing certain telecommunication services or cable television services and subject to the exclusion in subdivision 18 of § 2.2-3705.6. However, the exemption provided by this subdivision shall not apply to any authority created pursuant to the BVU Authority Act (§ 15.2-7200 et seq.).

33. 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 information and trade secrets subject to the exclusion in subdivision 19 of § 2.2-3705.6.

34. Discussion or consideration by the State Board of Elections or local electoral boards of voting security matters made confidential pursuant to § 24.2-410.2 or 24.2-625.1.

35. 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 criminal investigative files.

36. Discussion or consideration by the Brown v. Board of Education Scholarship Committee of information or confidential matters subject to the exclusion in subdivision A 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.

37. Discussion or consideration by the Virginia Port Authority of information subject to the exclusion in subdivision 1 of § 2.2-3705.6 related to certain proprietary information gathered by or for the Virginia Port Authority.

38. 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, by any local retirement system, acting pursuant to § 51.1-803, by the Board of the Virginia College Savings Plan acting pursuant to § 23.1-706, or by the Virginia College Savings Plan's Investment Advisory Committee appointed pursuant to § 23.1-702 of information subject to the exclusion in subdivision 24 of § 2.2-3705.7.

39. Discussion or consideration of information subject to the exclusion in subdivision 3 of § 2.2-3705.6 related to economic development.

40. Discussion or consideration by the Board of Education of information relating to the denial, suspension, or revocation of teacher licenses subject to the exclusion in subdivision 11 of § 2.2-3705.3.

41. Those portions of meetings of the Virginia Military Advisory Council or any commission created by executive order for the purpose of studying and making recommendations regarding preventing closure or realignment of federal military and national security installations

and facilities located in Virginia and relocation of such facilities to Virginia, or a local or regional military affairs organization appointed by a local governing body, during which there is discussion of information subject to the exclusion in subdivision 8 of § 2.2-3705.2.

42. Discussion or consideration by the Board of Trustees of the Veterans Services Foundation of information subject to the exclusion in subdivision 28 of § 2.2-3705.7 related to personally identifiable information of donors.

43. Discussion or consideration by the Virginia Tobacco Region Revitalization Commission of information subject to the exclusion in subdivision 23 of § 2.2-3705.6 related to certain information contained in grant applications.

44. Discussion or consideration by the board of directors of the Commercial Space Flight Authority of information subject to the exclusion in subdivision 24 of § 2.2-3705.6 related to rate structures or charges for the use of projects of, the sale of products of, or services rendered by the Authority and certain proprietary information of a private entity provided to the Authority.

45. Discussion or consideration of personal and proprietary information related to the resource management plan program and subject to the exclusion in (i) subdivision 25 of § 2.2-3705.6 or (ii) subsection E of § 10.1-104.7. This exclusion shall not apply to the discussion or consideration of records that contain information that has been certified for release by the person who is the subject of the information or transformed into a statistical or aggregate form that does not allow identification of the person who supplied, or is the subject of, the information.

46. Discussion or consideration by the Board of Directors of the Virginia Alcoholic Beverage Control Authority of information subject to the exclusion in subdivision 1 of § 2.2-3705.3 related to investigations of applicants for licenses and permits and of licensees and permittees.

47. Discussion or consideration of grant, loan, or investment application records subject to the

exclusion in subdivision 28 of § 2.2-3705.6 for a grant, loan, or investment pursuant to Article 11 (§ 2.2-2351 et seq.) of Chapter 22.

48. Discussion or development of grant proposals by a regional council established pursuant to Article 26 (§ 2.2-2484 et seq.) of Chapter 24 to be submitted for consideration to the Virginia Growth and Opportunity Board.

49. Discussion or consideration of (i) individual sexual assault cases by a sexual assault response team established pursuant to § 15.2-1627.4, (ii) individual child abuse or neglect cases or sex offenses involving a child by a child sexual abuse response team established pursuant to § 15.2-1627.5, or (iii) individual cases involving abuse, neglect, or exploitation of adults as defined in § 63.2-1603 pursuant to §§ 15.2-1627.5 and 63.2-1605.

50. Discussion or consideration by the Board of the Virginia Economic Development Partnership Authority, the Joint Legislative Audit and Review Commission, or any subcommittees thereof, of the portions of the strategic plan, marketing plan, or operational plan exempt from disclosure pursuant to subdivision 33 of § 2.2-3705.7.

51. Those portions of meetings of the subcommittee of the Board of the Virginia Economic Development Partnership Authority established pursuant to subsection F of § 2.2-2237.3 to review and discuss information received from the Virginia Employment Commission pursuant to subdivision C 2 of § 60.2-114.

52. Discussion or consideration by the Commonwealth of Virginia Innovation Partnership Authority (the Authority), an advisory committee of the Authority, or any other entity designated by the Authority, of information subject to the exclusion in subdivision 35 of § 2.2-3705.7.

53. Deliberations of the Virginia Lottery Board conducted pursuant to § 58.1-4105 regarding the denial or revocation of a license of a casino

gaming operator, or the refusal to issue, suspension of, or revocation of any license or permit related to casino gaming, and discussion, consideration, or review of matters related to investigations excluded from mandatory disclosure under subdivision 1 of § 2.2-3705.3.

54. Deliberations of the Virginia Lottery Board in an appeal conducted pursuant to § 58.1-4007 regarding the denial of, revocation of, suspension of, or refusal to renew any license or permit related to sports betting and any discussion, consideration, or review of matters related to investigations excluded from mandatory disclosure under subdivision 1 of § 2.2-3705.3.

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

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

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

E. This section shall not be construed to (i) require the disclosure of any contract between the Department of Health Professions and an impaired practitioner entered into pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of Title 54.1 or (ii) require the board of directors of any authority created pursuant to the Industrial Development and Revenue Bond Act (§ 15.2-4900 et seq.), or

any public body empowered to issue industrial revenue bonds by general or special law, to identify a business or industry to which subdivision A 5 applies. However, such business or industry shall be identified as a matter of public record at least 30 days prior to the actual date of the board's authorization of the sale or issuance of such bonds.

**§2.2-3712. Closed meetings procedures; certification of proceedings.**

A. No closed meeting shall be held unless the public body proposing to convene such meeting has taken an affirmative recorded vote in an open meeting approving a motion that (i) identifies the subject matter, (ii) states the purpose of the meeting as authorized in subsection A of § 2.2-3711 or other provision of law and (iii) cites the applicable exemption from open meeting requirements provided in subsection A of § 2.2-3711 or other provision of law. The matters contained in such motion shall be set forth in detail in the minutes of the open meeting. A general reference to the provisions of this chapter, the authorized exemptions from open meeting requirements, or the subject matter of the closed meeting shall not be sufficient to satisfy the requirements for holding a closed meeting.

B. The notice provisions of this chapter shall not apply to closed meetings of any public body held solely for the purpose of interviewing candidates for the position of chief administrative officer. Prior to any such closed meeting for the purpose of interviewing candidates, the public body shall announce in an open meeting that such closed meeting shall be held at a disclosed or undisclosed location within 15 days thereafter.

C. The public body holding a closed meeting shall restrict its discussion during the closed meeting only to those matters specifically exempted from the provisions of this chapter and identified in the motion required by subsection A.

D. At the conclusion of any closed meeting, the public body holding such meeting shall

immediately reconvene in an open meeting and shall take a roll call or other recorded vote to be included in the minutes of that body, certifying that to the best of each member's knowledge (i) only public business matters lawfully exempted from open meeting requirements under this chapter and (ii) only such public business matters as were identified in the motion by which the closed meeting was convened were heard, discussed or considered in the meeting by the public body. Any member of the public body who believes that there was a departure from the requirements of clauses (i) and (ii), shall so state prior to the vote, indicating the substance of the departure that, in his judgment, has taken place. The statement shall be recorded in the minutes of the public body.

E. Failure of the certification required by subsection D to receive the affirmative vote of a majority of the members of the public body present during a meeting shall not affect the validity or confidentiality of such meeting with respect to matters considered therein in compliance with the provisions of this chapter. The recorded vote and any statement made in connection therewith, shall upon proper authentication, constitute evidence in any proceeding brought to enforce the provisions of this chapter.

F. A public body may permit nonmembers to attend a closed meeting if such persons are deemed necessary or if their presence will reasonably aid the public body in its consideration of a topic that is a subject of the meeting.

G. A member of a public body shall be permitted to attend a closed meeting held by any committee or subcommittee of that public body, or a closed meeting of any entity, however designated, created to perform the delegated functions of or to advise that public body. Such member shall in all cases be permitted to observe the closed meeting of the committee, subcommittee or entity. In addition to the requirements of § 2.2-3707, the minutes of the committee or other entity shall include the

identity of the member of the parent public body who attended the closed meeting.

H. Except as specifically authorized by law, in no event may any public body take action on matters discussed in any closed meeting, except at an open meeting for which notice was given as required by § 2.2-3707.

I. Minutes may be taken during closed meetings of a public body, but shall not be required. Such minutes shall not be subject to mandatory public disclosure.

**§2.2-3713. Proceedings for enforcement of chapter.**

A. Any person, including the attorney for the Commonwealth acting in his official or individual capacity, denied the rights and privileges conferred by this chapter may proceed to enforce such rights and privileges by filing a petition for mandamus or injunction, supported by an affidavit showing good cause. Such petition may be brought in the name of the person notwithstanding that a request for public records was made by the person's attorney in his representative capacity. Venue for the petition shall be addressed as follows:

1. In a case involving a local public body, to the general district court or circuit court of the county or city from which the public body has been elected or appointed to serve and in which such rights and privileges were so denied;

2. In a case involving a regional public body, to the general district or circuit court of the county or city where the principal business office of such body is located; and

3. In a case involving a board, bureau, commission, authority, district, institution, or agency of the state government, including a public institution of higher education, or a standing or other committee of the General Assembly, to the general district court or the circuit court of the residence of the aggrieved party or of the City of Richmond.

B. In any action brought before a general district court, a corporate petitioner may appear through its officer, director or managing agent without the assistance of counsel, notwithstanding any provision of law or Rule of Supreme Court of Virginia to the contrary.

C. Notwithstanding the provisions of § 8.01-644, the petition for mandamus or injunction shall be heard within seven days of the date when the same is made, provided the party against whom the petition is brought has received a copy of the petition at least three working days prior to filing. However, if the petition or the affidavit supporting the petition for mandamus or injunction alleges violations of the open meetings requirements of this chapter, the three-day notice to the party against whom the petition is brought shall not be required. The hearing on any petition made outside of the regular terms of the circuit court of a locality that is included in a judicial circuit with another locality or localities shall be given precedence on the docket of such court over all cases that are not otherwise given precedence by law.

D. The petition shall allege with reasonable specificity the circumstances of the denial of the rights and privileges conferred by this chapter. A single instance of denial of the rights and privileges conferred by this chapter shall be sufficient to invoke the remedies granted herein. If the court finds the denial to be in violation of the provisions of this chapter, the petitioner shall be entitled to recover reasonable costs, including costs and reasonable fees for expert witnesses, and attorney fees from the public body if the petitioner substantially prevails on the merits of the case, unless special circumstances would make an award unjust. In making this determination, a court may consider, among other things, the reliance of a public body on an opinion of the Attorney General or a decision of a court that substantially supports the public body's position.

E. In any action to enforce the provisions of this chapter, the public body shall bear the burden of proof to establish an exclusion by a

preponderance of the evidence. No court shall be required to accord any weight to the determination of a public body as to whether an exclusion applies. Any failure by a public body to follow the procedures established by this chapter shall be presumed to be a violation of this chapter.

F. Failure by any person to request and receive notice of the time and place of meetings as provided in § 2.2-3707 shall not preclude any person from enforcing his rights and privileges conferred by this chapter.

### **§2.2-3714. Violations and penalties.**

A. In a proceeding commenced against any officer, employee, or member of a public body under § 2.2-3713 for a violation of § 2.2-3704, 2.2-3705.1 through 2.2-3705.7, 2.2-3706, 2.2-3706.1, 2.2-3707, 2.2-3708.2, 2.2-3710, 2.2-3711 or 2.2-3712, the court, if it finds that a violation was willfully and knowingly made, shall impose upon such officer, employee, or member in his individual capacity, whether a writ of mandamus or injunctive relief is awarded or not, a civil penalty of not less than \$500 nor more than \$2,000, which amount shall be paid into the Literary Fund. For a second or subsequent violation, such civil penalty shall be not less than \$2,000 nor more than \$5,000.

B. In addition to any penalties imposed pursuant to subsection A, if the court finds that any officer, employee, or member of a public body failed to provide public records to a requester in accordance with the provisions of this chapter because such officer, employee, or member altered or destroyed the requested public records with the intent to avoid the provisions of this chapter with respect to such request prior to the expiration of the applicable record retention period set by the retention regulations promulgated pursuant to the Virginia Public Records Act (§ 42.1-76 et seq.) by the State Library Board, the court may impose upon such officer, employee, or member in his individual capacity, whether or not a writ of mandamus or injunctive relief is awarded, a civil penalty of up

to \$100 per record altered or destroyed, which amount shall be paid into the Literary Fund.

C. In addition to any penalties imposed pursuant to subsections A and B, if the court finds that a public body voted to certify a closed meeting in accordance with subsection D of § 2.2-3712 and such certification was not in accordance with the requirements of clause (i) or (ii) of subsection D of § 2.2-3712, the court may impose on the public body, whether or not a writ of mandamus or injunctive relief is awarded, a civil penalty of up to \$1,000, which amount shall be paid into the Literary Fund. In determining whether a civil penalty is appropriate, the court shall consider mitigating factors, including reliance of members of the public body on (i) opinions of the Attorney General, (ii) court cases substantially supporting the rationale of the public body, and (iii) published opinions of the Freedom of Information Advisory Council.

**§2.2-3715. Effect of advisory opinions from the Freedom of Information Advisory Council on liability for willful and knowing violations.**

Any officer, employee, or member of a public body who is alleged to have committed a willful and knowing violation pursuant to § 2.2-3714 shall have the right to introduce at any proceeding a copy of a relevant advisory opinion issued pursuant to § 30-179 as evidence that he did not willfully and knowingly commit the violation if the alleged violation resulted from his good faith reliance on the advisory opinion.

## APPENDIX

This Appendix includes the VSBA sample documents detailing a centralized procedure for handling requests for information under the Act. These items are intended to provide a consistent format for school division staff to follow when requests for information are made as well as create a record of who requested what and how the school division responded. **Local school boards may adopt, revise or disregard these documents.**

## REGULAR SCHOOL BOARD MEETINGS

The School Board transacts all business at School Board meetings. The School Board does not vote by secret or written ballot. However, nothing prohibits separately contacting the membership, or any part thereof, of the School Board for the purpose of ascertaining a member's position with respect to the transaction of public business, whether such contact is done in person, by telephone or by electronic communication, provided the contact is done on a basis that does not constitute a meeting under the Virginia Freedom of Information Act.

All meetings of the School Board are open to the public, except as otherwise permitted by law.

No meeting is conducted through telephonic, video, electronic or other electronic communication means where the members are not physically assembled to discuss or transact public business, except as provided in Policy BDD Electronic Participation in Meetings from Remote Locations.

The School Board gives notice of its meetings in accordance with Policy BDDA Notification of School Board Meetings.

At least one copy of the proposed agenda and all agenda packets and, unless exempt, all materials furnished to the members of the School Board for a meeting are made available for public inspection at the same time such documents are furnished to the members of the School Board.

Any person may photograph, film, record or otherwise reproduce any portion of an open meeting. The School Board may adopt rules governing the placement and use of equipment necessary for broadcasting, photographing, filming or recording a meeting to prevent interference with the proceedings, but does not prohibit or otherwise prevent any person from photographing, filming, recording or otherwise reproducing any portion of an open meeting. The School Board does not conduct any open meeting in any building or facility where such recording devices are prohibited.

Minutes of all regular School Board meetings are recorded in accordance with Policy BDDG Minutes.

Adopted:

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Legal Ref.: Code of Virginia, 1950, as amended, §§ 2.2-3707, 2.2-3708.2, 2.2-3710, 22.1-72 and 22.1-74.

Cross Refs.: KC                    Community Involvement in Decision Making  
                  BCA                    Board Organizational Meetings

BDD Electronic Participation in Meetings from Remote Locations  
BDDA Notification of School Board Meetings  
BDDG Minutes

### SPECIAL SCHOOL BOARD MEETINGS

The School Board holds special and continued meetings when necessary. Special meetings are held when called by the chairman or when requested by two or more members.<sup>1</sup> Special meetings may be called provided each member is duly notified, or a reasonable attempt has been made to notify each member.

Business that does not come within the purposes set forth in the call of the meeting is not transacted at any special meeting of the School Board unless the members present unanimously agree to consider additional items of business.

Notice, reasonable under the circumstances, of special or continued meetings is given contemporaneously with the notice provided to members of the School Board.

Adopted:

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Legal Ref.: Code of Virginia, 1950, as amended, §§ 2.2-3707, 22.1-72.

Cross Refs.:	KC	Community Involvement in Decision Making
	BCA	Board Organizational Meetings
	BDDA	Notification of School Board Meetings
	BDDG	Minutes

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**FOOTNOTE IS FOR REFERENCE ONLY AND SHOULD BE REMOVED FROM FINAL POLICY.**

<sup>1</sup> Virginia law does not specify who may call a special meeting. Instead, it specifies that each school board shall specify its own procedure for calling and holding such meetings. Thus, if your Board prefers to specify a different method by which special meetings can be called, it may do so.

## CLOSED MEETINGS

- A Closed meetings may be held by the School Board or any committee<sup>1</sup> thereof only in accordance with Virginia law, for purposes including the following:
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 the School Board. Any teacher shall be permitted to be present during a closed meeting in which there is a discussion or consideration of a disciplinary matter which 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 School Board. The School Board may not, however, discuss the compensation of Board members in closed session.<sup>2</sup>
  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 in the BLANK 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 School 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 School Board.
  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.

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FOOTNOTES ARE FOR REFERENCE ONLY AND SHOULD BE REMOVED FROM FINAL POLICY.

<sup>1</sup> "Committee" includes subcommittees and other entities, however designated, of the School Board created to perform delegated functions of the Board or to advise the Board. It does not exclude any such committee, subcommittee or entity because it has private sector or citizen members.

<sup>2</sup> This sentence applies only to elected school boards; appointed boards should not include this sentence in their policies.

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 School Board 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 School Board. For purposes of this subsection, "probable litigation" means litigation which has been specifically threatened or on which the School Board or its legal counsel has a reasonable basis to believe will be commenced by or against a known party. The closure of a meeting is not permitted merely because an attorney representing the School Board is in attendance or is consulted on a matter.
8. Consultation with legal counsel employed or retained by the School Board regarding specific legal matters requiring the provision of legal advice by such counsel. The closure of a meeting is not permitted merely because an attorney representing the School Board is in attendance or is consulted on a matter.
9. Discussion or consideration of honorary degrees or special awards.
10. Discussion or consideration of tests or examinations or other information used, administered or prepared by a public body and subject to the exclusion in subdivision 4 of Va. Code § 2.2-3705.1.
11. 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 School Board in open meeting finds that an open meeting will have an adverse effect upon the negotiating position of the School Board 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.
12. Discussion or consideration of medical and mental health records subject to the exclusion in subdivision 1 of Va. Code § 2.2-3705.5.
13. Discussion of plans to protect public safety as it relates to terrorist activity or specific cybersecurity threats or vulnerabilities and briefings by staff members, legal counsel or law-enforcement or emergency service officials concerning actions taken to respond to such matters or a related threat to public safety; discussion of information subject to the exclusion in subdivision 3 or 4 of Va. Code § 2.2-3705.2 where discussion in an open meeting would jeopardize the safety of any person or the security of any facility, building, structure, information technology system or software program; 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.

14. Discussion or consideration of information subject to the exclusion in subdivision 11 of Va. Code § 2.2-3705.6 (the Public Private Education Facilities and Infrastructure Act) by the School Board or any independent review panel appointed to review information and advise the School Board concerning such information.
  15. 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 School Board.
- B. No resolution, ordinance, rule, contract, regulation or motion adopted, passed or agreed to in a closed meeting shall become effective unless the School Board, following the meeting, reconvenes in open meeting and takes a vote of the membership on such resolution, ordinance, rule, contract, regulation or motion which shall have its substance reasonably identified in the open meeting.
- C. The School Board or any committee thereof may permit nonmembers to attend a closed meeting of the Board or committee if such persons are deemed necessary or if their presence will reasonably aid the Board or committee in its consideration of a topic which is a subject of the meeting.
- D. School Board members may attend closed meetings held by any committee or subcommittee of the Board, or a closed meeting of any entity, however designated, created to perform the delegated functions of or to advise the Board. School Board members shall in all cases be permitted to observe the closed meeting of the committee, subcommittee or entity. In addition to the requirements of Va. Code § 2.2-3707, the minutes of the committee or other entity shall include the identity of the School Board members who attended the closed meeting.

Adopted:

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Legal Ref.: Code of Virginia, 1950, as amended, §§ 2.2-3711, 2.2-3712.

Cross Ref.:	BCE	School Board Committees
	BCEA	Disciplinary Committee
	BCF	Advisory Committees to the School Board
	BDDA	Notification of School Board Meetings

CALLING AND CERTIFICATION OF CLOSED MEETINGS

- A. No closed meetings are held by the School Board or any committee<sup>1</sup> thereof unless the School Board or committee has taken an affirmative recorded vote in an open meeting approving a motion which (i) identifies the subject matter, (ii) states the purpose of the meeting as authorized in Va. Code § 2.2-3711.A or other provision of law and (iii) cites the applicable exemption or exemptions from open meeting requirements provided in the Virginia Freedom of Information Act (FOIA) or other provision of law. The matters contained in such motion are set forth in detail in the minutes of the open meeting. A general reference to the provisions of FOIA or authorized exemptions from open meeting requirements, or the subject matter of the closed meeting is not sufficient to satisfy the requirements for holding a closed meeting.
- B. The School Board, or committee thereof, in holding a closed meeting, restricts its discussion during the closed meeting only to those purposes specifically exempted under FOIA and identified in the motion required in Section A, above.
- C. At the conclusion of any closed meeting, the School Board or committee thereof immediately reconvenes in an open meeting and takes a roll call or other recorded vote to be included in the minutes, certifying that to the best of each member's knowledge (i) only public business matters lawfully exempted from open meeting requirements and (ii) only such public business matters as were identified in the motion by which the closed meeting was convened were heard, discussed or considered in the meeting. Any member of the Board or committee who believes that there was a departure from the requirements of (i) and (ii) above, so states prior to the vote, indicating the substance of the departure that, in the member's judgment, has taken place. The statement is recorded in the minutes of the meeting.
- D. Failure of the certification required by Section C, above, to receive the affirmative vote of a majority of the members present during a meeting does not affect the validity or confidentiality of such meeting with respect to matters considered therein in compliance with these provisions. The recorded vote and any statement made in connection therewith, upon proper authentication, constitutes evidence in any proceeding brought to enforce FOIA.
- E. Except as specifically authorized by law, in no event may the School Board or committee thereof take action on matters discussed in any closed meeting, except at an open meeting for which notice was given pursuant to Va. Code § 2.2-3707.

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**FOOTNOTES ARE FOR REFERENCE ONLY AND SHOULD BE REMOVED FROM FINAL POLICY.**

<sup>1</sup> "Committee" includes subcommittees and other entities, however designated, of the School Board created to perform delegated functions of the Board or to advise the Board. It does not exclude any such committee, subcommittee or entity because it has private sector or citizen members.

F. The School Board is subject to a civil penalty of up to \$1,000 if a court finds that the Board voted to certify a closed meeting in accordance with Section C above and such certification was not in accordance with FOIA.

Adopted:

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Legal Ref.: Code of Virginia, 1950, as amended, §§ 2.1-3701, 2.2-3712 and 2.2-3714.

Cross Refs.:	BCE	School Board Committees
	BCEA	Disciplinary Committee
	BCF	Advisory Committees to the School Board
	BDC	Closed Meetings
	BDDA	Notification of School Board Meetings

ELECTRONIC PARTICIPATION IN MEETINGS  
FROM REMOTE LOCATIONS

Except as provided hereafter, or as otherwise permitted by law, the School Board does not conduct any meeting wherein the public business is discussed or transacted through telephonic, video, electronic or other electronic communication means where the members are not physically assembled.<sup>1</sup> This policy is applied strictly and uniformly, without exception, to the entire membership of the School Board and without regard to the identity of the member requesting remote participation or the matters that will be considered or voted on at the meeting.

For purposes of this policy, "electronic communication" means the use of technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities to transmit or receive information.

I. Quorum Physically Assembled

A. The School Board may conduct any meeting wherein the public business is discussed or transacted through electronic communication means if 1) on or before the day of a meeting, a member of the School Board notifies the chair that such member is unable to attend the meeting due to a temporary or permanent disability or other medical condition that prevents the member's physical attendance, a family member's medical condition that requires the member to provide care for such family member, thereby preventing the member's physical attendance, or that such member is unable to attend the meeting due to a personal matter and identifies with specificity the nature of the personal matter; and 2) the School Board approves the member's participation by a majority vote of the members present at the primary or central meeting location.

Participation by a School Board member by electronic communication means due to a personal matter is limited each calendar year to two meetings or 25 percent of the meetings held per calendar year rounded up to the next whole number, whichever is greater.

B. If participation by a School Board member through electronic communication means is approved pursuant to subsection A above, the School Board records in its minutes the remote location from which the member participated; however, the remote location need not be open to the public. If participation is approved due to a temporary or permanent disability or other medical condition, the School Board also includes in its minutes the fact that the member participated through electronic communication means due to a temporary or permanent disability or other medical condition that prevented

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**FOOTNOTE IS FOR REFERENCE ONLY AND SHOULD BE REMOVED FROM FINAL POLICY.**

<sup>1</sup> The Virginia Freedom of Information Act requires school boards to adopt a policy allowing for and governing the participation of its members by electronic communication means in order for such participation to occur. This policy satisfies that requirement.

the member's physical attendance. If participation is approved due to a personal matter, the School Board also includes in its minutes the specific nature of the personal matter cited by the member.

If a School Board member's participation from a remote location due to a personal matter is disapproved, such disapproval is recorded in the minutes with specificity.

- C. A School Board member may participate in a meeting by electronic means pursuant to subsections A and B above only when:
- a quorum of the School Board is physically assembled at one primary or central meeting location; and
  - the School Board makes arrangements for the voice of the remote participant to be heard by all persons at the primary or central meeting location.

## II. Quorum Not Physically Assembled

The School Board may meet by electronic communication means without a quorum physically assembled at one location when the Governor has declared a state of emergency in accordance with Va. Code § 44-146.17, or the locality in which the School Board is located has declared a local state of emergency pursuant to Va. Code § 44-146.21, provided

- the catastrophic nature of the declared emergency makes it impracticable or unsafe to assemble a quorum in a single location, and
- the purpose of the meeting is to provide for the continuity of operations of the School Board or the discharge of its lawful purposes, duties, and responsibilities.

If it holds a meeting pursuant to this section, the School Board

- gives public notice using the best available method given the nature of the emergency contemporaneously with the notice provided members of the School Board;
- makes arrangements for public access to the meeting through electronic communications means, including videoconferencing if already used by the School Board; and
- provides the public with the opportunity to comment at those meetings when public comment is customarily received.

For any meeting conducted pursuant to this section, the nature of the emergency, the fact that the meeting was held by electronic communication means and the type of electronic communication means by which the meeting was held are stated in the minutes of the meeting.

Adopted:

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Legal Ref.: Code of Virginia, 1950, as amended, §§ 2.2-3701, 2.2-3707, 2.2-3708.2,  
2.2-3710.

Acts 2020, c. 1283.

Cross Ref.: BDDG      Minutes

## MINUTES

Minutes are recorded at all open meetings, approved by the school board in regular session, signed by the clerk and chairman of the board, and kept and stored in accordance with the provisions of the Code of Virginia.

Draft minutes and all other records of open meetings, including audio or audio/visual records, are public records open pursuant to the Virginia Freedom of Information Act as described in Policy KBA Requests for Public Records and Regulation KBA-R Requests for Public Records.

Minutes may be taken during closed meetings of the school board, but are not required. Such minutes are not subject to mandatory public disclosure.

Minutes are not required to be taken at deliberations of study commissions or study committees, or any other committees or subcommittees appointed by the school board except where the membership of any such commission, committee or subcommittee includes a majority of the school board.

Minutes are in writing and include, but are not limited to

- the date, time, and location of the meeting;
- the members of the school board recorded as present and absent;
- a summary of the discussion on matters proposed, deliberated or decided; and
- a record of any votes taken.

Adopted:

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Legal Ref.: Code of Virginia, 1950, as amended, §§ 2.2-3704, 2.2-3707, 2.2-3712, 22.1-74.

Cross Refs.:	BDC	Closed Meetings
	BDD	Electronic Participation in Meetings from Remote Locations
	KBA	Requests for Public Records
	KBA-R	Requests for Public Records

REQUESTS FOR PUBLIC RECORDS

BLANK School Board complies with the Virginia Freedom of Information Act (FOIA). Except as otherwise specifically provided by law, all public records are open to citizens of the Commonwealth, representatives of newspapers and magazines with circulation in the Commonwealth and representatives of radio and television stations broadcasting in or into the Commonwealth during the regular office hours of the custodian of such records. All requests for information are processed in accordance with KBA-R Requests for Public Records.

Officers, employees, and members of the School Board who fail to provide public records as required by FOIA because they altered or destroyed the requested records with the intent to avoid the provisions of FOIA are subject to penalties in their individual capacity of up to \$100 per record altered or destroyed.

The name(s) and contact information for the person(s) BLANK School Board has designated as its Freedom of Information Act (FOIA) Officer(s)<sup>1</sup> is listed in regulation KBA-R Requests for Public Records and posted at the school board office and on the division's website. The FOIA Officer(s) serve(s) as a point of contact for members of the public in requesting public records and coordinate(s) the school board's compliance with FOIA. The FOIA officer(s) receive(s) training at least once during each consecutive period of two calendar years beginning on the date on which the FOIA Officer last completed a training session by the school board's legal counsel or the Virginia Freedom of Information Advisory Council.

Adopted:

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Legal Ref.: Code of Virginia, 1950, as amended, §§ 2.2-3704, 2.2-3704.2, 2.2-3714.

Cross Ref.: KBA-R Requests for Public Records

**FOOTNOTES ARE FOR REFERENCE ONLY AND SHOULD BE REMOVED FROM FINAL POLICY**

<sup>1</sup> Each school board may name one or more FOIA Officers. The name and contact information of the FOIA Officer(s) must be made available in a way reasonably calculated to provide notice to the public, including posting at the school board office, posting on the school board's website or including the information in school board publications.

## **Rights & Responsibilities**

### **The Rights of Requestors and the Responsibilities of BLANK Public Schools under the Virginia Freedom of Information Act**

The Virginia Freedom of Information Act (FOIA), located at § 2.2-3700 et seq. of the Code of Virginia, guarantees citizens of the Commonwealth and representatives of the media access to public records held by public bodies, public officials and public employees.

A public record is any writing or recording – regardless of whether it is a paper record, an electronic file, an audio or video recording or record in any other format – that is prepared or owned by, or in the possession of a public body or its officers, employees or agents in the transaction of public business. All public records are presumed to be open to the public and may only be withheld if a specific statutory exemption applies.

The policy of FOIA is to promote an increased awareness by all persons of governmental activities. In furthering this policy, FOIA requires that the law be interpreted liberally, in favor of access, and that any exemption allowing public records to be withheld must be interpreted narrowly.

#### **FOIA Rights**

- A citizen of the Commonwealth has the right to request to inspect or receive copies of public records, or both.
- A citizen of the Commonwealth has the right to request that any charges for the requested records be estimated in advance.
- If a citizen of the Commonwealth believes that their FOIA rights have been violated, the citizen may file a petition in district or circuit court to compel compliance with FOIA. Alternatively, they may contact the FOIA Council for a nonbinding advisory opinion.

#### **Making a Request for Records from BLANK Public Schools**

- A citizen of the Commonwealth may request records by U.S. Mail, fax, e-mail, in person or over the phone. FOIA does not require that a request be in writing, nor that it specifically state that records are being requested under FOIA.
- As a practical matter, it may be helpful to both the requestor and the person receiving the request to put the request in writing. This creates a record of the request. It also gives us a clear statement of what records are requested, so that there is no misunderstanding over a verbal request. However, we cannot refuse to respond to a FOIA request if it is not put in writing.
- A request must identify the records sought with “reasonable specificity.” This is a common-sense standard. It does not refer to or limit the volume or number of records requested; instead, it requires the requestor to be specific enough so that we can identify and locate the records that are requested.

- A request must ask for existing records or documents. FOIA creates a right to inspect or copy records; it does not apply to general questions about the work of BLANK Public Schools, nor does it require BLANK Public Schools to create a record that does not exist.
- A requestor may choose to receive electronic records in any format used by BLANK Public Schools in the regular course of business. For example, if requested records are maintained in an Excel file, the requestor you may elect to receive those records electronically, via e-mail or on a computer disk or to receive a printed copy of those records.
- If we have questions about a request, please cooperate with staff's efforts to clarify the type of records sought, or to attempt to reach a reasonable agreement about a response to a large request. Making a FOIA request is not an adversarial process, but we may need to discuss a request to ensure that we understand what records are being sought.

**To request records from BLANK Public Schools, direct your request to BLANK Public Schools' designated Freedom of Information Act Officer (FOIA Officer) who is responsible for serving as a point of contact for members of the public who wish to request public records. The Blank Public Schools FOIA Officer is:**

**INSERT NAME AND CONTACT INFORMATION FOR FOIA OFFICER**

In addition, the FOIA Advisory Council is available to answer questions about FOIA. The Council may be contacted by e-mail at [foiacouncil@dls.virginia.gov](mailto:foiacouncil@dls.virginia.gov) or by phone at (804) 225-3056 or 1-866-448-4100.

**BLANK Public Schools' Responsibilities in Responding to Your Request**

BLANK Public Schools must respond to a request within five working days of receiving it. "Day One" is considered the day after the request is received. The 5-day period does not include weekends or holidays.

The reason behind a request for public records from BLANK Public Schools is irrelevant and a requestor does not have to state why they want the records before we respond to the request. FOIA does, however, allow BLANK Public Schools to require a requestor to provide their name and legal address.

FOIA requires that BLANK Public Schools make one of the following responses to a request within the 5-day time period:

1. We provide the records requested in their entirety.
2. We withhold all of the records requested, because all of the records are subject to a specific statutory exemption or exemptions. If all of the records are being withheld, we must send a response in writing. That writing must identify the volume and subject matter of the records withheld and state the specific section(s) of the Code of Virginia that allows us to withhold the records.

3. We provide some of the records requested, but withhold other records. We cannot withhold an entire record if only a portion of it is subject to an exemption. In that instance, we may redact the portion of the record that may be withheld, and must provide the remainder of the record. We must provide the requestor a written response stating the specific section(s) of the Code of Virginia that allows portions of the requested records to be withheld.
4. We inform the requestor in writing that the requested records cannot be found or do not exist (we do not have the records requested). However, if we know that another public body has the requested records, we must include contact information for the other public body in our response.
5. If it is practically impossible for BLANK Public Schools to respond to the request within the 5-day period, we must state this in writing, explaining the conditions that make the response impossible. This will allow us 7 additional working days to respond to the request, giving us a total of 12 working days to respond to the request.

If a request is made for a very large number of records and we feel that we cannot provide the records within 12 working days without disrupting our other organizational responsibilities, we may petition the court for additional time to respond to the request. However, FOIA requires that we make a reasonable effort to reach an agreement with the requestor concerning the production of the records before we go to court to ask for more time.

#### **Costs**

BLANK Public Schools may make reasonable charges not to exceed its actual cost incurred in accessing, duplicating, supplying or searching for the requested records. BLANK Public Schools will not impose any extraneous, intermediary or surplus fees or expenses to recoup the general costs associated with creating or maintaining records or transacting the general business of the schools. Any duplicating fee charged by BLANK Public Schools will not exceed the actual cost of duplication. All charges for the supplying of requested records shall be estimated in advance at the request of the requestor as set forth in subsection Va. Code § 2.2-3704.F.

The requestor may have to pay for the records requested from the BLANK Public Schools. FOIA allows us to charge for the actual costs of responding to FOIA requests. This includes items like staff time spent searching for the requested records, copying costs or any other costs directly related to supplying the requested records. It does not include general overhead costs.

If we estimate that it will cost more than \$200 to respond to a request, we may require the requestor to pay a deposit, not to exceed the amount of the estimate, before proceeding with the request. The five days that we have to respond to the request does not include the time between when we ask for a deposit and when the requestor responds.

A requestor may request that we estimate in advance the charges for supplying the records requested. This will allow the requestor to know about any costs upfront, or give the requestor the opportunity to modify the request in an attempt to lower the estimated costs.

If a requestor owes us money from a previous FOIA request that has remained unpaid for more than 30 days, BLANK Public Schools may require payment of the past-due bill before it will respond to a new FOIA request.

### **Types of Records**

The following is a general description of the types of records held by BLANK Public Schools:

- Personnel records concerning employees and officials of BLANK Public Schools
- Scholastic records
- Business and finance records
- Operational records involving support departments such as Technology, Transportation, Facilities, Food Services, etc.
- Agendas, minutes and other records of the meetings of the School Board and committees appointed by the School Board (which are also available on the BLANK Public Schools website at \_\_\_\_\_)
- Records of contracts to which BLANK Public Schools is a party

### **Commonly Used Exemptions**

The Code of Virginia allows any public body to withhold certain records from public disclosure. BLANK Public Schools commonly withholds records subject to the following exemptions:

- Personnel records (§ 2.2-3705.1 (1) of the Code of Virginia)
- Records subject to attorney-client privilege (§ 2.2-3705.1 (2)) or attorney work product (§ 2.2-3705.1 (3))
- Vendor proprietary information (§ 2.2-3705.1 (6))
- Records relating to the negotiation and award of a contract, prior to a contract being awarded (§ 2.2-3705.1 (12))
- Records related to critical incident response (§ 2.2-3705.2 (14))
- Scholastic records (§ 2.2-3705.4(1) and 20 U.S.C. § 1232g)

### **Policy Regarding the Use of Exemptions**

The general policy of BLANK Public Schools is to invoke the personnel records exemption in those instances where it applies in order to protect the privacy of employees and officials of BLANK Public Schools.

The general policy of BLANK Public Schools is to invoke the contract negotiations exemption whenever it applies in order to protect BLANK Public Schools bargaining position and negotiating strategy.

The general policy of BLANK Public Schools is to invoke the scholastic records exemption in those instances where it applies in order to protect the privacy of students and comply with other state and federal laws governing the privacy of student records.

## REQUESTS FOR PUBLIC RECORDS

BLANK School Board is committed to full compliance with the Virginia Freedom of Information Act (FOIA) and processes all requests for public records in accordance with the following procedures.

\_\_\_\_\_ is (are) BLANK School Board's FOIA Officer(s).<sup>1</sup> The FOIA Officer(s) serve(s) as a point of contact for members of the public in requesting public records and coordinate(s) the school board's compliance with FOIA. The FOIA Officer(s) may be reached at \_\_\_\_\_.

### Access to Records

1. When practicable, the following records are available on request at the central office: **[SCHOOL BOARD SHALL INSERT LIST OF RECORDS AVAILABLE ON DEMAND--for example, most recent School Board meeting minutes]**.
2. Unless otherwise specified by the FOIA Officer, inspection of records takes place at the central office of BLANK School Board during its regular office hours and records are not removed from that site. Copies may be requested in lieu of or at the time of inspection, subject to the charges listed below. Nonexempt records maintained in an electronic database are produced in any tangible medium or format identified by the requester that is regularly used in the ordinary course of business by BLANK School Board, including posting the records on a website or delivering the records through an electronic mail address provided by the requester.
3. Requesters must provide their legal name and address and verification that the requester is a citizen of the Commonwealth, a representative of a newspaper or magazine with circulation in the Commonwealth, or a representative of a radio or television station broadcasting in or into the Commonwealth.
4. The FOIA Officer or designee is present during inspection or copying of records. A record of each inspection is made, using form KBA-F2 Record of Inspection and/or Delivery of Copies.

### Request Procedures

1. Requests for access to records shall be made with reasonable specificity.
2. Requests shall be directed to the BLANK Public Schools FOIA Officer at: **[INSERT ADDRESS (may be a street address, a post office box, or an e-mail address), TELEPHONE AND FAX NUMBER]**

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FOOTNOTES ARE FOR REFERENCE ONLY AND SHOULD BE REMOVED FROM FINAL POLICY

<sup>1</sup> Each school board must name one or more FOIA Officers. The name and contact information of the FOIA Officer(s) must be made available in a way reasonably calculated to provide notice to the public, including posting at the school board office, posting on the school board's website or including the information in school board publications.

3. Requesters should make their requests using Form KBA-F1 Request for Public Records. Requests received via telephone are transcribed onto Form KBA-F1 Request for Public Records by school board staff. Written requests other than on Form KBA-F1 Request for Public Records are appended to a copy of the form by staff, who fill out as much of the form as possible.
4. School board staff provide Form KBA-F1 Request for Public Records and a copy of this regulation upon request to any person interested in obtaining access to records, and shall instruct the requester to direct the request to the FOIA Officer. Telephone inquiries are redirected to the FOIA Officer. Any written requests received by building personnel are immediately forwarded to the FOIA Officer with a notation indicating the date and time the request was received.

### **Responding to Requests**

1. Promptly, but in all cases within five working days of receiving the request, the school division provides the requested records to the requester or makes one of the following responses in writing:
  - (a) The requested records are being entirely withheld. The response will identify with reasonable particularity the volume and subject matter of the withheld records, and, with respect to each category of withheld records, cite the specific Virginia Code section(s) or other law that authorizes the withholding of the records.
  - (b) The requested records are being provided in part and are being withheld in part. The response will identify with reasonable particularity the subject matter of the withheld portions and cite, with respect to each category of withheld records, the specific Virginia Code section(s) or other law which authorizes the withholding of the records.
  - (c) The requested records could not be found or do not exist. If the school division knows that another public body has the requested records, the response includes contact information for the other public body.
  - (d) It is not practically possible to provide the records or to determine whether they are available within the five-day period. Such response specifies the conditions which make a response impossible. If the response is made within five working days, one of the preceding responses is provided within an additional seven-day period.

No public record is withheld in its entirety on the grounds that some portion of the public record is excluded from disclosure by law. A public record may be withheld from disclosure in its entirety only to the extent that an exclusion from disclosure applies to the entire content of the public record. Otherwise, only those portions of the public record containing information subject to an exclusion may be withheld, and all portions of the public record that are not so excluded are disclosed.

The school division may petition the appropriate court for additional time to respond to a request for records when the request is for an extraordinary volume of records or requires an extraordinarily lengthy search and a response within the time outlined

above will prevent the school division from meeting its operational responsibilities. Before proceeding with the petition, the school division will make reasonable efforts to reach an agreement with the requester concerning the production of the records requested.

2. The five-day period begins on the first working day following the day the request is received by the school division. Any time that elapses between the time the requester is notified of an advance cost determination pursuant to the procedures detailed below and the time that the requester responds to that notice is not counted in calculating the five working days.

### Processing of Requests

1. The FOIA Officer, after receiving a request, promptly makes an initial determination as to whether the requested records will be provided to the requester, will be withheld, either completely or in part, or if it is practically impossible to provide the requested records or to determine whether they are available within five days.
2. If the FOIA Officer is unsure whether the requested documents should be provided to the requester, legal advice is promptly sought.
3. If the FOIA Officer is uncertain whether the requested records exist or where they may be located, efforts are promptly initiated to locate the records or determine whether they exist.
4. If the requested records will be made available either in whole or in part, the FOIA Officer promptly consults with School Board staff to determine the cost involved to assemble the records for inspection and copying. Where portions of individual records must be redacted prior to inspection and copying, the cost of doing this is taken into account. The following costs are charged at the rates indicated, not to exceed actual cost:
  - [SCHOOL BOARD SHALL FILL IN THE SCHEDULE BELOW WITH RATES NOT TO EXCEED ACTUAL COST. A RANGE OF RATES SHOULD BE INSERTED FOR STAFF MEMBER TIME]
  - Staff member search time, charged by the quarter hour. Depending on the staff member(s) involved in the search, rates of \_\_\_ to \_\_\_ per quarter hour may apply.
  - Computer search time, charged at the rate of \_\_\_ per quarter hour
  - Computer printouts, charged at the rate of \_\_\_ cents per page
  - Photocopies (including those necessary to perform redactions), charged at the rate of \_\_\_ cents per page.
  - Incidental out-of-pocket costs necessary to assemble the records (for example: phone, postage, or courier charges).
5. If the requester has asked for an advance determination of the cost, or if the cost is expected to exceed \$200, the requester shall be notified in advance of the cost associated with the request. If the cost of the request is determined to exceed \$200, the School Board may, before continuing to process the request, require the requester to agree to payment of a deposit not to exceed the amount of the advance determination. The deposit shall be credited toward the final cost of supplying the requested records. No further action shall be taken until the requester responds, and

the requester must agree to pay the estimated amount before any further processing of the request is performed.

6. Before processing a request for records, the FOIA Officer may require the requester to pay any amounts owed to the school board for previous requests for records that remain unpaid 30 days or more after billing.
7. If school division records have been transferred to any entity, including any other public body, for storage, maintenance or archiving, the school division remains the custodian of the records for purposes of responding to requests and is responsible for retrieving and supplying the records to the requester.
8. Any records to be disclosed are assembled for inspection and copying by school board staff, under the direction and supervision of the FOIA Officer.
9. School board staff are responsible for recording the date the request was received, verifying identification and recording and assembling additional information about the request as indicated on Form KBA-F1 Request for Public Records.

Adopted:

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Legal Ref.: Code of Virginia, 1950, as amended, §§ 2.2-3704, 2.2-3704.01, 2.2-3704.2.

Cross Ref.: KBA            Requests for Public Records

**REQUEST FOR PUBLIC RECORDS**

Name \_\_\_\_\_

Address \_\_\_\_\_

E-mail address \_\_\_\_\_

Phone \_\_\_\_\_

I am a (check one):

- Citizen of the Commonwealth of Virginia
- Member of the Press referenced in Va. Code §2.2-3704  
News Organization \_\_\_\_\_

Requesters may be asked to provide verification that they are citizens of the Commonwealth or a member of the press referenced in Va. Code § 2.2-3704.

<b>STAFF USE ONLY</b>
Date Request Received: _____
Request was made (check one)
<input type="checkbox"/> by requester on this form
<input type="checkbox"/> by telephone
<input type="checkbox"/> in writing other than on form (attach original request)
Date Response Sent: _____
(attach copy)
<input type="checkbox"/> Identification Verified
Type: _____
Number: _____
<input type="checkbox"/> Itemized Cost Estimate Attached

I am requesting access to the following records (please be as specific as possible, and attach additional paper if necessary) \_\_\_\_\_

Reasonable costs may be assessed in connection with this request. A current schedule of costs appears in Regulation KBA-R Requests for Public Records. If the costs associated with this request are expected to exceed \$200, the requestor will be asked to pay the estimated costs before the request is processed.

In addition, the requestor may ask for an advance determination of the cost of the request. Please indicate here if you would like an advance determination of cost.  
Yes \_\_\_ No \_\_\_

If you are requesting copies, please specify the format in which you would like to receive them. BLANK school division will provide the record(s) in the requested format if that medium is used by it in the regular course of its business.

Specify format desired (if available):

- Photocopies
- E-mail (give address): \_\_\_\_\_
- Website posting
- Other (please specify): \_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

**RETURN COMPLETED FORM TO:  
BLANK COUNTY PUBLIC SCHOOLS  
[INSERT FOIA OFFICER'S ADDRESS]**

**RECORD OF INSPECTION and/or  
DELIVERY OF COPIES**

**Inspection of Public Records**

Date \_\_\_\_\_ Time In \_\_\_\_\_ Time Out \_\_\_\_\_

Person Inspecting Records

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

Staff Person in Attendance

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

Records Reviewed (describe)

**Copies of Public Records**

<u>Record</u>	<u>No. Pages</u>	<u>Delivery Method</u> <u>(mail, e-mail,</u> <u>etc.)</u>	<u>Date of Delivery</u>	<u>Cost (if any)</u>	<u>Date and</u> <u>Method of</u> <u>Payment</u>
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Staff Person Providing Copies

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature