

SENATE BILL NO. _____ HOUSE BILL NO. _____

1 A BILL to amend and reenact §§ 2.2-3705.1, 2.2-3705.8, and 2.2-3714 of the Code of Virginia, relating
2 to the Virginia Freedom of Information Act; personnel record exclusion; limitations.

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

4 **1. That §§ 2.2-3705.1, 2.2-3705.8, and 2.2-3714 of the Code of Virginia are amended and reenacted**
5 **as follows:**

6 **§ 2.2-3705.1. Exclusions to application of chapter; exclusions of general application to**
7 **public bodies.**

8 The following records are excluded from the provisions of this chapter but may be disclosed by
9 the custodian in his discretion, except where such disclosure is prohibited by law:

10 1. Personnel records containing information concerning identifiable individuals, except that
11 access shall not be denied to the person who is the subject thereof. Any person who is the subject of any
12 personnel record and who is 18 years of age or older may waive, in writing, the protections afforded by
13 this subdivision. If the protections are so waived, the public body shall open such records for inspection
14 and copying.

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

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

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

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

33 As used in this subdivision, "test or examination" shall include (a) any scoring key for any such
34 test or examination and (b) any other document that would jeopardize the security of the test or
35 examination. Nothing contained in this subdivision shall prohibit the release of test scores or results as
36 provided by law, or limit access to individual records as provided by law. However, the subject of such
37 employment tests shall be entitled to review and inspect all records relative to his performance on such
38 employment tests.

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

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

48 6. Vendor proprietary information software that may be in the official records of a public body.
49 For the purpose of this subdivision, "vendor proprietary software" means computer programs acquired
50 from a vendor for purposes of processing data for agencies or political subdivisions of the
51 Commonwealth.

52 7. Computer software developed by or for a state agency, state-supported institution of higher
53 education or political subdivision of the Commonwealth.

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

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

63 10. Personal information, as defined in § 2.2-3801, including electronic mail addresses, furnished
64 to a public body for the purpose of receiving electronic mail from the public body, provided that the
65 electronic mail recipient has requested that the public body not disclose such information. However,
66 access shall not be denied to the person who is the subject of the record.

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

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

76 13. Those portions of records that contain account numbers or routing information for any credit
77 card, debit card, or other account with a financial institution of any person or public body. However,
78 access shall not be denied to the person who is the subject of the record. For the purposes of this

79 subdivision, "financial institution" means any organization authorized to do business under state or
80 federal laws relating to financial institutions, including, without limitation, banks and trust companies,
81 savings banks, savings and loan companies or associations, and credit unions.

82 **§ 2.2-3705.8. Limitation on record exclusion for certain consultant's reports.**

83 ~~A. Neither any provision of this chapter nor any provision of Chapter 38 (§ 2.2-3800 et seq.) of~~
84 ~~this title shall be construed as denying public access to (i) contracts between a public body and its~~
85 ~~officers or employees, other than contracts settling public employee employment disputes held~~
86 ~~confidential as personnel records under § 2.2-3705.1; (ii) records of the position, job classification,~~
87 ~~official salary or rate of pay of, and records of the allowances or reimbursements for expenses paid to~~
88 ~~any officer, official or employee of a public body; or (iii) the compensation or benefits paid by any~~
89 ~~corporation organized by the Virginia Retirement System or its officers or employees.~~

90 ~~The provisions of this subsection, however, shall not require public access to records of the~~
91 ~~official salaries or rates of pay of public employees whose annual rate of pay is \$10,000 or less.~~

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

97 **§ 2.2-3714. Violations and penalties.**

98 In a proceeding commenced against any officer, employee, or member of a public body under §
99 2.2-3713 for a violation of § 2.2-3704, 2.2-3705.1 through ~~2.2-3705.8~~ 2.2-3705.7, 2.2-3706, 2.2-3707,
100 2.2-3708, 2.2-3708.1, 2.2-3710, 2.2-3711 or 2.2-3712, the court, if it finds that a violation was willfully
101 and knowingly made, shall impose upon such officer, employee, or member in his individual capacity,
102 whether a writ of mandamus or injunctive relief is awarded or not, a civil penalty of not less than \$500
103 nor more than \$2,000, which amount shall be paid into the State Literary Fund. For a second or
104 subsequent violation, such civil penalty shall be not less than \$2,000 nor more than \$5,000.

105 **2. That the provisions of § 2.2-3705.1 of this act are declaratory of existing law.**

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