

**Review of Record Exemption for
Virginia Alcoholic Beverage Control Authority
(§ 2.2-3705.7 (# 34); effective July 1, 2018)
(Comparison to Other Existing Record Exemptions)**

**November 18, 2015
Records Subcommittee
of the
FOIA Council**

I. § 2.2-3705.7 (# 34)

34. (Effective July 1, 2018) Records of the Virginia Alcoholic Beverage Control Authority to the extent such records contain (i) information of a proprietary nature gathered by or in the possession of the Authority from a private entity pursuant to a promise of confidentiality; (ii) trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), of any private entity; (iii) financial records of a private entity, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise; (iv) contract cost estimates prepared for the (a) confidential use in awarding contracts for construction or (b) purchase of goods or services; or (v) the determination of marketing and operational strategies where disclosure of such strategies would be harmful to the competitive position of the Authority.

In order for the records identified in clauses (i) through (iii) to be excluded from the provisions of this chapter, the private entity shall make a written request to the Authority:

- 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 Authority shall determine whether the requested exclusion from disclosure is necessary to protect such records of the 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.

II. Comparison between ABC Authority Record Exemption (2.2-3705.7 #34) and Other Record Exemptions

ABC Authority Exemption	Related Records Exemptions	NOTES
Records of the Virginia Alcoholic Beverage Control Authority to the extent such records contain:	-----	-----
(i) information of a proprietary nature gathered by or in the possession of the Authority from a private entity pursuant to a promise of confidentiality	No other generic <u>proprietary record</u> exemption in FOIA; current exemptions in 2.2-3705.6 are for specifically named public bodies or for a specifically named purpose (i.e. economic development).	Phrasing of other FOIA proprietary records exemptions read the same as for this ABC Authority exemption. See also work of Proprietary Records Workgroup in attempting to craft general proprietary records exemption. See also VA Sup. Ct decision in <i>American Tradition Institute</i> case.
(ii) trade secrets, as defined in the Uniform Trade Secrets Act (59.1-336 et seq.), of any private entity;	No other generic <u>trade secret record</u> exemption in FOIA; current exemptions in 2.2-3705.6 are for specifically named public bodies or for a specifically named purpose (i.e. economic development)	Phrasing of other FOIA trade secret exemptions read the same as for this ABC Authority exemption.
(iii) financial records of a private entity, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise;	No other generic <u>financial record/balance sheet record</u> exemption in FOIA; current exemptions in 2.2-3705.6 are for specifically named public bodies or for a specifically named purpose (i.e. economic development)	Phrasing of other FOIA financial record/balance sheet exemptions read the same as for this ABC Authority exemption.
(iv) contract cost estimates prepared for the (a) confidential use in awarding contracts for construction or (b) purchase of goods or services;	Nothing in FOIA, other than 2.2-3705.1 (#8); but that is limited to real property. See also 2.2-4342 of VPPA-- "Cost estimates relating to a proposed procurement transaction prepared by or	ABC Authority is exempt from the VPPA; therefore 2.2-4342 inapplicable to ABC Authority.

	for a public body shall not be open to public inspection.	
(v) the determination of marketing and operational strategies where disclosure of such strategies would be harmful to the competitive position of the Authority	No other generic <u>marketing or operational strategies</u> exemption in FOIA; current exemptions in FOIA are for specifically named public bodies--see notes.	VCUHSA--2.2-3705.7 (#15) and 2.2-3711 (meetings) (#23) UVA/EVMS--2.2-3705.4 (#5) and 2.2-3711 (meetings) (#22)
EARMARKING:		
In order for the records identified in clauses (i) through (iii) to be excluded from the provisions of this chapter, the private entity shall make a written request to the Authority: 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.	Earmarking provisions found throughout FOIA record exemptions, especially in 2.2-3705.6--proprietary record exemptions. Specifically, subdivisions 11, 13, 18, 20, 22, 23, 24, 26, and 27 in 2.2-3705.6.	There are, however, minor variations in the phrasing of the various earmarking provisions in FOIA.
The Authority shall determine whether the requested exclusion from disclosure is necessary to protect such records of the 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.	Subdivisions 11, 22, 23, 24 in 2.2-3705.6. Subdivisions 25 in 2.2-3705.7	VRS, local retirement systems and VCSP