



# VIRGINIA FREEDOM OF INFORMATION ADVISORY COUNCIL

## COMMONWEALTH OF VIRGINIA

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### **2004 FOIA LEGISLATIVE UPDATE**

The 2004 Session of the General Assembly passed eighteen bills amending the Virginia Freedom of Information Act (FOIA). Of note, both bills recommended by the Freedom of Information Advisory Council passed -- SB 352 (Houck) reorganizing the records exemptions and SB 354 (Houck) relating to records and meeting exemptions for the Civil Commitment Review Committee. This memo will present a brief overview of amendments to FOIA section by section in order to provide context and organization to the numerous bills. For more specific information on the particulars of each bill, please see the bill itself. Unless otherwise indicated, the changes will become effective July 1, 2004.

#### **§ 2.2-3703. Public bodies and records to which chapter inapplicable; voter registration and election records; access by persons incarcerated in a state, local, or federal correctional facility.**

The provision stating that incarcerated persons in the Commonwealth do not have FOIA rights was moved from § 2.2-3705 to this section by the records reorganization bill, which repealed § 2.2-3705. [SB 352] (2004 Acts of Assembly, c. 690)

The exclusion from FOIA for the Commitment Review Committee relating to sexually violent predators was removed; narrower records and meeting exemptions were added in §§ 2.2-3705 and 2.2-3711. [SB 354] (2004 Acts of Assembly, c. 398)

#### **§ 2.2-3704.1. Posting of notice of rights and responsibilities by state public bodies; assistance by the Freedom of Information Advisory Council.**

A new section was created requiring executive state agencies to make available and post on the Internet information about FOIA, including a contact person, FOIA rights of citizens, and policies concerning commonly withheld records. The FOIA Council is required to assist in development and implementation of this information, upon request. [HB 358] (2004 Acts of Assembly, c. 730)

#### **§ 2.2-3705. Exclusions to application of chapter.**

Section 2.2-3705 was repealed by the records reorganization bill, and replaced with seven new subject-specific exemption sections. [SB 352] (2004 Acts of Assembly, c. 690) A table



converting the existing records exemption sections to their new section citations is included at the end of this document. The exemptions amended and added in § 2.2-3705 by the 2004 session of the General Assembly will be examined and placed in the appropriate new sections once each bill becomes law. As passed, however, the language of each exemption appears as an amendment to § 2.2-3705.

Four existing records exemptions were amended as follows:

- Subdivision A 1: The exemption for investigations of applications for licenses and permits was expanded to include such records held by the Private Security Services Unit of the Department of Criminal Justice Services. [HB 1246] (2004 Acts of Assembly, c. 766)
- Subdivision A 5: The medical records exemption was amended to apply to "health records," instead of "medical and mental records." This change is consistent with federal regulations concerning protected health information. [HB 877/SB 337] (2004 Acts of Assembly, cc. 65, 1014)
- Subdivision A 22: The exemption for certain proprietary records submitted to economic development entities was clarified to apply to state, local or regional economic development agencies. [SB 394] (2004 Acts of Assembly, c. 593)
- Subdivision A 43: The exemption currently exempts records of certain state audits. The exemption was expanded to apply to the same kind of records held at the local level. [SB 562] (2004 Acts of Assembly, c. 605)

Seven new records exemptions were created as follows:

- Exemption for records of park and recreation departments containing identifiable information of minors, except that directory information may not be withheld. [HB 168] (2004 Acts of Assembly, c. 832)
- Exemption for records relating to citizen emergency response teams that reveal personal information about individual participants. [HB 347] (2004 Acts of Assembly, c. 426)
- Exemption for data provided by a telecommunications carrier to a public body for use in a 911 or E-911 emergency dispatch system. [HB 1364] (2004 Acts of Assembly, c. 482)
- Exemption for records of the Virginia Commission on Military Bases that contain vulnerability information or strategies to prevent the closure of federal military bases in Virginia. This exemption will become effective immediately upon signature of the Governor, and will expire July 1, 2006. [HB 1396] (2004 Acts of Assembly, c. 770)
- Exemption for the names and addresses of persons receiving certain transportation services. [SB 149] (2004 Acts of Assembly, c. 666)
- Exemption for records of the Commitment Review Committee concerning the mental health assessment of an individual subject to civil commitment as a sexually violent predator and records identifying the victims of such person. [SB 354] (2004 Acts of Assembly, c. 398)
- Exemption for records of the State Health Commissioner relating to the health of a person subject to an order of quarantine or isolation. This exemption will



become effective immediately upon signature of the Governor. [HB 1483/SB 685] (2004 Acts of Assembly, cc. 773, 1021)

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

The records exemption reorganization created this section that includes the record exemptions currently found at § 2.2-3705(A)(4), (7), (8), (11), (14), (18), (25), (35), (40), (78), (80) and (82).

**§ 2.2-3705.2. Exclusions to application of chapter; records relating to public safety.**

The records exemption reorganization created this section that includes the record exemptions currently found at § 2.2-3705(A)(24), (39), (45), (57), (65), (69) and (85).

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

The records exemption reorganization created this section that includes the record exemptions currently found at § 2.2-3705(A)(1), (13), (26), (28), (31), (38), (43), (73), (74) and (81).

**§ 2.2-3705.4. Exclusions to application of chapter; educational records and certain records of educational institutions.**

The records exemption reorganization created this section that includes the record exemptions currently found at § 2.2-3705(A)(3), (9), (20), (58) and (67).

**§ 2.2-3705.5. Exclusions to application of chapter; health and social services records.**

The records exemption reorganization created this section that includes the record exemptions currently found at § 2.2-3705(A)(5), (12), (15), (32), (41), (42), (44), (54), (59), (63), (64), (68), (77), (79) and (87).

**§ 2.2-3705.6. Exclusions to application of chapter; proprietary records and trade secrets.**

The records exemption reorganization created this section includes the record exemptions currently found at § 2.2-3705(A)(16), (19), (22), (23), (27), (46), (48), (49), (50), (53), (52), (56), (61), (62), (66), (70), (75) and (83).

**§ 2.2-3705.7. Exclusions to application of chapter; records of specific public bodies and certain other limited exemptions.**

The records exemption reorganization created this section that includes the record exemptions currently found at § 2.2-3705(A)(2), (6), (10), (17), (21), (29), (30), (33), (34), (36), (37), (47), (51), (55), (60), (71), (72), (76), (84) and (86).



**§ 2.2-3705.8. Limitation on record exclusions.**

The provisions stating that salary information and nonexempt portions of consultant's reports are public records were moved to this new section by the records exemption reorganization bill. These provisions were previously located in § 2.2-3705, which was repealed. [SB 352] (2004 Acts of Assembly, c. 690)

**§ 2.2-3706. Disclosure of criminal records; limitations.**

Records indicating the telephone number of cellular phones and pagers provided to law-enforcement personnel are exempt from disclosure. [HB 538/SB 297] (2004 Acts of Assembly, cc. 685, 735)

**§ 2.2-3707. Meetings to be public; notice of meetings; recordings; minutes.**

The requirement that minutes be taken at open meetings is clarified to specify that minutes must include: the date, time, and location of the meeting; the members of the public body present and absent; a summary of matters discussed; and a record of any votes. [HB 358] (2004 Acts of Assembly, c. 730)

**§ 2.2-3707.01. Meetings of the General Assembly.**

A new section was created to specifically address meetings of the General Assembly. The new section specifies that floor sessions and meetings of standing or interim study committees or subcommittees, joint rules of conference, or a quorum of any such committee or subcommittee must be open and are governed by FOIA. Political party caucuses are not meetings for purposes of FOIA. Any other meetings of the General Assembly will be governed by rules established by the Joint Rules Committee that are approved by a majority of each house and have been the subject of regional public hearings. A copy of the proposed rules must be provided to the FOIA Council, and the FOIA Council will provided technical assistance, upon request, to the Joint Rules Committee. [HB 1357] (2004 Acts of Assembly, c. 768)

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

Two new meeting exemptions were created as follows:

- Exemption for discussion by the Virginia Commission on Military Bases of records exempt from disclosure that reveal vulnerabilities or strategies to prevent the closure of federal military bases in Virginia. This exemption will become effective immediately upon signature of the Governor, and will expire on July 1, 2006. [HB 1396] (2004 Acts of Assembly, c. 770)
- Exemption for discussion by the Commitment Review Committee of records of mental health assessments of individuals subject to commitment as a sexually violent predator or records identifying their victims. [SB 354] (2004 Acts of Assembly, c. 398)



**Freedom of Information Act**  
**Reorganization of § 2.2-3705, Records Exemptions**  
**Conversion Tables**

Former Reference in § 2.2-3705(A)	New Section
1	Subdivision 1 of § 2.2-3705.3
2	Subdivision 1 of § 2.2-3705.7
3	Subdivision 1 of § 2.2-3705.4
4	Subdivision 1 of § 2.2-3705.1
5	Subdivision 1 of § 2.2-3705.5
6	Subdivision 2 of § 2.2-3705.7
7	Subdivision 2 of § 2.2-3705.1
8	Subdivision 3 of § 2.2-3705.1
9	Subdivision 2 of § 2.2-3705.4
10	Subdivision 3 of § 2.2-3705.7
11	Subdivision 4 of § 2.2-3705.1
12	Subdivision 2 of § 2.2-3705.5
13	Subdivision 2 of § 2.2-3705.3
14	Subdivision 5 of § 2.2-3705.1
15	Subdivision 3 of § 2.2-3705.5
16	Subdivision 1 of § 2.2-3705.6
17	Subdivision 4 of § 2.2-3705.7
18	Subdivision 6 of § 2.2-3705.1
19	Subdivision 2 of § 2.2-3705.6
20	Subdivision 3 of § 2.2-3705.4
21	Subdivision 5 of § 2.2-3705.7
22	Subdivision 3 of § 2.2-3705.6
23	Subdivision 4 of § 2.2-3705.6
24	Subdivision 1 of § 2.2-3705.2
25	Subdivision 7 of § 2.2-3705.1
26	Subdivision 3 of § 2.2-3705.3
27	Subdivision 5 of § 2.2-3705.6
28	Subdivision 4 of § 2.2-3705.3
29	Subdivision 6 of § 2.2-3705.7
30	Subdivision 7 of § 2.2-3705.7
31	Subdivision 5 of § 2.2-3705.3
32	Subdivision 4 of § 2.2-3705.5
33	Subdivision 8 of § 2.2-3705.7
34	Subdivision 9 of § 2.2-3705.7



35	Subdivision 8 of § 2.2-3705.1
36	Subdivision 10 of § 2.2-3705.7
37	Subdivision 11 of § 2.2-3705.7
38	Subdivision 6 of § 2.2-3705.3
39	Subdivision 2 of § 2.2-3705.2
40	Subdivision 9 of § 2.2-3705.1
41	Subdivision 5 of § 2.2-3705.5
42	Subdivision 6 of § 2.2-3705.5
43	Subdivision 7 of § 2.2-3705.3
44	Subdivision 7 of § 2.2-3705.5
45	Subdivision 3 of § 2.2-3705.2
46	Subdivision 6 of § 2.2-3705.6
47	Subdivision 12 of § 2.2-3705.7
48	Subdivision 7 of § 2.2-3705.6
49	Subdivision 8 of § 2.2-3705.6
50	Subdivision 9 of § 2.2-3705.6
51	Subdivision 13 of § 2.2-3705.7
52	Subdivision 8 of § 2.2-3705.5
53	Subdivision 10 of § 2.2-3705.6
54	Subdivision 9 of § 2.2-3705.5
55	Subdivision 14 of § 2.2-3705.7
56	Subdivision 11 of § 2.2-3705.6
57	Subdivision 4 of § 2.2-3705.2
58	Subdivision 4 of § 2.2-3705.4
59	Subdivision 10 of § 2.2-3705.5
60	Subdivision 15 of § 2.2-3705.7
61	Subdivision 12 of § 2.2-3705.6
62	Subdivision 13 of § 2.2-3705.6
63	Subdivision 11 of § 2.2-3705.5
64	Subdivision 12 of § 2.2-3705.5
65	Subdivision 5 of § 2.2-3705.2
66	Subdivision 14 of § 2.2-3705.6
67	Subdivision 5 of § 2.2-3705.4
68	Subdivision 13 of § 2.2-3705.5
69	Subdivision 6 of § 2.2-3705.2
70	Subdivision 15 of § 2.2-3705.6
71	Subdivision 16 of § 2.2-3705.7
72	Subdivision 17 of § 2.2-3705.7
73	Subdivision 8 of § 2.2-3705.3
74	Subdivision 9 of § 2.2-3705.3
75	Subdivision 16 of § 2.2-3705.6
76	Subdivision 18 of § 2.2-3705.7
77	Subdivision 14 of § 2.2-3705.5
78	Subdivision 10 of § 2.2-3705.1
79	Subdivision 15 of § 2.2-3705.5



80	Subdivision 11 of § 2.2-3705.1
81	Subdivision 10 of § 2.2-3705.3
82	Subdivision 12 of § 2.2-3705.1
83	Subdivision 17 of § 2.2-3705.6
84	Subdivision 19 of § 2.2-3705.7
85	Subdivision 7 of § 2.2-3705.2
86	Subdivision 20 of § 2.2-3705.7
87	Subdivision 16 of § 2.2-3705.5

<b>New Section</b>	<b>Former Reference in § 2.2-3705(A)</b>
§ 2.2-3705.1. Exclusions to application of chapter; <b>exclusions of general application to public bodies.</b>	Subdivisions 4, 7, 8, 11, 14, 18, 25, 35, 40, 78, 80, and 82.
§2.2-3705.2. Exclusions to application of chapter; <b>records relating to public safety.</b>	Subdivisions 24, 39, 45, 57, 65, 69, and 85.
§ 2.2-3705.3. Exclusions to application of chapter; <b>records relating to administrative investigations.</b>	Subdivisions 1, 13, 26, 28, 31, 38, 43, 73, 74, and 81.
§ 2.2-3705.4. Exclusions to application of chapter; <b>educational records and certain records of educational institutions.</b>	Subdivisions 3, 9, 20, 58, and 67.
§ 2.2-3705.5. Exclusions to application of chapter; <b>health and social services records.</b>	Subdivisions 5, 12, 15, 32, 41, 42, 44, 52, 54, 59, 63, 64, 68, 77, 79, and 87.
§ 2.2-3705.6. Exclusions to application of chapter; <b>proprietary records and trade secrets.</b>	Subdivisions 16, 19, 22, 23, 27, 46, 48, 49, 50, 53, 56, 61, 62, 66, 70, 75, and 83.
§ 2.2-3705.7. Exclusions to application of chapter; <b>records of specific public bodies and certain other limited exemptions.</b>	Subdivisions 2, 6, 10, 17, 21, 29, 30, 33, 34, 36, 37, 47, 51, 55, 60, 71, 72, 76, 84, and 86.

