

SENATE BILL NO. _____ HOUSE BILL NO. _____

1 A BILL to amend and reenact §§ 2.2-3705.1 and 2.2-3705.3 of the Code of Virginia, relating to the
2 Virginia Freedom of Information Act; definition of personnel record; administrative
3 investigations related to personnel matters.

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

5 **1. That §§ 2.2-3705.1 and 2.2-3705.3 of the Code of Virginia are amended and reenacted as**
6 **follows:**

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

9 The following information contained in a public record is excluded from the mandatory
10 disclosure provisions of this chapter but may be disclosed by the custodian in his discretion, except
11 where such disclosure is prohibited by law. Redaction of information excluded under this section from a
12 public record shall be conducted in accordance with § 2.2-3704.01.

13 1. Personnel information concerning identifiable individuals, ~~except that access shall not be~~
14 ~~denied to the person who is the subject thereof~~ other than individuals involved in administrative
15 investigations excluded in accordance with § 2.2-3705.3, that (i) is used or has been used to determine
16 that individual's qualification for employment, promotion, assignment, or additional compensation,
17 except as otherwise provided in this subdivision; (ii) otherwise documents the employment relationship,
18 including records related to attendance; payroll; medical, tax, or employee benefits; evaluations;
19 retirement; grievance, termination, or other disciplinary action; or (iii) is personal information as defined
20 in § 2.2-3801.

21 Access to such personnel information shall not be denied to the person who is the subject
22 thereof. Any person who is the subject of such information and who is 18 years of age or older may
23 waive, in writing, the protections afforded by this subdivision. If the protections are so waived, such
24 information shall be disclosed.

25 Nothing in this subdivision shall be construed to authorize the withholding of ~~any~~:

26 a. Any contracts between a public body and its officers or employees, other than contracts
27 settling public employee employment disputes excluded under subdivision 1;

28 b. Records of the name, position, job classification, official salary, or rate of pay of, and records
29 of the allowances or reimbursements for expenses paid to, any officer, official, or employee of a public
30 body. The provisions of this subdivision b, however, shall not require public access to records of the
31 official salaries or rates of pay of public employees whose annual rate of pay is \$10,000 or less;

32 c. Certificates of training or other evidence of training required as a condition of employment or
33 continued employment;

34 d. Any resumes or applications submitted by persons who are appointed by the Governor
35 pursuant to § 2.2-106 or 2.2-107; or

36 e. Records of the compensation or benefits paid by any corporation organized by the Virginia
37 Retirement System or its officers or employees.

38 2. Written advice of legal counsel to state, regional₂, or local public bodies or the officers or
39 employees of such public bodies, and any other information protected by the attorney-client privilege.

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

43 4. Any test or examination used, administered₂, or prepared by any public body for purposes of
44 evaluation of (i) any student or any student's performance, (ii) any employee or employment seeker's
45 qualifications or aptitude for employment, retention, or promotion, or (iii) qualifications for any license
46 or certificate issued by a public body.

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

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

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

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

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

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

70 9. Information concerning reserves established in specific claims administered by the
71 Department of the Treasury through its Division of Risk Management as provided in Article 5 (§ 2.2-
72 1832 et seq.) of Chapter 18, or by any county, city, or town; and investigative notes, correspondence and
73 information furnished in confidence with respect to an investigation of a claim or a potential claim
74 against a public body's insurance policy or self-insurance plan. However, nothing in this subdivision
75 shall authorize the withholding of information taken from inactive reports upon expiration of the period
76 of limitations for the filing of a civil suit.

77 10. Personal information, as defined in § 2.2-3801, including electronic mail addresses, furnished
78 to a public body for the purpose of receiving electronic mail from the public body, provided that the

79 electronic mail recipient has requested that the public body not disclose such information. However,
80 access shall not be denied to the person who is the subject of the record.

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

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

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

96 **§ 2.2-3705.3. Exclusions to application of chapter; records relating to administrative**
97 **investigations.**

98 The following information contained in a public record is excluded from the mandatory
99 disclosure provisions of this chapter but may be disclosed by the custodian in his discretion, except
100 where such disclosure is prohibited by law. Redaction of information excluded under this section from a
101 public record shall be conducted in accordance with § 2.2-3704.01.

102 1. [Investigator notes, and other correspondence and information, furnished in confidence with](#)
103 [respect to an active administrative investigation. Information contained in reports of completed](#)
104 [investigations shall be disclosed in a form that does not reveal the identity of the complainants or](#)
105 [persons supplying information. The information disclosed shall include the agency involved, the nature](#)

106 of the complaint, the actions taken to resolve the complaint, and the identity of the person who is the
107 subject of the complaint. If, however, an investigation does not lead to corrective action, the identity of
108 the person who is the subject of the complaint may be released only with the consent of the subject
109 person.

110 2. (Effective until July 1, 2018) Information relating to investigations of applicants for licenses
111 and permits, and of all licensees and permittees, made by or submitted to the Alcoholic Beverage
112 Control Board, the Virginia Lottery, the Virginia Racing Commission, the Department of Agriculture
113 and Consumer Services relating to investigations and applications pursuant to Article 1.1:1 (§ 18.2-
114 340.15 et seq.) of Chapter 8 of Title 18.2, or the Private Security Services Unit of the Department of
115 Criminal Justice Services.

116 ~~1-2.~~ (Effective July 1, 2018) Information relating to investigations of applicants for licenses and
117 permits, and of all licensees and permittees, made by or submitted to the Virginia Alcoholic Beverage
118 Control Authority, the Virginia Lottery, the Virginia Racing Commission, the Department of
119 Agriculture and Consumer Services relating to investigations and applications pursuant to Article 1.1:1
120 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2, or the Private Security Services Unit of the
121 Department of Criminal Justice Services.

122 ~~2-3.~~ Records of active investigations being conducted by the Department of Health Professions
123 or by any health regulatory board in the Commonwealth pursuant to § 54.1-108.

124 ~~3. Investigator notes, and other correspondence and information, furnished in confidence with~~
125 ~~respect to an active investigation of individual employment discrimination complaints made to the~~
126 ~~Department of Human Resource Management, to such personnel of any local public body, including~~
127 ~~local school boards, as are responsible for conducting such investigations in confidence, or to any public~~
128 ~~institution of higher education. Information contained in inactive reports shall be disclosed in a form that~~
129 ~~does not reveal the identity of charging parties, persons supplying the information, or other individuals~~
130 ~~involved in the investigation.~~

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

133 5. Investigative notes and other correspondence and information furnished in confidence with
134 respect to an investigation or conciliation process involving an alleged unlawful discriminatory practice
135 under the Virginia Human Rights Act (§ 2.2-3900 et seq.) or under any local ordinance adopted in
136 accordance with the authority specified in § 2.2-524, or adopted pursuant to § 15.2-965, or adopted prior
137 to July 1, 1987, in accordance with applicable law, relating to local human rights or human relations
138 commissions. Information contained in inactive reports shall be disclosed in a form that does not reveal
139 the identity of the parties involved or other persons supplying information.

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

147 7. Investigative notes, correspondence and information furnished in confidence, and records
148 otherwise exempted by this chapter or any Virginia statute, provided to or produced by or for (i) the
149 Auditor of Public Accounts; (ii) the Joint Legislative Audit and Review Commission; (iii) an appropriate
150 authority as defined in § 2.2-3010 with respect to an allegation of wrongdoing or abuse under the Fraud
151 and Abuse Whistle Blower Protection Act (§ 2.2-3009 et seq.); (iv) the Office of the State Inspector
152 General with respect to an investigation initiated through the Fraud, Waste and Abuse Hotline or an
153 investigation initiated pursuant to Chapter 3.2 (§ 2.2-307 et seq.); (v) internal auditors appointed by the
154 head of a state agency or by any public institution of higher education; (vi) the committee or the auditor
155 with respect to an investigation or audit conducted pursuant to § 15.2-825; or (vii) the auditors,
156 appointed by the local governing body of any county, city, or town or a school board, who by charter,
157 ordinance, or statute have responsibility for conducting an investigation of any officer, department, or
158 program of such body. Information contained in completed investigations shall be disclosed in a form
159 that does not reveal the identity of the complainants or persons supplying information to investigators.

160 Unless disclosure is excluded by this subdivision, the information disclosed shall include the agency
161 involved, the identity of the person who is the subject of the complaint, the nature of the complaint, and
162 the actions taken to resolve the complaint. If an investigation does not lead to corrective action, the
163 identity of the person who is the subject of the complaint may be released only with the consent of the
164 subject person. Local governing bodies shall adopt guidelines to govern the disclosure required by this
165 subdivision.

166 8. Information furnished in confidence to the Department of Human Resource Management with
167 respect to an investigation, consultation, or mediation under § 2.2-1202.1, and memoranda,
168 correspondence and other records resulting from any such investigation, consultation or mediation.
169 Information contained in inactive reports shall be disclosed in a form that does not reveal the identity of
170 the parties involved or other persons supplying information.

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

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

178 11. Information furnished to or prepared by the Board of Education pursuant to subsection D of §
179 22.1-253.13:3 in connection with the review or investigation of any alleged breach in security,
180 unauthorized alteration, or improper administration of tests by local school board employees responsible
181 for the distribution or administration of the tests. However, this section shall not prohibit the disclosure
182 of such information to (i) a local school board or division superintendent for the purpose of permitting
183 such board or superintendent to consider or to take personnel action with regard to an employee or (ii)
184 any requester, after the conclusion of a review or investigation, in a form that (a) does not reveal the
185 identity of any person making a complaint or supplying information to the Board on a confidential basis
186 and (b) does not compromise the security of any test mandated by the Board.

187 12. Information contained in ~~(i)~~ an application for licensure or renewal of a license for teachers
188 and other school personnel, including transcripts or other documents submitted in support of an
189 application, ~~and (ii) an active investigation conducted by or for the Board of Education related to the~~
190 ~~denial, suspension, cancellation, revocation, or reinstatement of teacher and other school personnel~~
191 ~~licenses including investigator notes and other correspondence and information, furnished in confidence~~
192 ~~with respect to such investigation.~~ However, this subdivision shall not prohibit the disclosure of such ~~(a)~~
193 application information to the applicant at his own expense ~~or (b) investigation information to a local~~
194 ~~school board or division superintendent for the purpose of permitting such board or superintendent to~~
195 ~~consider or to take personnel action with regard to an employee. Information contained in completed~~
196 ~~investigations shall be disclosed in a form that does not reveal the identity of any complainant or person~~
197 ~~supplying information to investigators. The completed investigation information disclosed shall include~~
198 ~~information regarding the school or facility involved, the identity of the person who was the subject of~~
199 ~~the complaint, the nature of the complaint, and the actions taken to resolve the complaint. If an~~
200 ~~investigation fails to support a complaint or does not lead to corrective action, the identity of the person~~
201 ~~who was the subject of the complaint may be released only with the consent of the subject person.~~ No
202 personally identifiable information regarding a current or former student shall be released except as
203 permitted by state or federal law.

204 13. Information provided in confidence and related to an investigation by the Attorney General
205 under Article 1 (§ 3.2-4200 et seq.) or Article 3 (§ 3.2-4204 et seq.) of Chapter 42 of Title 3.2, Article
206 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 (§
207 58.1-1000) of Chapter 10 of Title 58.1. However, information related to an investigation that has been
208 inactive for more than six months shall, upon request, be disclosed provided such disclosure is not
209 otherwise prohibited by law and does not reveal the identity of charging parties, complainants, persons
210 supplying information, witnesses, or other individuals involved in the investigation.

211 **2. That the provisions of this act are declaratory of existing law.**

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