SENATE BILL NO. _____ HOUSE BILL NO. _____

1	A BILL to amend and reenact § 2.2-3705.7 of the Code of Virginia, relating to the Virginia Freedom of
2	Information Act; record exemption for certain customer account information.
3	Be it enacted by the General Assembly of Virginia:
4	1. That § 2.2-3705.7 of the Code of Virginia is amended and reenacted as follows:
5	§ 2.2-3705.7. Exclusions to application of chapter; records of specific public bodies and
6	certain other limited exemptions.
7	The following records are excluded from the provisions of this chapter but may be disclosed by
8	the custodian in his discretion, except where such disclosure is prohibited by law:
9	1. State income, business, and estate tax returns, personal property tax returns, scholastic and
10	confidential records held pursuant to § 58.1-3.
11	2. Working papers and correspondence of the Office of the Governor; Lieutenant Governor; the
12	Attorney General; the members of the General Assembly, the Division of Legislative Services, or the
13	Clerks of the House of Delegates and the Senate of Virginia; the mayor or chief executive officer of any
14	political subdivision of the Commonwealth; or the president or other chief executive officer of any
15	public institution of higher education in Virginia. However, no record, which is otherwise open to
16	inspection under this chapter, shall be deemed exempt by virtue of the fact that it has been attached to or
17	incorporated within any working paper or correspondence.
18	As used in this subdivision:
19	"Members of the General Assembly" means each member of the Senate of Virginia and the
20	House of Delegates and their legislative aides when working on behalf of such member.
21	"Office of the Governor" means the Governor; his chief of staff, counsel, director of policy,
22	Cabinet Secretaries, and the Assistant to the Governor for Intergovernmental Affairs; and those
23	individuals to whom the Governor has delegated his authority pursuant to § 2.2-104.

24 "Working papers" means those records prepared by or for an above-named public official for his25 personal or deliberative use.

26 3. Library records that can be used to identify both (i) any library patron who has borrowed
27 material from a library and (ii) the material such patron borrowed.

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. Records and writings 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.

38 7. Customer account information of a public utility affiliated with a political subdivision of the
 39 Commonwealth, including the customer's name and service address, but excluding the amount of utility
 40 service provided and the amount of money <u>charged or paid</u> for such utility service.

41 8. Personal information, as defined in § 2.2-3801, (i) filed with the Virginia Housing 42 Development Authority concerning individuals who have applied for or received loans or other housing 43 assistance or who have applied for occupancy of or have occupied housing financed, owned or otherwise 44 assisted by the Virginia Housing Development Authority; (ii) concerning persons participating in or 45 persons on the waiting list for federally funded rent-assistance programs; (iii) filed with any local 46 redevelopment and housing authority created pursuant to § 36-4 concerning persons participating in or 47 persons on the waiting list for housing assistance programs funded by local governments or by any such 48 authority; or (iv) filed with any local redevelopment and housing authority created pursuant to § 36-4 or 49 any other local government agency concerning persons who have applied for occupancy or who have 50 occupied affordable dwelling units established pursuant to § 15.2-2304 or 15.2-2305. However, access 51 to one's own information shall not be denied.

- 52 9. Records regarding the siting of hazardous waste facilities, except as provided in § 10.1-1441, 53 if disclosure of them would have a detrimental effect upon the negotiating position of a governing body 54 or on the establishment of the terms, conditions and provisions of the siting agreement.
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10. Records containing information on the site specific location of rare, threatened, endangered 56 or otherwise imperiled plant and animal species, natural communities, caves, and significant historic and 57 archaeological sites if, in the opinion of the public body that has the responsibility for such information, 58 disclosure of the information would jeopardize the continued existence or the integrity of the resource. 59 This exemption shall not apply to requests from the owner of the land upon which the resource is 60 located.

61 11. Records, memoranda, working papers, graphics, video or audio tapes, production models, 62 data and information of a proprietary nature produced by or for or collected by or for the Virginia 63 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 **64** 65 winning tickets, frequency of drawings or selections of winning tickets, odds of winning, advertising, or marketing, where such official records have not been publicly released, published, copyrighted or 66 67 patented. Whether released, published or copyrighted, all game-related information shall be subject to 68 public disclosure under this chapter upon the first day of sales for the specific lottery game to which it 69 pertains.

70 12. Records of the Virginia Retirement System, acting pursuant to § 51.1-124.30, or of a local 71 retirement system, acting pursuant to § 51.1-803, or of the Rector and Visitors of the University of 72 Virginia, acting pursuant to § 23-76.1, or of the Virginia College Savings Plan, acting pursuant to § 23-73 38.77, relating to the acquisition, holding or disposition of a security or other ownership interest in an 74 entity, where such security or ownership interest is not traded on a governmentally regulated securities 75 exchange, to the extent that: (i) such records contain confidential analyses prepared for the Rector and 76 Visitors of the University of Virginia, prepared by the retirement system or the Virginia College Savings 77 Plan, or provided to the retirement system or the Virginia College Savings Plan under a promise of **78** confidentiality, of the future value of such ownership interest or the future financial performance of the

entity; and (ii) disclosure of such confidential analyses would have an adverse effect on the value of the
investment to be acquired, held or disposed of by the retirement system, the Rector and Visitors of the
University of Virginia, or the Virginia College Savings Plan. Nothing in this subdivision shall be
construed to prevent the disclosure of records relating to the identity of any investment held, the amount
invested, or the present value of such investment.

84 13. Names and addresses of subscribers to Virginia Wildlife magazine, published by the
85 Department of Game and Inland Fisheries, provided the individual subscriber has requested in writing
86 that the Department not release such information.

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

90 15. Records of the Virginia Commonwealth University Health System Authority pertaining to 91 any of the following: an individual's qualifications for or continued membership on its medical or 92 teaching staffs; proprietary information gathered by or in the possession of the Authority from third 93 parties pursuant to a promise of confidentiality; contract cost estimates prepared for confidential use in 94 awarding contracts for construction or the purchase of goods or services; data, records or information of 95 a proprietary nature produced or collected by or for the Authority or members of its medical or teaching 96 staffs; financial statements not publicly available that may be filed with the Authority from third parties; 97 the identity, accounts or account status of any customer of the Authority; consulting or other reports paid **98** for by the Authority to assist the Authority in connection with its strategic planning and goals; the 99 determination of marketing and operational strategies where disclosure of such strategies would be 100 harmful to the competitive position of the Authority; and data, records or information of a proprietary 101 nature produced or collected by or for employees of the Authority, other than the Authority's financial or 102 administrative records, in the conduct of or as a result of study or research on medical, scientific, 103 technical or scholarly issues, whether sponsored by the Authority alone or in conjunction with a 104 governmental body or a private concern, when such data, records or information have not been publicly 105 released, published, copyrighted or patented.

106 16. Records of the Department of Environmental Quality, the State Water Control Board, State 107 Air Pollution Control Board or the Virginia Waste Management Board relating to (i) active federal 108 environmental enforcement actions that are considered confidential under federal law and (ii) 109 enforcement strategies, including proposed sanctions for enforcement actions. Upon request, such 110 records shall be disclosed after a proposed sanction resulting from the investigation has been proposed 111 to the director of the agency. This subdivision shall not be construed to prohibit the disclosure of records 112 related to inspection reports, notices of violation, and documents detailing the nature of any 113 environmental contamination that may have occurred or similar documents.

114 17. As it pertains to any person, records related to the operation of toll facilities that identify an 115 individual, vehicle, or travel itinerary including, but not limited to, vehicle identification data, vehicle 116 enforcement system information; video or photographic images; Social Security or other identification 117 numbers appearing on driver's licenses; credit card or bank account data; home addresses; phone 118 numbers; or records of the date or time of toll facility use.

119 18. Records of the Virginia Lottery pertaining to (i) the social security number, tax identification 120 number, state sales tax number, home address and telephone number, personal and lottery banking 121 account and transit numbers of a retailer, and financial information regarding the nonlottery operations 122 of specific retail locations; and (ii) individual lottery winners, except that a winner's name, hometown, 123 and amount won shall be disclosed.

124 19. Records of the Board for Branch Pilots relating to the chemical or drug testing of a person
125 regulated by the Board, where such person has tested negative or has not been the subject of a
126 disciplinary action by the Board for a positive test result.

127 20. Records, investigative notes, correspondence, and information pertaining to the planning,
128 scheduling and performance of examinations of holder records pursuant to the Uniform Disposition of
129 Unclaimed Property Act (§ 55-210.1 et seq.) prepared by or for the State Treasurer, his agents,
130 employees or persons employed to perform an audit or examination of holder records.

131 21. Records of the Virginia Department of Emergency Management or a local governing body132 relating to citizen emergency response teams established pursuant to an ordinance of a local governing

133 134 body, to the extent that such records reveal the name, address, including e-mail address, telephone or pager numbers, or operating schedule of an individual participant in the program.

135 22. Records of state or local park and recreation departments and local and regional park 136 authorities to the extent such records contain information identifying a person under the age of 18 years. 137 However, nothing in this subdivision shall operate to prohibit the disclosure of information defined as 138 directory information under regulations implementing the Family Educational Rights and Privacy Act, 139 20 U.S.C. § 1232g, unless the public body has undertaken the parental notification and opt-out **140** requirements provided by such regulations. Access shall not be denied to the parent, including a 141 noncustodial parent, or guardian of such person, unless the parent's parental rights have been terminated 142 or a court of competent jurisdiction has restricted or denied such access. For records of such persons 143 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 record may waive, in writing, the protections afforded by
this subdivision. If the protections are so waived, the public body shall open such records for inspection
and copying.

147 23. Records submitted for inclusion in the Statewide Alert Network administered by the 148 Department of Emergency Management, to the extent that they reveal names, physical addresses, email 149 addresses, computer or internet protocol information, telephone numbers, pager numbers, other wireless 150 or portable communications device information, or operating schedules of individuals or agencies, 151 where the release of such information would compromise the security of the Statewide Alert Network or 152 individuals participating in the Statewide Alert Network.

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24. Records of the Judicial Inquiry and Review Commission made confidential by § 17.1-913.

154 25. Records of the Virginia Retirement System acting pursuant to § 51.1-124.30, of a local
155 retirement system acting pursuant to § 51.1-803 (hereinafter collectively referred to as the retirement
156 system), or of the Virginia College Savings Plan, acting pursuant to § 23-38.77 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

160 managers, to the extent that disclosure of such records would have an adverse impact on the financial 161 interest of the retirement system or the Virginia College Savings Plan; and 162 b. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), provided by a 163 private entity to the retirement system or the Virginia College Savings Plan, to the extent disclosure of 164 such records would have an adverse impact on the financial interest of the retirement system or the 165 Virginia College Savings Plan. 166 For the records specified in subdivision b to be excluded from the provisions of this chapter, the 167 entity shall make a written request to the retirement system or the Virginia College Savings Plan: 168 (1) Invoking such exclusion prior to or upon submission of the data or other materials for which 169 protection from disclosure is sought; 170 (2) Identifying with specificity the data or other materials for which protection is sought; and 171 (3) Stating the reasons why protection is necessary. 172 The retirement system or the Virginia College Savings Plan shall determine whether the 173 requested exclusion from disclosure meets the requirements set forth in subdivision b. 174 Nothing in this subdivision shall be construed to authorize the withholding of the identity or 175 amount of any investment held or the present value and performance of all asset classes and subclasses. 176 26. Records of the Department of Corrections made confidential by § 53.1-233. 177 27. Records maintained by the Department of the Treasury or participants in the Local 178 Government Investment Pool (§ 2.2-4600 et seq.), to the extent such records relate to information 179 required to be provided by such participants to the Department to establish accounts in accordance with 180 § 2.2-4602. 181 28. Personal information, as defined in § 2.2-3801, contained in the Veterans Care Center 182 Resident Trust Funds concerning residents or patients of the Department of Veterans Services Care

183 Centers, except that access shall not be denied to the person who is the subject of the record.

184 29. Records maintained in connection with fundraising activities by the Veterans Services
185 Foundation pursuant to § 2.2-2716 to the extent that such records reveal the address, electronic mail
186 address, facsimile or telephone number, social security number or other identification number appearing

187 on a driver's license, or credit card or bank account data of identifiable donors, except that access shall 188 not be denied to the person who is the subject of the record. Nothing in this subdivision, however, shall 189 be construed to authorize the withholding of records relating to the amount, date, purpose, and terms of 190 the pledge or donation or the identity of the donor. The exclusion provided by this subdivision shall not 191 apply to protect from disclosure (i) the identities of sponsors providing grants to or contracting with the 192 foundation for the performance of services or other work or (ii) the terms and conditions of such grants 193 or contracts.

30. Names, physical addresses, telephone numbers, and email addresses contained in correspondence between an individual and a member of the governing body, school board, or other public body of the locality in which the individual is a resident, unless the correspondence relates to the transaction of public business. 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 attached to or incorporated within any such correspondence.

200 31. Records of the Commonwealth's Attorneys' Services Council, to the extent such records are 201 prepared for and utilized by the Commonwealth's Attorneys' Services Council in the training of state 202 prosecutors or law-enforcement personnel, where such records are not otherwise available to the public 203 and the release of such records would reveal confidential strategies, methods or procedures to be 204 employed in law-enforcement activities, or materials created for the investigation and prosecution of a 205 criminal case.

206 32. Records provided to the Department of Aviation by other entities of the Commonwealth in 207 connection with the operation of aircraft, where the records would not be subject to disclosure by the 208 entity providing the records. The entity providing the records to the Department of Aviation shall 209 identify the specific portion of the records to be protected and the applicable provision of this chapter 210 that exempts the record or portions thereof from mandatory disclosure.

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

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