

# Berryville-Clarke County Joint Committee on Economic Development and Tourism



## January 28, 2022 Organizational Meeting Packet



# Berryville / Clarke County Joint Committee on Economic Development and Tourism

## Agenda

10:00 am, Friday, January 28, 2022

Meeting Room AB Berryville-Clarke County Government Center  
101 Chalmers Court, 2nd Floor, Berryville, Virginia

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Berryville-Clarke County Government Center  
101 Chalmers Court  
Berryville, VA 22611

# **Call to Order**

## Organizational Items

### - Elect 2022 Chair

Clerk will call for nominations for 2022 Chair.

→Action: Move to nominate and elect [Board of Supervisors Representative] to serve as 2022 Chair.

Clerk will call for a vote on the motion to nominate and elect.

Following vote, the meeting will be turned over to the newly-elected 2022 Chair.

### - Elect Vice Chair

Chair will call for nominations for the 2022 Vice Chair.

→Action: Move to nominate and elect [Town Council Representative] to serve as 2022 Vice Chair.

Chair will call for vote on the motion to nominate and elect the 2022 Vice Chair.

### - Set Meeting Dates, Time, and Location

Proposed 2022 Meeting Schedule on next page.

→Action: Move to adopt the schedule as presented or corrected with specific changes noted.



## Berryville-Clarke County Joint Committee on Economic Development and Tourism

### 2022 Meeting Schedule

Fourth Friday, 10:00 am, Main Meeting Room

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- January 28, 2022 – Organizational Meeting
  
- March 25
  
- May 27
  
- July 22
  
- September 23
  
- November 17
  
- January 27, 2023 – Organizational Meeting

# **Adoption of Agenda**

Proposed motion: Move to adopt agenda [as presented] or [as amended – title of agenda items not listed on the published agenda provided to the public.]

# **Approval of Minutes**

## **September 24, 2021, Regular Meeting**

Proposed Motion: I move to approve the minutes of September 24,  
2021, [as presented] or [as amended, citing specific amendment].

Berryville Clarke County Joint Committee on Economic Development & Tourism  
September 24, 2021                      Regular Meeting                      10:00 am

At a regular meeting of the Berryville Clarke County Joint Committee on Economic Development & Tourism held on Friday, September 24, 2021, at 10:00 am in the Main Meeting Room, Berryville Clarke County Government Center, 101 Chalmers Court, 2nd Floor, Berryville, Virginia.

Members Present:    Jay Arnold, Doug Lawrence, David Weiss

Members Absent:    Kara Rodriquez

Staff Present:        Chris Boies, Christy Dunkle, Felicia Hart, Cathy Kuehner, Brianna Taylor

Others Present:     Mary Ivie

Press Present:        None

**1. Call to Order**

At 10:05 am, Jay Arnold called the meeting to order.

**2. Adoption of Agenda**

**David Weiss, seconded by Doug Lawrence, moved to approve the agenda as presented. The motion carried by the following vote:**

Jay Arnold	-	Aye
Doug Lawrence	-	Aye
Kara Rodriquez	-	Absent
David Weiss	-	Aye

**3. Approval of Minutes: July 16, 2021, Regular Meeting**

**David Weiss, seconded by Doug Lawrence, moved to approve the July 16, 2021 minutes as presented. The motion carried by the following vote:**

Jay Arnold	-	Aye
Doug Lawrence	-	Aye
Kara Rodriquez	-	Absent
David Weiss	-	Aye



#### 4. 2021-2022 Goals & Priorities

Jay Arnold and David Weiss questioned if there was a method of who is doing what, or is it all Felicia Hart? Felicia Hart explained that this is what I would like to start working on; if I need assistance, I will go to Chris Boies and also reach out to see where we can get additional resources.

Jay Arnold stated that many are in the works and explained that things could change if need be. Felicia Hart explained that things change all of the time.

Doug Lawrence stated that it has been nice to have Felicia Hart report quarterly to the Board of Supervisors; could you start doing that for Town Council as well? Felicia Hart explained that that would not be an issue; it is an excellent way to help the citizens and business owners know what is happening. Jay Arnold conveyed that this packet has been sent to the Town Council each time so the Council can read through it and see what is happening.

**Doug Lawrence, seconded by David Weiss, moved to approve the 2021-2022 Goals & Priorities as presented. The motion carried by the following vote:**

Jay Arnold	-	Aye
Doug Lawrence	-	Aye
Kara Rodriguez	-	Absent
David Weiss	-	Aye

#### 5. Economic Development & Tourism Update

Felicia Hart gave the following report:

##### Goals

- 1) Convene group of hospitality owners/operators
  - I keep in touch with them as needed to understand what their reality is.
- 2) Engage stakeholders on the feasibility of a hotel in Berryville (this would include owners/operators in the region)
  - Work in progress – COVID major consideration right now.
    - o Talked with a company recently about this – but they come into a locality and look for local financiers and then build.
    - o In talking with other localities, a majority of the hotels are still having difficulty hiring front line staff – for many, it’s almost a self-serve mentality when you check in.
    - o Locally, the occupancy rate is dropping right now because of cancellations.
    - o Some local hotels are competing against the Airbnb’s and short-term rentals.

- 3) Continue efforts on small business attraction, retention and expansion (seminars, promotion, assistance). I have also expanded this to include workforce initiatives and expansion.
  - We have brought in Virginia Career Works, the Virginia Employment Commission and other local and state agencies as needed for networking.
  - Working regionally regarding the Worlds of Work!, Workforce Initiative and programs Clarke County schools are currently involved in.
  - We continue to work with the schools in making introductions for local businesses and the students.
  - See attachment in the packet from Christine Kriz – Lord Fairfax Small Business Development Center.
- 4) Engage in a dialogue with property owners of vacant buildings and the developable land to spur economic activity.
  - Ongoing.
  - I continue to review weekly.
  - Merke property has sold – LVG will be building a warehouse to double the size of their existing space on Station Road.
    - Christy Dunkle explained that they are looking at having three (3) warehouse buildings. Met with them a few weeks ago, anticipate them to submit to Berryville Area Development Authority (BADA) in October; the issue is that they have not met with DEQ yet; they have all of the contacts now. She added that the BADA does not do things conditionally so need everything in place. Further added that they do have a good site plan. Doug Lawrence asked, and Christy Dunkle responded that there is a buffer between commercial property and residential.
    - There was discussion on the lights throughout the Business Park.
  - Spoke with several property owners recently regarding the Brownfield grant.
    - Initially, this was going to be a regional grant with Winchester, Frederick, and Clarke, looking for older properties that may have had some chemical spills, former gas stations, etc. However, the State has changed the rules; it is no longer a coalition grant, now each County has to apply individually. Therefore, Clarke County and Frederick County are dropping out.
    - It was a good opportunity for me; I got to talk to twelve (12) properties owners directly and discuss their needs, and I will look for ways to assist in the future.
  - In talks with some to utilize their front window space for marketing/promotion of Main Street in partnership with Berryville Main Street and the Barns.
  - A new restaurant is coming to Berryville, called Homespun; I have had good conversations with the owner, who is a partner in Smithfield Farm. Hope to be open by the end of October.
  - Working with Battletown Pharmacy, they are closing, so helping them with that process.
- 5) Evaluate what is needed to make the Berryville Main Street (BMS) program viable and successful – report back to Joint Committee on recommendation.

- They have a new president – Michelle Marino with Edward Jones. Very positive meetings.
- Have developed regular joint meetings with Berryville Main Street (BMS), The Barns and Clarke County. Many new programs are in the works including quarterly Meet/Greet meetings for new citizens; regular meetings with local businesses; BMS will be expanding their marketing to include businesses in the County; Business Spotlight enhancement program; welcome bags for new citizens; and we’re working directly with the Ruritans to develop relationships with those organizations/ groups renting the fairgrounds; rack and coupon cards; and Dinner and a Show program at the Barns; a cohesive holiday program with several events tied together; enhanced social media blitz with all three parties; Clarke County will also be working directly with these two outlets to better address quick turnaround needs from VTC and other news outlets wanting information directly on local businesses.
  - Working on brochures for people who have an event at the Ruritan fairground; to give them resources and contact information. For example, this weekend is the Shenandoah Valley Fiber Festival; I have spoken with the person putting that event on and found out that she could have used some help from local businesses, but at the time, she did not know how to make the connection. This piece will help in that aspect; people will be able to contact me, and I will coordinate with Berryville Main Street, Barns of Rose Hill, etc.
- 6) Formalize website and social media strategies for economic development.
  - Work in progress regarding updates.
  - New website is in design works – will better enable us to post immediately and provide more pertinent information for those who use it.
- 7) Establish relationships, and provide training for, realtors in the area.
  - In regular conversations with Blue Ridge Association of Realtors (BRAR) ED Nancy Silva.
  - Made introductions with ED and Clarke County High School officials as partnership for teaching students.
  - Made BRAR aware of new Waterloo water/sewer program and the potential at Double Tollgate.
  - Continue meeting one-on-one with realtors to learn of speedbumps /issues/ concerns.
  - Continue to offer my assistance for those dealing with properties in Clarke County.
- 8) Develop and implement an incentive program using the CARES funding.
  - Program completed.
  - New funds are available through the American Rescue Plan. We are currently trying to understand how these new funds can be used, and when.

Other projects:

Economic Development

- Continue having broadband meetings/updates/phone calls. We are looking at opportunities to use the new American Rescue Plan funds – update on the VATI grant with a partnership with All Points Broadband.

- Have been pushing the Return to Earn grant program that reimburses companies (up to \$500) for sign-on bonuses. This is a program through the Governor’s office.
- Will be producing a “Welcome” piece for Ruritans to hand out to officials who are renting/leasing fairground space. Handout will provide my contact information and give ideas on ways that we can assist them in getting the word out about their upcoming programs and we can make introductions with local companies they would need services/products from.
- We are still working with the Virginia Health Department; we are coordinating with local businesses to schedule on-site vaccines.
  - This is a no-cost program that allows the Health Department to schedule on-site (at the businesses) vaccines for all their employees. This will help to eliminate manufacturing down time while at the same time vaccinating more people.
- I continue to have regular update meetings with representatives from our local Department of Social Services to make them aware of several local programs and organizations for partnership opportunities.
- I continue to make introductions for companies like Casey Trees who has an immediate hiring need. Introductions include Clarke County High School, Top of Virginia Chamber, Christine Kriz at Lord Fairfax Small Business Development Center (LFSBDC), United Way, and numerous local and state agencies.
- Have monthly phone calls with representatives of the Virginia Economic Developers Association (VEDA). We continue to update them on current realty of Clarke County and regionally.
- Continue to utilize Christine Kriz from the Lord Fairfax Small Business Development Center.
- Regionally (Winchester, Frederick County, Clarke County) we had a meeting with Draper Aden regarding the EPA Community-Wide Brownfields Coalition Grant.
  - This is a new opportunity grant program Clarke County agreed to participate in. The program will allow us to work with any property owner who is in need of an environmental site assessment in order to sell their property. This is especially pertinent for any older farms who may have used any chemicals or pesticides. This is a no cost program to the property owner or Clarke County. The program has a total value of \$600,000 with no match required.
- Regionally participating in the Startup Shenandoah Valley program. This program works with businesses to identify and address their risks while scaling up.
- Continue to meet regularly with Christy Dunkle for updates/catch up.
- I continue to meet regularly with Clarke County’s Planning and Zoning Directors for updates/catch ups.
- I continue to regularly post upcoming events (training, meetings, etc.) on the Economic Facebook page. I also post about opportunities such as free visits from the Health Department
- Work/talk continues on both the Waterloo and the Double Tollgate areas. Clarke County is still awaiting final vote from Frederick County regarding our water/sewer request.

- Continue hosting weekly meetings with Frederick County and City of Winchester EDAs. Also part of the group is Christine Kriz with Lord Fairfax Small Business Development Center and Cynthia Snyder with the Top of Virginia Chamber.
- Regionally we are part of the Small Business Resiliency Team program as part of the GOVirginia – this is in partnership with Lord Fairfax Small Business Development Center. This program assists small businesses with marketing, financial guidance, creation of an e-commerce website and accounting software.

#### Tourism

- Continue to write blogs for state, regional and local use – making it seasonal right now.
- Continue conversations with our local farmers/farm markets about needs and opportunities.
- I continue to post regular updates on the Tourism Facebook page highlighting upcoming events, places to visit and things to do.
- Expanded blog opportunities listings with the Shenandoah Valley Tourism Partnership (SVTP) and the Shenandoah Valley Travel Association (SVTA).
- Evaluating additional signage at the fairgrounds to showcase more of what Clarke County/ Berryville have to offer.
  - Have a meeting scheduled for next week with iHeart Radio to discuss potential geofencing/tracking so we can tell when people from out of town are coming into the area and where they are going. When they come into the area, they will receive a notice on their phone welcoming them to Clarke County and have links and information.
  - Look at producing QR Codes of the local map to post throughout the fairgrounds to inform people of the restaurants, lodging, etc.
- Continue to update the Virginia Tourism Corporation (VTC) website regarding Clarke County and our assets/businesses.
- Have talked with Berryville Main Street and the Barns about utilizing some of our blogs.
- We have also been in discussion with them about a potential mural campaign around town.
- Discussion is also happening about a potential LOVEWorks program.

Doug Lawrence questioned if staff could look into how other localities do the sales tax for events when a vendor lives out of town; the products are sold in the County, but the vendor reports them based on where their business is. Chris Boies stated that he believes that legally it is the point of sale, so it is supposed to stay within the County it is sold.

Jay Arnold stated that the Town is looking at the taxing of food trucks; if they get a Town and County license, the tax should be collected appropriately; if they are in the Town, the tax should go to the Town, and if they are in the County than tax should go to the County. Jay Arnold asked if the County gets meals tax for the food vendors at the fairgrounds? Chris Boies stated that the County meals tax does apply to the vendors at the Ruritans;

the County ordinance exempts non-profits, so the Ruritan themselves are exempt. The County ordinance also includes food trucks.

Felicia Hart thanked Jay Arnold for all of his help regarding Berryville Main Street and the Barns of Rose Hill. Jay Arnold stated that he is glad to see the coordination between her, Berryville Main Street, and the Barns of Rose Hill. David Weiss expressed that utilizing all of those groups helps everyone out. Felicia Hart commented that it broadens the audience.

Doug Lawrence asked if staff could make a brochure for antiques included in the welcome package. Felicia Hart stated that Berryville Main Street, Barns of Rose Hill, and herself are working on the different rack cards, planning on doing quarterly meet and greets at the Barns for Town and County businesses and new residents; will help citizens get more information. She added that this would be a learning curve, so they will continue to look for opportunities to expand and add items throughout over time. Doug Lawrence asked, and Felicia Hart responded that to identify new residents, she will use the land deeds and work with Christy Dunkle to get information and get them a welcome bag.

## 6. Next Meeting

Staff proposed to change the regularly scheduled Friday, November 19, meeting to Thursday, November 18, at 10:00 am

*By consensus, the committee agreed to move the regularly scheduled meeting to Thursday, November 18, 2021, at 10:00 am.*

Christy Dunkle stated that she had met with the new owner of the Battletown Inn. The owners own Lockes Store; they are looking to finish Battletown Inn with nine (9) rooms and get the restaurant up and running, similar to what it was years ago. Working on getting it all done by the spring.

## Adjournment

**David Weiss, seconded by Doug Lawrence, moved to adjourn the meeting. The motion carried by the following vote:**

Jay Arnold	-	Aye
Doug Lawrence	-	Aye
Kara Rodriguez	-	Absent
David Weiss	-	Aye

At 10:32 pm, Jay Arnold adjourned the meeting.

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Minutes Recorded & Transcribed by Brianna R. Taylor

**Priorities:**

*approved September 2021*

- 1) Complete redo of the Economic Development website
- 2) Set up quarterly meetings with the Berryville Main Street President and Barns of Rose Hill Director to discuss/work out
  - a. Partnership opportunities
  - b. Cross promotion of events (at the fair grounds and in the community)
  - c. Ways to gather data from our visitors
  - d. How they provide additional support to a broader business base
  - e. Ways to enhance the visitors' experience while at the Barns of Rose Hill
  - f. Regular Meet/Greet with businesses and another for new residents
- 3) Enhance our regional participation and opportunities with groups like
  - a. Economic Coalition of the Northern Shenandoah Valley
  - b. Shenandoah Valley Travel Association
  - c. Shenandoah Valley Tourism Partnership
  - d. Shenandoah Spirits Trail
  - e. Virginia Economic Development Authority (VEDA)
  - f. Virginia Economic Development Partnership (VEDP)
- 4) Manage and maintain websites and social media highlighting Clarke County. This includes blog posts, stories and photography for sites including
  - a. YesClarkeCounty
  - b. Clarke Tourism
  - c. Clarke Connect
  - d. Virginia Tourism Commission
  - e. Shenandoah Valley Tourism Partnership
  - f. Shenandoah Valley Travel Association (2 sites)
  - g. Shenandoah Spirits Trail
  - h. Virginia Economic Development Authority (VEDA), and
  - i. Virginia Economic Development Partnership
- 5) Enhance relationships between County/Town departments to more easily share information –
  - a. New business licenses
  - b. Current business licenses
  - c. Potential rezoning requests
- 6) Work with businesses to highlight employment and training opportunities. This could include
  - a. Social media listings/shares
  - b. Virtual Job Fair opportunities
  - c. Listings on the Virginia Employment Commission site
  - d. Listings on the Top of Virginia Job Opportunities site,
  - e. Introduction to the workforce training at Clarke County Schools, and
  - f. Any other outlets as needed/determined
- 7) Continuation of
  - a. Engaging stakeholders on potential hotel in Berryville
  - b. Continue efforts on business attraction, retention and growth – to include
    - i. Assistance

- ii. Promotions
- iii. Training and any needed support
- iv. Potential co-op space
- c. Continue dialogue with property owners of vacant properties and developable land
- d. Continue relationship with Blue Ridge Association of Realtors

## **Other projects:**

### **Economic Development**

Broadband – Our VATI grant for universal broadband coverage in Clarke County was approved by the State. Now we are waiting on the MOU from them in order to better plan for next steps and overall timeline.

We continue to work one-on-one with the Lord Fairfax Small Business Development Center. Numerous (9) local business introductions have been made to which the LFSBDC has immediately followed up with.

Met with the owner of the LGV group and his property manager. I've since made numerous introductions including local businesses, local realtors, EDAs in Winchester and Frederick County, along with introductions to the Lord Fairfax Small Business Development Center and to both the Virginia Economic Development Partnership (VEDP) and the Virginia Economic Developers Association (VEDA). I continue to have regular conversations with all entities.

We are developing an Agritourism summit in partnership with Winchester/Frederick County to bring our local farmers together for a meet/greet. At this conference we will be discussing their needs (local/state) to better determine how we can be of assistance to them. We have already reached out to the leadership of the Clarke County Farmer's Market to participate. We are looking at a meeting at the end of February that will be hosted here in Clarke County at the Ruritan grounds.

Have reached out to the group who purchased the Battletown Inn to see if I can be of assistance.

We continue to work closely with the Clarke County Farmer's Market to not only help promote their events, but to also assist them with regional/state/federal events and potential fundings for their members.

Continue to plan the new Economic Development website. I am still researching resources from fellow EDA's, the State's EDA site and other potential resources.

We continue to work closely with local realtors to get a heads up of properties that will be coming on the market soon. This allows us to work one on one with them and make introductions to appropriate business owners.

We have made several introductions to property owners in the Waterloo area. These introductions are from realtors/businesses outside our area who are looking at potential properties.



Clarke County will be represented again in the upcoming Widget Cup. This is a partnership between EDAs and the school systems in Winchester and Frederick and Clarke Counties. Clarke County currently holds the title.

We are already working on the Economic Development Advisory Committee Spring Tour.

I, along with the EDA Directors for Winchester and Frederick County presented to the Top of Virginia Chamber's Leadership class. Discussion was on economic development and tourism.

Clarke County Economic Development was represented at the Employer Expo hosted in Winchester at the War Memorial Building. In addition to serving on the planning committee, Clarke County had two local businesses host recruiting tables at the event. Wrap up and planning for our next Expo is already in the works.

Have met with the owner of Clarke Monthly to see how we can better collaborate on getting the word out about new programs/projects Clarke County is participating in, and opportunities for our Clarke County citizens. Opportunities like the Habitat Home Repair program are out there – we just need to help get the word out.

We continue to push the "Return to Earn" grant program that reimburses companies (up to \$500) for sign-on bonuses. This is a program through the Governor's office.

We continue to make introductions for local companies who have an immediate hiring need. Introductions include Clarke County High School, Top of Virginia Chamber, Christine Kriz at Lord Fairfax Small Business Development Center, United Way, and numerous local and state agencies.

We continue to have monthly phone calls with representatives of the Virginia Economic Developers Association (VEDA).

Continue to meet with Christy Dunkle for updates/catch up.

Continue to meet regularly with Clarke County's Planning and Zoning Directors for updates.

I continue to regularly post upcoming events (training, meetings, etc.) on the Economic Facebook page.

Work/talk continues regarding the water/sewer subsidiary program offered in the Waterloo area. I have made a presentation at the Blue Ridge Association of Realtors, have made other regional associations aware and continue to talk with local property owners in the area about this. After a call from a local realtor, Chris and I met and talked with the Sanitary Authority about our fees and how they are determined.

Work/talk continues on sewer/water in the Double Tollgate area from Frederick Water. Chris Boise has been regularly meeting with them to discuss next steps.

I continue to work directly with Shaine Coleman from Clarke County High School to make introductions to our local businesses. This includes working to find potential jobs in our area, and also allows the students to "shadow" an employee to determine if they really are interested in that profession.

I continue hosting weekly meetings with Frederick County and City of Winchester EDAs. Also part of the group is Christine Kriz with Lord Fairfax Small Business Development Center and Cynthia Snyder with the Top of Virginia Chamber.

I want to personally thank Winchester, Frederick and Shenandoah County for taking the lead on a new “talent website.” I am currently updating information for Clarke County to this new site. This site provides an overview of our area and the quality of life that we offer.

I continue to push the Small Business Resiliency Team regional program as part of the GOVirginia – this is in partnership with Lord Fairfax Small Business Development Center. This program assists small businesses with access to free marketing, financial guidance, creation of an e-commerce website and accounting software.

## **Tourism**

Being aware of the disconnect between what is going on at the fairgrounds and what our local businesses know – and do not know – we have developed new relationships. I have joined the Ruritans to help bridge this gap. A “Welcome” piece for Ruritans to hand out to organizations who are renting/leasing fairground space is being produced. This handout will provide my contact information and give ideas on ways that we can assist them in not only promoting their event, but making introductions to local businesses who can be of assistance to them.

- Lucketts Market is already committed to two events this year – one in May and one in October.
- We can provide them links to “Places to Stay” and “Things to Do” while their vendors and attendees are here – and share any specials or discounts, local businesses would like to offer.
- We are looking at additional signage opportunities at the fairgrounds to remind attendees of our Main Street and what else Clarke County has to offer.

Continue to write blogs for state, regional and local use.

As mentioned earlier, we will be hosting an Agritourism Summit here in Clarke County at the end of February. This is a partnership with Winchester/Frederick County and all farmers/farm markets will be invited.

We are promoting the fairgrounds as a place that can be rented for outdoor/indoor events. We are targeting the Northern Virginia area to help promote this space – especially with COVID restrictions.

Continue conversations with our local farmers/farm markets about needs and opportunities and we continue to promote them regionally.

We continue to post regular updates on the Tourism Facebook page highlighting upcoming events, places to visit and things to do.

Clarke County hosted space at the Virginia Welcome Center in Clear Brook, VA for the month of December. In addition to the Clarke County marketing, numerous non-profits also had displays. This marketing allows Clarke County to get in front of over 40,000 visitors.

We have expanded blog opportunities listings with the Shenandoah Valley Tourism Partnership (SVTP) and the Shenandoah Valley Travel Association (SVTA) and are sharing these with the Virginia Tourism Corporation (VTC).

Distribution of the ARPA funds through the Virginia Tourism Corporation are in the works. Discussions about new rack cards, ways to promote/improve the experience at the Clarke County Visitors Center and additional signage at the fairgrounds are topics of discussion.

We are working closely with local photographers to share their talents/images on our Tourism website and through our social media.

I would like to (again) acknowledge the new partnership between the Berryville Main Street Program and the Barns of Rose Hill. This partnership provides:

- An opportunity for Clarke County, Berryville Main Street and the Barns to reach a broader audience to disseminate information in a timelier manner.
- We already hosted our first quarterly Meet/Greets (two meetings) and had wonderful turnouts at both events.
- We will start hosting quarterly Meet/Greet for new residents of Berryville and Clarke County. Our first event will be April 11<sup>th</sup> at the Barns of Rose Hill. This will give us an opportunity to help new residents understand the Town vs the County and what services are provided by each, introductions to our local non-profits and volunteer opportunities here in Clarke County, handouts from local businesses/organizations, and an opportunity for new residents to ask questions.
- We have developed a social media calendar with all the national holidays and “national days.” This will allow us to plan marketing around specific events. Marketing would include our three entities and local businesses and organizations to allow for an even greater audience reach.
- We are producing Welcome Bags with information about the Town/County, coupons/ brochures from local businesses, information about local non-profits.
- We continue the conversation about a mural program here in the Town/County. We could become part of the Appalachian Mural Trail program that would give us an even broader audience.
- We continue to explore the opportunity to become a WonderLOVE community through the Virginia Tourism Corporation. This statewide program that would give us another targeted audience.
- The Barns just hosted their first “Dinner and a Show” event that was sold out. If an attendee provided a receipt from a local restaurant for dinner, they get a reduced rate to attend the show. We will continue to push social media between the three of us to help get the word out. Additional marketing opportunities are being explored.
- We will be looking at the production of a new rack card incorporating businesses in the Town and the County and possible coupon card.

- Berryville Main Street will be producing their own website. This will enable the 3 organizations to share more information, provide links to each other's site and provide a more cohesive message to not only our community, but to our visitors as well.
- We continue exploring ways to host a "Community Calendar" on the Berryville Main Street's website.
- Work is in progress to develop a "Local Love" program/campaign
- 

Questions?



## Berryville-Clarke County Joint Committee on Economic Development and Tourism

### 2022 Meeting Schedule

Fourth Friday, 10:00 am, Main Meeting Room

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- January 28, 2022 – Organizational Meeting
  
- March 25
  
- May 27
  
- July 22
  
- September 23
  
- November 17
  
- January 27, 2023 – Organizational Meeting

# Adjourn

## **Reports in Packet:**

- Memorandum of Understanding between Berryville and Clarke County
  
- 2021-2022 Established Goals
  
- Annual Distribution
  - Title 2.2. Administration of Government, Chapter 37. Virginia Freedom of Information Act
  
  - Title 42.1. Libraries, Chapter 7. Virginia Public Records Act

**Memorandum of Understanding (MOU)  
Between The Town of Berryville and Clarke County  
Regarding Economic Development and Tourism**

**WHEREAS**, the Town of Berryville and Clarke County have previously entered into a MOU regarding economic development and tourism and now wish to update that document; and

**WHEREAS**, the Town of Berryville and Clarke County over the past four decades have worked cooperatively to promote a unique and highly successful land use philosophy that focuses growth and development within the Town while preserving the County's natural, historical, and agricultural resources; and

**WHEREAS**, the County's small land area, close proximity to four surrounding urban growth areas, and limited access to public water and sewer capacity make the sharing of Economic Development resources a necessity; and

**WHEREAS**, the future of economic development – including business, retail, industry, agriculture, and Tourism – in Clarke County is dependent upon effective collaboration and cooperation between the Town and County;

**AND WHEREAS**, the Town and the County recognize that combining resources and creating unified points of contact for Economic Development and Tourism will enable our communities to more efficiently address the needs of new and existing businesses, streamline regulations and regulatory processes, and more effectively market our unique assets.

**NOW THEREFORE, BE IT RESOLVED THAT** the Town of Berryville and Clarke County agree to work cooperatively to implement the following action items:

1. **Joint Management of Economic Development and Tourism.** The Town and County shall jointly manage the Economic Development and Tourism efforts in Clarke County and the Town of Berryville on an ongoing basis.
2. **Single Points of Contact for Economic Development and Tourism.** Both the Town and County agree that it would be best if the business community dealt with a single point of contact for Economic Development and Tourism. The point of contact will be the Clarke County Director of Economic Development & Tourism. The Town Director of Community Development will serve as the primary liaison to the County Director of Economic Development & Tourism for economic and tourism activities in the Town.
3. **Joint Committee for Economic Development and Tourism.** The Berryville/Clarke County Joint Committee for Economic Development and Tourism shall consist of two members of the Board of Supervisors and two members of the Town Council. The Committee shall elect a Chair and Vice Chair annually, rotating between the Town and County. For example, when the Chair position is held by an elected representative of the Town, the Vice Chair position shall be held by an elected official of the County. In the following year the Chair position would be held by an elected official of the County and the Vice Chair position held by an elected official of the Town. The Committee shall





**Priorities:**

*approved September 2021*

- 1) Complete redo of the Economic Development website
- 2) Set up quarterly meetings with the Berryville Main Street President and Barns of Rose Hill Director to discuss/work out
  - a. Partnership opportunities
  - b. Cross promotion of events (at the fair grounds and in the community)
  - c. Ways to gather data from our visitors
  - d. How they provide additional support to a broader business base
  - e. Ways to enhance the visitors' experience while at the Barns of Rose Hill
  - f. Regular Meet/Greet with businesses and another for new residents
- 3) Enhance our regional participation and opportunities with groups like
  - a. Economic Coalition of the Northern Shenandoah Valley
  - b. Shenandoah Valley Travel Association
  - c. Shenandoah Valley Tourism Partnership
  - d. Shenandoah Spirits Trail
  - e. Virginia Economic Development Authority (VEDA)
  - f. Virginia Economic Development Partnership (VEDP)
- 4) Manage and maintain websites and social media highlighting Clarke County. This includes blog posts, stories and photography for sites including
  - a. YesClarkeCounty
  - b. Clarke Tourism
  - c. Clarke Connect
  - d. Virginia Tourism Commission
  - e. Shenandoah Valley Tourism Partnership
  - f. Shenandoah Valley Travel Association (2 sites)
  - g. Shenandoah Spirits Trail
  - h. Virginia Economic Development Authority (VEDA), and
  - i. Virginia Economic Development Partnership
- 5) Enhance relationships between County/Town departments to more easily share information –
  - a. New business licenses
  - b. Current business licenses
  - c. Potential rezoning requests
- 6) Work with businesses to highlight employment and training opportunities. This could include
  - a. Social media listings/shares
  - b. Virtual Job Fair opportunities
  - c. Listings on the Virginia Employment Commission site
  - d. Listings on the Top of Virginia Job Opportunities site,
  - e. Introduction to the workforce training at Clarke County Schools, and
  - f. Any other outlets as needed/determined
- 7) Continuation of
  - a. Engaging stakeholders on potential hotel in Berryville
  - b. Continue efforts on business attraction, retention and growth – to include
    - i. Assistance
    - ii. Promotions
    - iii. Training and any needed support
    - iv. Potential co-op space
  - c. Continue dialogue with property owners of vacant properties and developable land
  - d. Continue relationship with Blue Ridge Association of Realtors

Code of Virginia  
Title 2.2. Administration of Government  
Subtitle II. Administration of State Government  
Part B. Transaction of Public Business  
Chapter 37. Virginia Freedom of Information Act

**§ 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.

1968, c. 479, § 2.1-340; 1976, c. 467, § 2.1-340.1; 1989, c. 358; 1990, c. 538; 1999, cc. [703](#), [726](#); 2001, c. [844](#); 2002, c. [393](#).

**§ 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 (§ 38.2-5000 et 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-

336 et seq.).

1968, c. 479, § 2.1-341; 1970, c. 456; 1974, c. 332; 1975, c. 307; 1977, c. 677; 1978, cc. 573, 826; 1979, cc. 369, 687; 1980, c. 754; 1984, c. 252; 1989, c. 358; 1990, c. 538; 1993, cc. 270, 720; 1994, cc. 845, 931; 1996, c. 609; 1997, c. 641; 1999, cc. 703, 726; 2001, c. 844; 2002, c. 393; 2003, c. 897; 2007, c. 945; 2008, cc. 233, 789; 2010, c. 706; 2011, c. 242; 2015, cc. 131, 195, 224; 2016, cc. 620, 716; 2017, cc. 616, 778; 2018, cc. 54, 55; 2019, c. 358.

### **§ 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.

1976, c. 467, § 2.1-341.1; 1999, cc. 703, 726; 2001, c. 844; 2002, c. 393.

### **§ 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 (§ 30-178 et 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 (§ 53.1-261 et seq.) or (ii) civilly committed pursuant to the Sexually Violent Predators Act (§ 37.2-900 et 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.

1999, cc. 703, 726, § 2.1-341.2; 2001, c. 844; 2003, cc. 989, 1018; 2004, cc. 398, 690; 2007, cc. 438, 548, 626; 2017, c. 620; 2018, cc. 127, 584; 2019, c. 729.

#### **§ 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.

2014, c. 319.

#### **§ 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 (§ 42.1-76 et 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.

1968, c. 479, § 2.1-342; 1973, c. 461; 1974, c. 332; 1975, cc. 307, 312; 1976, cc. 640, 709; 1977, c. 677; 1978, c. 810; 1979, cc. 682, 684, 686, 689; 1980, cc. 678, 754; 1981, cc. 456, 464, 466, 589; 1982, cc. 225, 449, 452, 560, 635; 1983, cc. 372, 462, 607; 1984, cc. 85, 395, 433, 513, 532; 1985, cc. 81, 155, 502, 618; 1986, cc. 273, 291, 383, 469, 592; 1987, cc. 401, 491, 581; 1988, cc. 39, 151,



395, 411, 891, 902; 1989, cc. 56, 358, 478; 1990, cc. 217, 538, 721, 819, 968; 1991, cc. 213, 561; 1992, cc. 40, 150, 167, 200, 203, 207, 593, 612; 1993, cc. 205, 270, 296, 537, 552, 638, 750, 883; 1994, cc. 485, 532, 606, 839, 853, 918; 1995, cc. 299, 362, 499, 562, 638, 722, 812, 837; 1996, cc. 168, 469, 589, 599, 783, 786, 794, 855, 862, 902, 905, 1001, 1046; 1997, cc. 198, 295, 439, 567, 636, 641, 777, 782, 785, 838, 861; 1998, cc. 427, 891; 1999, cc. 438, 703, 726; 2001, c. 844; 2002, cc. 715, 830; 2003, cc. 275, 981, 1021; 2007, c. 439; 2009, c. 626; 2010, c. 627; 2011, c. 604; 2016, cc. 620, 716; 2017, c. 778; 2020, c. 1142; 2021, Sp. Sess. I, c. 483.

**§ 2.2-3704.01. Records containing both excluded and nonexcluded 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.

2016, cc. 620, 716.

**§ 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 § 2.2-3704.2 to (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.

2004, c. 730;2009, c. 626;2014, c. 421;2016, c. 748;2017, cc. 645, 778.

### **§ 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.

2016, c. 748;2017, cc. 290, 778;2020, c. 1141.

### **§ 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 (§ 15.2-4900 et 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.

2019, c. 531;2020, cc. 76, 80, 904.

### **§ 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 (§ 2.2-3800 et 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 (§ 2.2-1832 et 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.

1999, cc. 485, 518, 703, 726, 793, 849, 852, 867, 868, 881, § 2.1-342.01; 2000, cc. 66, 237, 382, 400, 430, 583, 589, 592, 594, 618, 632, 657, 720, 932, 933, 947, 1006, 1064; 2001, cc. 288, 518, 844, § 2.2-3705; 2002, cc. 87, 155, 242, 393, 478, 481, 499, 522, 571, 572, 633, 655, 715, 798, 830; 2003, cc. 274, 307, 327, 332, 358, 704, 801, 884, 891, 893, 897, 968; 2004, c. 690; 2010, c. 553; 2016, cc. 620, 716, 729; 2017, cc. 140, 778; 2021, Sp. Sess. I, c. 484.

### **§ 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 (§ 56-484.12 et 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,

paggers, 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 (§ 32.1-123 et 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 antiterrorism, 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.

1999, cc. 485, 518, 703, 726, 793, 849, 852, 867, 868, 881, § 2.1-342.01; 2000, cc. 66, 237, 382, 400, 430, 583, 589, 592, 594, 618, 632, 657, 720, 932, 933, 947, 1006, 1064; 2001, cc. 288, 518, 844, § 2.2-3705; 2002, cc. 87, 155, 242, 393, 478, 481, 499, 522, 571, 572, 633, 655, 715, 798, 830; 2003, cc. 274, 307, 327, 332, 358, 704, 801, 884, 891, 893, 897, 968; 2004, cc. 398, 482, 690, 770; 2005, c. 410; 2008, c. 721; 2009, c. 418; 2010, c. 672; 2011, cc. 111, 536; 2012, cc. 617, 803, 835; 2013, c. 600; 2015, c. 183; 2016, cc. 554, 620, 716, 717; 2017, c. 778; 2018, cc. 52, 741; 2019, c. 358.

### **§ 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 (§ 18.2-340.15 et 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 (§ 32.1-323 et 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 (§ 2.2-3900 et 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 §§ 58.1-4014 through 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 § 2.2-3010 with respect to an allegation of wrongdoing or abuse under the Fraud and Abuse Whistle Blower Protection Act (§ 2.2-3009 et 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 (§ 2.2-307 et 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 (§ 36-97 et seq.) or the Statewide Fire Prevention Code (§ 27-94 et 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 (§ 9.1-138 et seq.), Article 4.1 (§ 9.1-150.1 et seq.), Article 11 (§ 9.1-185 et seq.), and Article 12 (§ 9.1-186 et seq.) of Chapter 1 of Title 9.1.

10. Information furnished to or prepared by the Board of Education pursuant to subsection D of § 22.1-253.13:3 in 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 (§ 3.2-4200 et seq.) or Article 3 (§ 3.2-4204 et seq.) of Chapter 42 of Title 3.2, Article 10 (§ 18.2-246.6 et seq.) of Chapter 6 or Chapter 13 (§ 18.2-512 et seq.) of Title 18.2, 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 (§ 37.2-400 et seq.) of Title 37.2.

1999, cc. 485, 518, 703, 726, 793, 849, 852, 867, 868, 881, § 2.1-342.01; 2000, cc. 66, 237, 382, 400, 430, 583, 589, 592, 594, 618, 632, 657, 720, 932, 933, 947, 1006, 1064; 2001, cc. 288, 518, 844, § 2.2-3705; 2002, cc. 87, 155, 242, 393, 478, 481, 499, 522, 571, 572, 633, 655, 715, 798, 830; 2003, cc. 274, 307, 327, 332, 358, 704, 801, 884, 891, 893, 897, 968; 2004, cc. 605, 690, 766; 2005, c. 601; 2006, cc. 25, 95; 2008, cc. 387, 668, 689, 758; 2009, cc. 237, 326, 340; 2011, cc. 798, 871; 2012, cc. 476, 507, 803, 835; 2013, cc. 571, 572, 690, 717, 723; 2014, cc. 225, 414, 609, 788; 2015, cc. 38, 730; 2016, cc. 272, 620, 716; 2017, c. 778; 2020, c. 48.

#### **§ 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 (§ 23.1-700 et 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.

1999, cc. [485](#), [518](#), [703](#), [726](#), [793](#), [849](#), [852](#), [867](#), [868](#), [881](#), § 2.1-342.01; 2000, cc. [66](#), [237](#), [382](#), [400](#), [430](#), [583](#), [589](#), [592](#), [594](#), [618](#), [632](#), [657](#), [720](#), [932](#), [933](#), [947](#), [1006](#), [1064](#); 2001, cc. [288](#), [518](#), [844](#), § 2.2-3705; 2002, cc. [87](#), [155](#), [242](#), [393](#), [478](#), [481](#), [499](#), [522](#), [571](#), [572](#), [633](#), [655](#), [715](#), [798](#), [830](#); 2003, cc. [274](#), [307](#), [327](#), [332](#), [358](#), [704](#), [801](#), [884](#), [891](#), [893](#), [897](#), [968](#); 2004, c. [690](#); 2006, c. [518](#); 2008, cc. [561](#), [665](#); 2010, cc. [456](#), [524](#); 2014, c. [313](#); 2016, cc. [554](#), [620](#), [716](#); 2017, c. [778](#); 2018, c. [756](#); 2019, cc. [638](#), [639](#); 2020, cc. [71](#), [78](#).

#### **§ 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 (§ 32.1-111.1 et 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 § 32.1-283.1 or 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 § 32.1-283.5 or 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 (§ [51.5-178](#) et 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 §§ [32.1-137.4](#) and [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 (§ [32.1-48.05](#) et 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 (§ [16.1-335](#) et seq.) of Chapter 11 of Title 16.1 and Chapter 8 (§ [37.2-800](#) et 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](#).

1999, cc. [485](#), [518](#), [703](#), [726](#), [793](#), [849](#), [852](#), [867](#), [868](#), [881](#), § 2.1-342.01; 2000, cc. [66](#), [237](#), [382](#), [400](#), [430](#), [583](#), [589](#), [592](#), [594](#), [618](#), [632](#), [657](#), [720](#), [932](#), [933](#), [947](#), [1006](#), [1064](#); 2001, cc. [288](#), [518](#), [844](#), § 2.2-3705; 2002, cc. [87](#), [155](#), [242](#), [393](#), [478](#), [481](#), [499](#), [522](#), [571](#), [572](#), [633](#), [655](#), [715](#), [798](#), [830](#); 2003, cc. [274](#), [307](#), [327](#), [332](#), [358](#), [704](#), [801](#), [884](#), [891](#), [893](#), [897](#), [968](#); 2004, cc. [65](#), [666](#), [690](#), [773](#), [1014](#), [1021](#); 2005, cc. [181](#), [227](#), [716](#); 2008, c. [539](#); 2009, cc. [472](#), [813](#), [840](#); 2011, cc. [110](#), [175](#), [535](#); 2012, cc. [476](#), [479](#), [507](#), [803](#), [835](#); 2015, cc. [22](#), [108](#), [127](#); 2016, cc. [620](#), [716](#); 2017, cc. [188](#), [475](#), [600](#), [719](#), [778](#); 2018, c. [600](#); 2019, c. [834](#); 2020, cc. [851](#), [860](#), [861](#).

**§ 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 (§ 15.2-4900 et seq.) of Title 15.2.
3. Proprietary information, voluntarily provided by private business pursuant to a promise of confidentiality from a public body, used by the public body for business, trade, and tourism development or retention; and memoranda, working papers, or other information related to businesses that are considering locating or expanding in Virginia, prepared by a public body, where competition or bargaining is involved and where disclosure of such information would adversely affect the financial interest of the public body.
4. Information that was filed as confidential under the Toxic Substances Information Act (§ 32.1-239 et seq.), as such Act existed prior to July 1, 1992.
5. Fisheries data that would permit identification of any person or vessel, except when required by court order as specified in § 28.2-204.
6. Confidential financial statements, balance sheets, trade secrets, and revenue and cost projections provided to the Department of Rail and Public Transportation, provided such information is exempt under the federal Freedom of Information Act or the federal Interstate Commerce Act or other laws administered by the Surface Transportation Board or the Federal Railroad Administration with respect to data provided in confidence to the Surface Transportation Board and the Federal Railroad Administration.
7. Proprietary information related to inventory and sales, voluntarily provided by private energy suppliers to the Department of Mines, Minerals and Energy, used by that Department for energy contingency planning purposes or for developing consolidated statistical information on energy supplies.
8. Confidential proprietary information furnished to the Board of Medical Assistance Services or the Medicaid Prior Authorization Advisory Committee pursuant to Article 4 (§ 32.1-331.12 et seq.) of Chapter 10 of Title 32.1.
9. Proprietary, commercial or financial information, balance sheets, trade secrets, and revenue and cost projections provided by a private transportation business to the Virginia Department of Transportation and the Department of Rail and Public Transportation for the purpose of conducting transportation studies needed to obtain grants or other financial assistance under the Transportation Equity Act for the 21st Century (P.L. 105-178) for transportation projects if disclosure of such information is exempt under the federal Freedom of Information Act or the federal Interstate Commerce Act or other laws administered by the Surface Transportation Board or the Federal Railroad Administration with respect to data provided in confidence to the Surface Transportation Board and the Federal Railroad Administration. However, the exclusion provided by this subdivision shall not apply to any wholly owned subsidiary of a public body.
10. Confidential information designated as provided in subsection F of § 2.2-4342 as trade secrets or proprietary information by any person in connection with a procurement transaction or by any

person who has submitted to a public body an application for prequalification to bid on public construction projects in accordance with subsection B of § 2.2-4317.

11. a. Memoranda, staff evaluations, or other information prepared by the responsible public entity, its staff, outside advisors, or consultants exclusively for the evaluation and negotiation of proposals filed under the Public-Private Transportation Act of 1995 (§ 33.2-1800 et seq.) or the Public-Private 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 (§ 33.2-1800 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 (§ 2.2-2351 et 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 (§ 2.2-2484 et 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.

1999, cc. 485, 518, 703, 726, 793, 849, 852, 867, 868, 881, § 2.1-342.01; 2000, cc. 66, 237, 382, 400, 430, 583, 589, 592, 594, 618, 632, 657, 720, 932, 933, 947, 1006, 1064; 2001, cc. 288, 518, 844, § 2.2-3705; 2002, cc. 87, 155, 242, 393, 478, 481, 499, 522, 571, 572, 633, 655, 715, 798, 830; 2003, cc. 274, 307, 327, 332, 358, 704, 801, 884, 891, 893, 897, 968; 2004, cc. 593, 690; 2005, cc. 258, 411; 2006, cc. 73, 76, 467, 831, 921, 936; 2006, Sp. Sess. I, c. 1; 2007, cc. 374, 693; 2008, cc. 71, 102, 266, 387, 633, 689, 736, 743; 2009, cc. 246, 311, 325, 765, 810, 869; 2010, cc. 310, 808; 2011, cc. 541, 781, 798, 871; 2012, cc. 693, 709; 2013, cc. 54, 482, 574; 2015, cc. 696, 697; 2016, cc. 620, 716, 724, 725, 775; 2017, cc. 662, 737, 778, 796, 816; 2018, cc. 470, 532, 533; 2019, cc. 358, 629; 2020, cc. 72, 79, 1164, 1169; 2021, Sp. Sess. I, c. 298.



This section has more than one version with varying effective dates. Scroll down to see all versions.

**§ 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 (§ 32.1-331.12 et seq.) of Chapter 10 of Title 32.1.
9. Proprietary, commercial or financial information, balance sheets, trade secrets, and revenue and cost projections provided by a private transportation business to the Virginia Department of Transportation and the Department of Rail and Public Transportation for the purpose of conducting transportation studies needed to obtain grants or other financial assistance under the Transportation Equity Act for the 21st Century (P.L. 105-178) for transportation projects if disclosure of such information is exempt under the federal Freedom of Information Act or the federal Interstate Commerce Act or other laws administered by the Surface Transportation Board

or the Federal Railroad Administration with respect to data provided in confidence to the Surface Transportation Board and the Federal Railroad Administration. However, the exclusion provided by this subdivision shall not apply to any wholly owned subsidiary of a public body.

10. Confidential information designated as provided in subsection F of § 2.2-4342 as trade secrets or proprietary information by any person in connection with a procurement transaction or by any person who has submitted to a public body an application for prequalification to bid on public construction projects in accordance with subsection B of § 2.2-4317.

11. a. Memoranda, staff evaluations, or other information prepared by the responsible public entity, its staff, outside advisors, or consultants exclusively for the evaluation and negotiation of proposals filed under the Public-Private Transportation Act of 1995 (§ 33.2-1800 et seq.) or the Public-Private 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 (§ 33.2-1800 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 (§ [2.2-2351](#) et 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 (§ 2.2-2484 et 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.

1999, cc. 485, 518, 703, 726, 793, 849, 852, 867, 868, 881, § 2.1-342.01; 2000, cc. 66, 237, 382, 400, 430, 583, 589, 592, 594, 618, 632, 657, 720, 932, 933, 947, 1006, 1064; 2001, cc. 288, 518, 844, § 2.2-3705; 2002, cc. 87, 155, 242, 393, 478, 481, 499, 522, 571, 572, 633, 655, 715, 798, 830; 2003, cc. 274, 307, 327, 332, 358, 704, 801, 884, 891, 893, 897, 968; 2004, cc. 593, 690; 2005, cc. 258, 411; 2006, cc. 73, 76, 467, 831, 921, 936; 2006, Sp. Sess. I, c. 1; 2007, cc. 374, 693; 2008, cc. 71, 102, 266, 387, 633, 689, 736, 743; 2009, cc. 246, 311, 325, 765, 810, 869; 2010, cc. 310, 808; 2011, cc. 541, 781



, 798, 871;2012, cc. 693, 709;2013, cc. 54, 482, 574;2015, cc. 696, 697;2016, cc. 620, 716, 724, 725, 775;2017, cc. 662, 737, 778, 796, 816;2018, cc. 470, 532, 533;2019, cc. 358, 629;2020, cc. 72, 79, 1164, 1169;2021, Sp. Sess. I, c. 298, 532.

This section has more than one version with varying effective dates. Scroll down to see all versions.

**§ 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 (§ 15.2-4900 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 (§ 32.1-331.12 et seq.) of Chapter 10 of Title 32.1.
9. Proprietary, commercial or financial information, balance sheets, trade secrets, and revenue and cost projections provided by a private transportation business to the Virginia Department of Transportation and the Department of Rail and Public Transportation for the purpose of conducting transportation studies needed to obtain grants or other financial assistance under the Transportation Equity Act for the 21st Century (P.L. 105-178) for transportation projects if

disclosure of such information is exempt under the federal Freedom of Information Act or the federal Interstate Commerce Act or other laws administered by the Surface Transportation Board or the Federal Railroad Administration with respect to data provided in confidence to the Surface Transportation Board and the Federal Railroad Administration. However, the exclusion provided by this subdivision shall not apply to any wholly owned subsidiary of a public body.

10. Confidential information designated as provided in subsection F of § 2.2-4342 as trade secrets or proprietary information by any person in connection with a procurement transaction or by any person who has submitted to a public body an application for prequalification to bid on public construction projects in accordance with subsection B of § 2.2-4317.

11. a. Memoranda, staff evaluations, or other information prepared by the responsible public entity, its staff, outside advisors, or consultants exclusively for the evaluation and negotiation of proposals filed under the Public-Private Transportation Act of 1995 (§ 33.2-1800 et seq.) or the Public-Private 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 (§ 33.2-1800 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 (§ 2.2-2351 et 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 (§ 2.2-2484 et 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.



1999, cc. [485](#), [518](#), [703](#), [726](#), [793](#), [849](#), [852](#), [867](#), [868](#), [881](#), § 2.1-342.01; 2000, cc. [66](#), [237](#), [382](#), [400](#), [430](#), [583](#), [589](#), [592](#), [594](#), [618](#), [632](#), [657](#), [720](#), [932](#), [933](#), [947](#), [1006](#), [1064](#); 2001, cc. [288](#), [518](#), [844](#), § 2.2-3705; 2002, cc. [87](#), [155](#), [242](#), [393](#), [478](#), [481](#), [499](#), [522](#), [571](#), [572](#), [633](#), [655](#), [715](#), [798](#), [830](#); 2003, cc. [274](#), [307](#), [327](#), [332](#), [358](#), [704](#), [801](#), [884](#), [891](#), [893](#), [897](#), [968](#); 2004, cc. [593](#), [690](#); 2005, cc. [258](#), [411](#); 2006, cc. [73](#), [76](#), [467](#), [831](#), [921](#), [936](#); 2006, Sp. Sess. I, c. [1](#); 2007, cc. [374](#), [693](#); 2008, cc. [71](#), [102](#), [266](#), [387](#), [633](#), [689](#), [736](#), [743](#); 2009, cc. [246](#), [311](#), [325](#), [765](#), [810](#), [869](#); 2010, cc. [310](#), [808](#); 2011, cc. [541](#), [781](#), [798](#), [871](#); 2012, cc. [693](#), [709](#); 2013, cc. [54](#), [482](#), [574](#); 2015, cc. [696](#), [697](#); 2016, cc. [620](#), [716](#), [724](#), [725](#), [775](#); 2017, cc. [662](#), [737](#), [778](#), [796](#), [816](#); 2018, cc. [470](#), [532](#), [533](#); 2019, cc. [358](#), [629](#); 2020, cc. [72](#), [79](#), [1164](#), [1169](#); 2021, Sp. Sess. I, cc. [298](#), [304](#), [532](#).

This section has more than one version with varying effective dates. Scroll down to see all versions.

### **§ 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 (§ 15.2-1544 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 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 (§ 51.5-53 et 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 (§ 55.1-2500 et seq.) prepared by or for the State Treasurer or his agents or employees or persons employed to perform an audit or examination of holder records.

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

21. Information held by state or local park and recreation departments and local and regional park authorities concerning identifiable individuals under the age of 18 years. However, nothing in this subdivision shall operate to prevent the disclosure of information defined as directory information under regulations implementing the 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 § 23.1-704 relating to:

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

b. Trade secrets 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 (§ 2.2-4600 et 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 (§ 46.2-300 et 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 of 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 (§ 59.1-336 et 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.

1999, cc. 485, 518, 703, 726, 793, 849, 852, 867, 868, 881, § 2.1-342.01; 2000, cc. 66, 237, 382, 400, 430, 583, 589, 592, 594, 618, 632, 657, 720, 932, 933, 947, 1006, 1064; 2001, cc. 288, 518, 844, § 2.2-3705; 2002, cc. 87, 155, 242, 393, 478, 481, 499, 522, 571, 572, 633, 655, 715, 798, 830; 2003, cc. 274, 307, 327, 332, 358, 704, 801, 884, 891, 893, 897, 968; 2004, cc. 426, 690, 832; 2005, cc. 165, 508; 2007, cc. 406, 652, 660, 737, 739; 2008, cc. 16, 739; 2009, cc. 223, 827, 845; 2010, c. 300; 2011, cc. 827, 867; 2012, c. 726; 2013, cc. 199, 481, 554, 574; 2014, cc. 225, 808; 2015, cc. 38, 137, 549, 730; 2016, cc. 550, 620, 716, 729; 2017, cc. 587, 642, 778, 804, 824; 2018, cc. 58, 141; 2019, cc. 163, 170, 247, 300, 358, 729, 775; 2020, cc. 70, 587, 1164, 1169, 1218, 1227, 1246, 1256; 2021, Sp. Sess. I, cc. 344, 345.

#### **§ 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.

1999, cc. 485, 518, 703, 726, 793, 849, 852, 867, 868, 881, § 2.1-342.01; 2000, cc. 66, 237, 382, 400, 430, 583, 589, 592, 594, 618, 632, 657, 720, 932, 933, 947, 1006, 1064; 2001, cc. 288, 518, 844, § 2.2-3705; 2002, cc. 87, 155, 242, 393, 478, 481, 499, 522, 571, 572, 633, 655, 715, 798, 830; 2003, cc. 274, 307, 327, 332, 358, 704, 801, 884, 891, 893, 897, 968; 2004, c. 690; 2017, c. 778.

#### **§ 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 (§ 2.2-307 et seq.), and (iii) campus police departments of public institutions of higher education established pursuant to Article 3 (§ 23.1-809 et 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 (§ 19.2-152.2 et 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 (§ 9.1-173 et seq.) of Chapter 1 of Title 9.1; or (iii) investigation or supervision by state probation and parole services in accordance with Article 2 (§ 53.1-141 et 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 (§ 9.1-900 et 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.

1999, cc. 703, 726, § 2.1-342.2; 2000, c. 227; 2001, c. 844; 2002, cc. 393, 715, 769, 830; 2004, cc. 685, 735; 2006, cc. 857, 914; 2007, c. 133; 2010, c. 627; 2011, cc. 798, 871; 2013, c. 695; 2016, cc. 184, 546; 2017, c. 828; 2018, c. 48; 2021, Sp. Sess. I, c. 483.

### **§ 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.

2021, Sp. Sess. I, c. 483.

**§ 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.

1968, c. 479, § 2.1-343; 1973, c. 461; 1976, c. 467; 1977, c. 677; 1982, c. 333; 1989, c. 358; 1990, c. 538; 1993, c. 720; 1995, c. 562; 1999, cc. 696, 703, 726; 2000, c. 227; 2001, c. 844; 2004, cc. 730, 768; 2005, c. 352; 2007, c. 300; 2009, c. 628; 2010, c. 309; 2015, c. 131; 2017, c. 616; 2018, c. 55.

### **§ 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 § 2.2-3708.2.

2004, c. 768;2005, c. 352;2018, c. 55.

#### **§ 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.

2002, cc. 580, 618;2006, cc. 474, 595;2007, c. 300;2017, c. 616.

#### **§§ 2.2-3708 and 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 videoconferencing 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.

2018, cc. [55](#), [56](#);2019, c. [359](#);2021, Sp. Sess. I, cc. [33](#), [490](#).

**§ 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.

1987, c. 71, § 2.1-343.2; 1999, cc. [703](#), [726](#);2000, c. [932](#);2001, cc. [710](#), [844](#);2002, c. [491](#).

**§ 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 fund-raising 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 nongeneral 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 (§ 54.1-2515 et 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 (§ 23.1-700 et 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.

1968, c. 479, § 2.1-344; 1970, c. 456; 1973, c. 461; 1974, c. 332; 1976, cc. 467, 709; 1979, cc. 369, 684; 1980, cc. 221, 475, 476, 754; 1981, cc. 35, 471; 1982, cc. 497, 516; 1984, cc. 473, 513; 1985, c. 277; 1988, c. 891; 1989, cc. 56, 358, 478; 1990, cc. 435, 538; 1991, c. 708; 1992, c. 444; 1993, cc. 270, 499; 1995, c. 499; 1996, cc. 855, 862, 902, 905, 1046; 1997, cc. 439, 641, 785, 861; 1999, cc. 485, 518, 703, 726, 849, 867, 868; 2000, cc. 382, 400, 720, 1064; 2001, cc. 231, 844; 2002, cc. 87, 393, 455, 478, 499, 655, 715, 830; 2003, cc. 274, 291, 332, 618, 703; 2004, cc. 398, 690, 770; 2005, cc. 258, 411, 568; 2006, cc. 430, 499, 518, 560; 2007, cc. 133, 374, 566, 739; 2008, cc. 626, 633, 668, 721, 743; 2009, cc. 223, 325, 472, 765, 810, 827, 845; 2010, cc. 310, 630, 808; 2011, cc. 89, 111, 147, 536, 541, 816, 874; 2012, cc. 476, 507, 803, 835; 2013, cc. 571, 580, 695; 2014, c. 225; 2015, cc. 27, 38, 108, 169, 182, 549, 730; 2016, cc. 544, 620, 716, 724, 725, 775, 778, 779; 2017, cc. 587, 616, 778, 796, 804, 816, 824; 2018, cc. 48, 532, 533, 600, 829; 2019, cc. 4, 170, 358, 426, 500, 729, 775, 834; 2020, cc. 759, 851, 1164, 1169, 1197, 1218, 1248, 1256; 2021, Sp. Sess. I, cc. 7, 483.

### **§ 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.

1989, c. 358, § 2.1-344.1; 1999, cc. 703, 726; 2001, c. 844; 2012, c. 428; 2017, c. 616.

### **§ 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.

1968, c. 479, § 2.1-346; 1976, c. 709; 1978, c. 826; 1989, c. 358; 1990, c. 217; 1996, c. 578; 1999, cc. 703, 726; 2001, c. 844; 2007, c. 560; 2009, c. 634; 2010, c. 299; 2011, cc. 133, 783; 2016, cc. 620, 716; 2019, c. 531.

## **§ 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.

1976, c. 467, § 2.1-346.1; 1978, c. 826; 1984, c. 252; 1989, c. 358; 1996, c. [578](#); 1999, cc. [703](#), [726](#); 2001, c. [844](#); 2003, c. [319](#); 2004, c. [690](#); 2008, cc. [233](#), [789](#); 2011, c. [327](#); 2017, c. [778](#); 2018, c. [55](#); 2019, c. [843](#); 2021, Sp. Sess. I, c. [483](#).

#### **§ 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.

2019, c. [354](#).

## Chapter 7. Virginia Public Records Act

### § 42.1-76. Legislative intent; title of chapter

The General Assembly intends by this chapter to establish a single body of law applicable to all public officers and employees on the subject of public records management and preservation and to ensure that the procedures used to manage and preserve public records will be uniform throughout the Commonwealth.

This chapter may be cited as the Virginia Public Records Act.

1976, c. 746.

### § 42.1-76.1. Notice of Chapter

Any person elected, reelected, appointed, or reappointed to the governing body of any agency subject to this chapter shall (i) be furnished by the agency or 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.

2006, c. 60.

### § 42.1-77. Definitions

As used in this chapter:

"Agency" means all boards, commissions, departments, divisions, institutions, authorities, or parts thereof, of the Commonwealth or its political subdivisions and includes the offices of constitutional officers.

"Archival quality" means a quality of reproduction consistent with established standards specified by state and national agencies and organizations responsible for establishing such standards, such as the Association for Information and Image Management, the American National Standards Institute, and the National Institute of Standards and Technology.

"Archival record" means a public record of continuing and enduring value useful to the citizens of the Commonwealth and necessary to the administrative functions of public agencies in the conduct of services and activities mandated by law that is identified on a Library of Virginia approved records retention and disposition schedule as having sufficient informational value to be permanently maintained by the Commonwealth.

"Archives" means the program administered by The Library of Virginia for the preservation of archival records.

"Board" means the State Library Board.

"Conversion" means the act of moving electronic records to a different format, especially data from an obsolete format to a current format.

"Custodian" means the public official in charge of an office having public records.

"Disaster plan" means the information maintained by an agency that outlines recovery techniques and methods to be followed in case of an emergency that impacts the agency's

records.

"Electronic record" means a public record whose creation, storage, and access require the use of an automated system or device. Ownership of the hardware, software, or media used to create, store, or access the electronic record has no bearing on a determination of whether such record is a public record.

"Essential public record" means records that are required for recovery and reconstruction of any agency to enable it to resume its core operations and functions and to protect the rights and interests of persons.

"Librarian of Virginia" means the State Librarian of Virginia or his designated representative.

"Lifecycle" means the creation, use, maintenance, and disposition of a public record.

"Metadata" means data describing the context, content, and structure of records and their management through time.

"Migration" means the act of moving electronic records from one information system or medium to another to ensure continued access to the records while maintaining the records' authenticity, integrity, reliability, and usability.

"Original record" means the first generation of the information and is the preferred version of a record. Archival records should to the maximum extent possible be original records.

"Preservation" means the processes and operations involved in ensuring the technical and intellectual survival of authentic records through time.

"Private record" means a record that does not relate to or affect the carrying out of the constitutional, statutory, or other official ceremonial duties of a public official, including the correspondence, diaries, journals, or notes that are not prepared for, utilized for, circulated, or communicated in the course of transacting public business.

"Public official" means all persons holding any office created by the Constitution of Virginia or by any act of the General Assembly, the Governor and all other officers of the executive branch of the state government, and all other officers, heads, presidents or chairmen of boards, commissions, departments, and agencies of the state government or its political subdivisions.

"Public record" or "record" means recorded information that documents a transaction or activity by or with any public officer, agency or employee of an agency. Regardless of physical form or characteristic, the recorded information is a public record if it is produced, collected, received or retained in pursuance of law or in connection with the transaction of public business. The medium upon which such information is recorded has no bearing on the determination of whether the recording is a public record.

For purposes of this chapter, "public record" shall not include nonrecord materials, meaning materials made or acquired and preserved solely for reference use or exhibition purposes, extra copies of documents preserved only for convenience or reference, and stocks of publications.

"Records retention and disposition schedule" means a Library of Virginia-approved timetable stating the required retention period and disposition action of a records series. The administrative, fiscal, historical, and legal value of a public record shall be considered in appraising its appropriate retention schedule. The terms "administrative," "fiscal," "historical,"

and "legal" value shall be defined as:

1. "Administrative value": Records shall be deemed of administrative value if they have continuing utility in the operation of an agency.
2. "Fiscal value": Records shall be deemed of fiscal value if they are needed to document and verify financial authorizations, obligations, and transactions.
3. "Historical value": Records shall be deemed of historical value if they contain unique information, regardless of age, that provides understanding of some aspect of the government and promotes the development of an informed and enlightened citizenry.
4. "Legal value": Records shall be deemed of legal value if they document actions taken in the protection and proving of legal or civil rights and obligations of individuals and agencies.

1976, c. 746; 1977, c. 501; 1981, c. 637; 1987, c. 217; 1990, c. 778; 1994, cc. [390](#), [955](#); 1998, cc. [427](#), [470](#); 2005, c. [787](#); 2006, c. [60](#).

#### **§ 42.1-78. Confidentiality safeguarded**

Any records made confidential by law shall be so treated. Records that by law are required to be closed to the public shall not be deemed to be made open to the public under the provisions of this chapter. Records in the custody of The Library of Virginia that are required to be closed to the public shall be open for public access 75 years after the date of creation of the record. No provision of this chapter shall be construed to authorize or require the opening of any records ordered to be sealed by a court; however, upon a petition filed with the clerk, a judge may enter an order releasing any record sealed prior to January 1, 1901. All records deposited in the archives that are not made confidential by law shall be open to public access.

1976, c. 746; 1979, c. 110; 1990, c. 778; 1994, c. [64](#); 2006, c. [60](#); 2020, c. [773](#).

#### **§ 42.1-79. Records management function vested in The Library of Virginia**

A. The archival and records management function shall be vested in The Library of Virginia. The Library of Virginia shall be the official custodian and trustee for the Commonwealth of all public records of whatever kind, and regardless of physical form or characteristics, that are transferred to it from any agency. As the Commonwealth's official repository of public records, The Library of Virginia shall assume ownership and administrative control of such records on behalf of the Commonwealth. The Library of Virginia shall own and operate any equipment necessary to manage and retain control of electronic archival records in its custody, but may, at its discretion, contract with third-party entities to provide any or all services related to managing archival records on equipment owned by the contractor, by other third parties, or by The Library of Virginia.

B. The Librarian of Virginia shall name a State Archivist who shall perform such functions as the Librarian of Virginia assigns.

C. Whenever legislation affecting public records management and preservation is under consideration, The Library of Virginia shall review the proposal and advise the General Assembly on the effects of its proposed implementation.

1976, c. 746; 1986, c. 565; 1990, c. 778; 1994, c. [64](#); 1998, c. [427](#); 2005, c. [787](#); 2006, c. [60](#).

#### **§ 42.1-79.1. Repealed**

Repealed by Acts 2005, c. 787, cl. 2.

**§§ 42.1-80, 42.1-81. Repealed**

Repealed by Acts 2003, c. 177.

**§ 42.1-82. Duties and powers of Library Board**

A. The State Library Board shall:

1. Issue regulations concerning procedures for the disposal, physical destruction or other disposition of public records containing social security numbers. The procedures shall include all reasonable steps to destroy such documents by (i) shredding, (ii) erasing, or (iii) otherwise modifying the social security numbers in those records to make them unreadable or undecipherable by any means.

2. Issue regulations and guidelines designed to facilitate the creation, preservation, storage, filing, reformatting, management, and destruction of public records by agencies. Such regulations shall mandate procedures for records management and include recommendations for the creation, retention, disposal, or other disposition of public records.

B. The State Library Board may establish advisory committees composed of persons with expertise in the matters under consideration to assist the Library Board in developing regulations and guidelines.

1976, c. 746; 1977, c. 501; 1981, c. 637; 1990, c. 778; 1994, cc. 64, 955; 2003, cc. 914, 918; 2005, c. 787; 2006, c. 60.

**§ 42.1-83. Repealed**

Repealed by Acts 2006, c. 60, cl. 2.

**§ 42.1-84. Repealed**

Repealed by Acts 2005, c. 787, cl. 2.

**§ 42.1-85. Records Management Program; agencies to cooperate; agencies to designate records officer**

A. The Library of Virginia shall administer a records management program for the application of efficient and economical methods for managing the lifecycle of public records consistent with regulations and guidelines promulgated by the State Library Board, including operation of a records center or centers. The Library of Virginia shall establish procedures and techniques for the effective management of public records, make continuing surveys of records and records keeping practices, and recommend improvements in current records management practices, including the use of space, equipment, software, and supplies employed in creating, maintaining, and servicing records.

B. Any agency with public records shall cooperate with The Library of Virginia in conducting surveys. Each agency shall establish and maintain an active, continuing program for the economical and efficient management of the records of such agency. The agency shall be responsible for ensuring that its public records are preserved, maintained, and accessible throughout their lifecycle, including converting and migrating electronic records as often as necessary so that information is not lost due to hardware, software, or media obsolescence or deterioration. Any public official who converts or migrates an electronic record shall ensure that it is an accurate copy of the original record. The converted or migrated record shall have the force

of the original.

C. Each state agency and political subdivision of this Commonwealth shall designate as many as appropriate, but at least one, records officer to serve as a liaison to The Library of Virginia for the purposes of implementing and overseeing a records management program, and coordinating legal disposition, including destruction, of obsolete records. Designation of state agency records officers shall be by the respective agency head. Designation of a records officer for political subdivisions shall be by the governing body or chief administrative official of the political subdivision. Each entity responsible for designating a records officer shall provide The Library of Virginia with the name and contact information of the designated records officer, and shall ensure that such information is updated in a timely manner in the event of any changes.

D. The Library of Virginia shall develop and make available training and education opportunities concerning the requirements of and compliance with this chapter for records officers in the Commonwealth.

1976, c. 746; 1990, c. 778; 1994, c. 64; 1998, c. 427; 2006, c. 60.

#### **§ 42.1-86. Essential public records; security recovery copies; disaster plans**

A. In cooperation with the head of each agency, The Library of Virginia shall establish and maintain a program for the selection and preservation of essential public records. The program shall provide for preserving, classifying, arranging, and indexing essential public records so that such records are made available to the public. The program shall provide for making recovery copies or designate as recovery copies existing copies of such essential public records.

B. Recovery copies shall meet quality standards established by The Library of Virginia and shall be made by a process that accurately reproduces the record and forms a durable medium. A recovery copy may also be made by creating a paper or electronic copy of an original electronic record. Recovery copies shall have the same force and effect for all purposes as the original record and shall be as admissible in evidence as the original record whether the original record is in existence or not. Recovery copies shall be preserved in the place and manner prescribed by the State Library Board and the Governor.

C. The Library of Virginia shall develop a plan to ensure preservation of public records in the event of disaster or emergency as defined in § 44-146.16. This plan shall be coordinated with the Department of Emergency Management and copies shall be distributed to all agency heads. The plan shall be reviewed and updated at least once every five years. The personnel of the Library shall be responsible for coordinating emergency recovery operations when public records are affected. Each agency shall ensure that a plan for the protection and recovery of public records is included in its comprehensive disaster plan.

1976, c. 746; 1980, c. 365; 1990, c. 778; 1994, c. 64; 1998, c. 427; 2005, c. 787; 2006, c. 60.

#### **§ 42.1-86.01. Records may be retained in electronic medium**

Notwithstanding any provision of law requiring a public record to be retained in a tangible medium, an agency may retain any public record in an electronic medium, provided that the record remains accessible for the duration of its retention schedule and meets all other requirements of this chapter. Nothing herein shall affect any law governing the retention of exhibits received into evidence in a criminal case in any court.

2018, c. 252.



### **§ 42.1-86.1. Disposition of public records**

A. No agency shall sell or give away public records. No agency shall destroy or discard a public record unless (i) the record appears on a records retention and disposition schedule approved pursuant to § 42.1-82 and the record's retention period has expired; (ii) a certificate of records destruction, as designated by the Librarian of Virginia, has been properly completed and approved by the agency's designated records officer; and (iii) there is no litigation, audit, investigation, request for records pursuant to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.), or renegotiation of the relevant records retention and disposition schedule pending at the expiration of the retention period for the applicable records series. After a record is destroyed or discarded, the agency shall forward the original certificate of records destruction to The Library of Virginia.

B. No agency shall destroy any public record created before 1912 without first offering it to The Library of Virginia.

C. Each agency shall ensure that records created after July 1, 2006 and authorized to be destroyed or discarded in accordance with subsection A, are destroyed or discarded in a timely manner in accordance with the provisions of this chapter; provided, however, such records that contain identifying information as defined in clauses (iii) through (ix), or clause (xii) of subsection C of § 18.2-186.3, shall be destroyed within six months of the expiration of the records retention period.

1990, c. 778; 1998, c. 427; 2005, c. 787; 2006, cc. 60, 909.

### **§ 42.1-87. Archival public records**

A. Custodians of archival public records shall keep them in fire-resistant, environmentally controlled, physically secure rooms designed to ensure proper preservation and in such arrangement as to be easily accessible. Current public records should be kept in the buildings in which they are ordinarily used. It shall be the duty of each agency to consult with The Library of Virginia to determine the best manner in which to store long-term or archival electronic records. In entering into a contract with a third-party storage provider for the storage of public records, an agency shall require the third-party to cooperate with The Library of Virginia in complying with rules and regulations promulgated by the Board.

B. Public records deemed unnecessary for the transaction of the business of any state agency, yet deemed to be of archival value, may be transferred with the consent of the Librarian of Virginia to the custody of the Library of Virginia.

C. Public records deemed unnecessary for the transaction of the business of any county, city, or town, yet deemed to be of archival value, shall be stored either in The Library of Virginia or in the locality, at the decision of the local officials responsible for maintaining public records. Archival public records shall be returned to the locality upon the written request of the local officials responsible for maintaining local public records. Microfilm shall be stored in The Library of Virginia but the use thereof shall be subject to the control of the local officials responsible for maintaining local public records.

D. Record books deemed archival should be copied or repaired, renovated or rebound if worn, mutilated, damaged or difficult to read. Whenever the public records of any public official are in need of repair, restoration or rebinding, a judge of the court of record or the head of such agency

or political subdivision of the Commonwealth may authorize that the records in need of repair be removed from the building or office in which such records are ordinarily kept, for the length of time necessary to repair, restore or rebind them, provided such restoration and rebinding preserves the records without loss or damage to them. Before any restoration or repair work is initiated, a treatment proposal from the contractor shall be submitted and reviewed in consultation with The Library of Virginia. Any public official who causes a record book to be copied shall attest it and shall certify an oath that it is an accurate copy of the original book. The copy shall then have the force of the original.

E. Nothing in this chapter shall be construed to divest agency heads of the authority to determine the nature and form of the records required in the administration of their several departments or to compel the removal of records deemed necessary by them in the performance of their statutory duty.

1976, c. 746; 1994, cc. [64](#), [955](#); 2005, c. [787](#); 2006, c. [60](#).

**§ 42.1-88. Custodians to deliver all records at expiration of term; penalty for noncompliance**

Any custodian of any public records shall, at the expiration of his term of office, appointment or employment, deliver to his successor, or, if there be none, to The Library of Virginia, all books, writings, letters, documents, public records, or other information, recorded on any medium kept or received by him in the transaction of his official business; and any such person who shall refuse or neglect for a period of ten days after a request is made in writing by the successor or Librarian of Virginia to deliver the public records as herein required shall be guilty of a Class 3 misdemeanor.

1976, c. 746; 1994, c. [64](#); 1998, c. [427](#).

**§ 42.1-89. Petition and court order for return of public records not in authorized possession**

The Librarian of Virginia or his designated representative such as the State Archivist or any public official who is the custodian of public records in the possession of a person or agency not authorized by the custodian or by law to possess such public records shall petition the circuit court in the city or county in which the person holding such records resides or in which the materials in issue, or any part thereof, are located for the return of such records. The court shall order such public records be delivered to the petitioner upon finding that the materials in issue are public records and that such public records are in the possession of a person not authorized by the custodian of the public records or by law to possess such public records. If the order of delivery does not receive compliance, the plaintiff shall request that the court enforce such order through its contempt power and procedures.

1975, c. 180; 1976, c. 746; 1998, c. [427](#).

**§ 42.1-90. Seizure of public records not in authorized possession**

A. At any time after the filing of the petition set out in § [42.1-89](#) or contemporaneous with such filing, the person seeking the return of the public records may by ex parte petition request the judge or the court in which the action was filed to issue an order directed at the sheriff or other proper officer, as the case may be, commanding him to seize the materials which are the subject of the action and deliver the same to the court under the circumstances hereinafter set forth.

B. The judge aforesaid shall issue an order of seizure upon receipt of an affidavit from the petitioner which alleges that the material at issue may be sold, secreted, removed out of this

Commonwealth or otherwise disposed of so as not to be forthcoming to answer the final judgment of the court respecting the same; or that such property may be destroyed or materially damaged or injured if permitted to remain out of the petitioner's possession.

C. The aforementioned order of seizure shall issue without notice to the respondent and without the posting of any bond or other security by the petitioner.

1975, c. 180; 1976, c. 746.

#### **§ 42.1-90.1. Auditing**

The Librarian may, in his discretion, conduct an audit of the records management practices of any agency. Any agency subject to the audit shall cooperate and provide the Library with any records or assistance that it requests. The Librarian shall compile a written summary of the findings of the audit and any actions necessary to bring the agency into compliance with this chapter. The summary shall be a public record, and shall be made available to the agency subject to the audit, the Governor, and the chairmen of the House and Senate Committees on General Laws, the House Committee on Appropriations, and the Senate Committee on Finance and Appropriations of the General Assembly.

2006, c. 60.

#### **§ 42.1-91. Repealed**

Repealed by Acts 2006, c. 60, cl. 2.

#### **§ 42.1-91.1. Availability of public records created prior to January 1, 1901**

Notwithstanding any provisions of a previously executed contract with any department, agency, or institution of the Commonwealth or political subdivision, any individual or private entity lawfully in possession of public records created prior to January 1, 1901, or images of such records may display or publish such records in any format, including in an electronic database or on the Internet, without paying a fee to or requesting permission from the original custodian of such records.

2020, c. 773.