



VIRGINIA FREEDOM OF INFORMATION ADVISORY COUNCIL

COMMONWEALTH OF VIRGINIA

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MEMORANDUM

TO: Members of the Virginia Freedom of Information Advisory Council

THROUGH: Maria J.K. Everett
Executive Director

FROM: Lisa Wallmeyer
Assistant Director

DATE: April 8, 2003

SUBJECT: 2003 Amendments to the Virginia Freedom of Information Act
(§ 2.2-3700 et. seq. of the Code of Virginia).¹

The 2003 Session of the General Assembly passed nineteen bills amending the Virginia Freedom of Information Act (FOIA), including the creation of eight new records and meetings exemptions. This memo will present a brief overview of amendments to FOIA in order to present context and organization to the numerous bills. For more specific information on the particulars of each bill, please see the bill summaries document or the bill itself.

§ 2.2-3701. Definitions.

The definition of a public body was amended to specifically include the Virginia Birth-Related Neurological Injury Program and its board of directors. (HB 2048)

§ 2.2-3703. Public bodies and records to which chapter inapplicable; voter registration and election records.

This section was amended to remove the Commitment Review Committee, and any documents, evaluations, assessments and proceedings involving the civil commitment of sexually violent predators, from the scope of FOIA. (HB 2445, SB 1149)

¹This memo will highlight the changes to FOIA, section by section. If a section of FOIA is not noted, then no changes were made.

§ 2.2-3704. Public records to be open to inspection; procedure for requesting records and responding to requests; charges.

Subsection F was amended, at the recommendation of the FOIA Council, relating to charges for public records. Before processing a request for records, a public body may now require a requester to pay any amounts owed to the public body for previous requests for records that remain unpaid 30 days or more after billing. (SB 738)

§ 2.2-3705. Exclusions to application of chapter.

Five existing records exemptions were amended as follows:

- Subdivision A 26: amended to exempt certain records submitted to a local public body concerning individual employment discrimination complaints. (HB 1651)
- Subdivision A 39: amended to exempt portions of engineering and construction drawings submitted to comply with the building code or fire code that reveal critical structural components. The protections must be invoked in writing by the owner or lessee of the building, identifying the records for which the protection is sought and stating why the protection is necessary. (HB 1727)
- Subdivision A 40: amended to exempt certain records relating to an investigation of a claim or a potential claim against a public body's insurance policy or self-insurance plan. (HB 2492)
- Subdivision A 56: amended to clarify that the exemption does not apply to certain documents under the Public-Private Transportation Act of 1995 and the Public-Private Education Facilities and Infrastructure Act of 2002 once a comprehensive agreement has been entered into, and clarifies that procurement records do not include certain proprietary or financial documents. (HB 1545)
- Subdivision A 57: amended to exempt critical infrastructure components or vulnerability assessments submitted to a public body for purposes of antiterrorism response planning. The protections must be invoked in writing by the person seeking the protections, identifying the records for which the protection is sought and stating why the protection is necessary. (HB 2211)

Six new records exemptions were created to protect the following:

- Records pertaining to examination of holder records pursuant to the Uniform Disposition of Unclaimed Property Act. (HB 1776)
- Certain records specified by § 38.2-5002.2 relating to the Virginia Birth-Related Neurological Injury Program. (HB 2048)
- Records of the Board of Branch Pilot relating to drug testing of persons regulated by the Board. (HB 2131)
- Security plans and specific vulnerability assessment components of school safety audits. (HB 2621)

- Proprietary business or research-related information submitted as part of a grant application to the Commonwealth Health Research Board. (HB 2658)
- Records relating to the negotiation and award of a specific contract where competition or bargaining is involved, but only until the public body has made a decision to award or not to award a contract. This amendment was a recommendation of the FOIA Council. (SB 737)

§ 2.2-3708. Electronic Communications Meetings.

The Acts of Assembly relating to electronic communications meetings were amended to include any public body whose membership includes persons who reside or work more than 55 miles from the meeting locations. The bills also amended the reporting requirements for electronic meetings and extended the sunset clause. (SB 1203)

§ 2.2-3709. Meetings of the Board of Visitors of the University of Virginia.

Among other things, this section was amended to reduce the requirement that two-thirds of the membership of the Board of Visitors be physically assembled in one place for electronic communications meeting to a quorum. The sunset clause was also extended. (SB1344)

§ 2.2-3711. Closed meetings authorized for certain limited purposes.

Three existing meetings exemptions were amended as follows:

- Subdivision A 9: Amended to allow the Virginia Museum of Natural History to hold closed meetings to discuss matters relating to specific gifts, bequests, and grants. (HB 2738)
- Subdivision A 16: Amended to allow the State Lottery Board to hold a closed meeting to discuss a licensing appeal action. (HB 2209)
- Subdivision A 28: Amended to allow the Board of Accountancy to hold certain portions of a disciplinary proceeding in closed meeting. (HB 1329)

Two new meetings exemptions were created to allow a closed meeting for the following purposes:

- Discussions of the Commonwealth Health Research Board concerning grant records exempt from public disclosure. (HB 2658)
- Discussion of the award of a public contract involving the expenditure of public funds. This amendment was a recommendation of the FOIA Council. (SB 737)

§ 2.2-3714. Violations and penalties.

Increases the minimum civil penalties for knowing and willing violations. (HB 2086)