



# VIRGINIA FREEDOM OF INFORMATION ADVISORY COUNCIL

## COMMONWEALTH OF VIRGINIA

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## **2005 FOIA LEGISLATIVE UPDATE**

### **I. Introduction**

The 2005 Session of the General Assembly passed a total of 12 bills amending the Virginia Freedom of Information Act (FOIA). One bill was recommended by the Freedom of Information Advisory Council this session: SB 711 (Houck), amending the requirements for electronic meetings. SB 711 was incorporated into the nearly-identical bill recommended by the Joint Commission on Technology and Science (JCOTS), SB 1196 (Newman). SB 1196/SB711 passed as a joint recommendation of the FOIA Council and JCOTS.

Of the 12 bills, six bills created new record exemptions to FOIA: HB 2399 adds an exemption for 911 or E-911 subscriber data collected by local governing bodies; HB 2729 adds an exemption for records of active investigations conducted by the Department of Criminal Justice Services of certain of its licensees; HB 2404 adds an exemption for proprietary records of a local wireless service authority; SB 959 adds an exemption for proprietary records of a local public body providing telecommunications and cable television services; HB 2032 adds an exemption for Statewide Alert Network records; and SB 1157 adds an exemption for records of the Judicial Inquiry and Review Commission. Two of these six, HB 2404 and SB 959, also create new closed meeting exemptions corresponding to their respective records exemptions.

In addition to SB 1196/SB 711 discussed above, four other bills amended current exemptions under FOIA: HB 2516 and SB 1109, which are identical, make technical amendments to existing provisions concerning minors' health records; SB 1023 makes a technical amendment to the

existing provision concerning involuntary admission records as part of the re-codification of Title 37.1 as Title 37.2; SB 752 extends the sunset provision for electronic meetings held by the Board of Visitors of the University of Virginia.

One other bill, HB 2930, addressing voting security matters involving the State Board of Elections and local electoral boards, also creates a new closed meeting exemption within FOIA. In amending Title 24.2 (election laws), HB 2930 also exempts certain records from disclosure under FOIA and provides that "site visits" are not "meetings" subject to FOIA.

Section II of this update presents a brief overview of amendments to FOIA section by section in order to provide context and organization to the numerous bills. Section III presents a brief overview of other access-related legislation passed during the 2005 Session of the General Assembly.

For more specific information on the particulars of each bill, please see the bill itself. Unless otherwise indicated, the changes became effective July 1, 2005.

## **II. Amendments to the Freedom of Information Act**

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

Adds an exemption for records of subscriber data collected by or provided to a local governing body for a 911 or E-911 system. [HB 2399] (2005 Acts of Assembly, c. 410)

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

Adds an exemption for records of certain active investigations being conducted by the Department of Criminal Justice of licensed private investigators, bail bondsmen, bail enforcement agents, and special conservators of the peace. [HB 2729] (2005 Acts of Assembly, c. 601)

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

Subdivision 1 of § 2.2-3705.5 is amended to provide consistency with federal regulations concerning minors' health records promulgated by the Secretary of Health and Human Services pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPPA). [HB 2516/SB 1109] (2005 Acts of Assembly, c. 181)

Subdivision 6 of § 2.2-3705.5 is amended to refer to § 37.2-818, and the current reference to § 37.1-67.3 is stricken, as part of the re-codification of Title 37.1 as Title 37.2. [SB 1023] (2005 Acts of Assembly, c. 716)

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

Adds an exemption for confidential proprietary records and trade secrets developed by or for a local wireless service authority. [HB 2404] (2005 Acts of Assembly, c. 411)

Adds an exemption for confidential proprietary records and trade secrets developed and held by a local public body providing telecommunication and cable television services. [SB 959] (2005 Acts of Assembly, c. 258)

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

Adds an exemption for records submitted for inclusion in the Statewide Alert Network administered by the Department of Emergency Management. [HB 2032] (2005 Acts of Assembly, c. 165)

Adds an exemption for records of the Judicial Inquiry and Review Commission made confidential by § 17.1-913. [SB 1157] (2005 Acts of Assembly, c. 508)

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

This section is amended to require that all state public bodies subject to FOIA post notice of their meetings on the Internet, and to encourage other public bodies to do the same. Additional requirements for electronic

meeting minutes are also added, concerning identifying which members were physically present at a central meeting location, those who participated in the meeting through electronic communication means from remote locations, and those who monitored the meeting from other locations. [SB 1196] (2005 Acts of Assembly, c. 352)

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

A new subsection is added specifying that no regular, special or reconvened session of the General Assembly may be conducted through electronic communication means. [SB 1196/SB 711] (2005 Acts of Assembly, c. 352)

**§ 2.2-3708. Electronic communication meetings.**

This section is amended to reduce the notice requirement for electronic meetings from 30 days to seven working days; to eliminate the 25 percent limit on the number of meetings that may be held electronically per year; to eliminate the requirement for an audio or audio/visual recording of electronic meetings, but retain the requirement that minutes be taken; to allow closed meetings to be conducted during electronic meetings; to modify the annual reporting requirement; and to add a definition of "electronic communication means;" [SB 1196/SB711] (2005 Acts of Assembly, c. 352)

**§ 2.2-3709. (Effective until July 1, 2005) Meetings of Board of Visitors of the University of Virginia.**

The sunset provision for this section is extended from July 1, 2005 until July 1, 2007. Reports concerning these meetings shall be submitted to the Virginia Freedom of Information Advisory Council, as well as to the Secretary of Education and the General Assembly. [SB 752] (2005 Acts of Assembly, c. 17)

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

Adds an exemption that permits closed meetings to be held for the purpose of discussion or consideration of confidential proprietary information or trade secrets by a local wireless service authority, corresponding to the new records exemption to be enacted regarding the same subject matter. [HB 2404] (2005 Acts of Assembly, c. 411)

Adds an exemption that permits closed meetings to be held for the purpose of discussion or consideration of confidential proprietary information or trade secrets developed and held by a local public body providing telecommunication and cable television services, corresponding to the new records exemption to be enacted regarding the same subject matter. [SB 959] (2005 Acts of Assembly, c. 258)

Adds an exemption that permits closed meetings to be held for the purpose of discussion or consideration by the State Board of Elections or local electoral boards of voting security matters made confidential pursuant to §24.2-625.1 (see Section III, *infra*). [HB 2930] (2005 Acts of Assembly, c. 568)

### **III. Other Access-Related Legislation**

#### **§ 2.2-2010. Additional powers of VITA.**

A new subsection is added to this existing section, as part of the dissolution of the Virginia Information Providers Network (VIPNet) and transfer of VIPNet's authority to the Virginia Information Technologies Agency (VITA). The new subsection permits VITA to fix and collect fees and charges notwithstanding the provisions of § 2.2-3704 of FOIA. Section 2.2-2032 of the current Code, which allows VIPNet to fix and collect fees notwithstanding § 2.2-3704 of FOIA, is repealed. [SB 1027] (2005 Acts of Assembly, c. 939)

#### **§ 23-38.95. Restructuring of public institutions of higher education; public access to information.**

This is a new section added as part of the legislation enabling the restructuring of public institutions of higher education. This new section provides that covered institutions continue to be subject to § 2.2-4342 of the Public Procurement Act and FOIA, but may conduct electronic meetings as state public bodies under § 2.2-3708, or pursuant to § 2.2-3709 (applicable to the Board of Visitors of the University of Virginia). [HB 2866/SB 1327] (2005 Acts of Assembly, c. 933)

#### **§ 24.2-625.1. Election laws; voting equipment security.**

This is a new section applicable to the State Board of Elections and local electoral boards. This section provides that these boards' records are not subject to disclosure under FOIA to the extent the records describe protocols for maintaining the security of ballots or voting and counting equipment, or reveal the results of risk assessments of specific local electoral procedures. This section also allows these boards' to hold closed meetings for purposes corresponding to this records exemption. It also sets forth a procedure by which two members of a local electoral board may conduct site visits to investigate compliance without the visits being considered "meetings" under FOIA. [HB 2930] (2005 Acts of Assembly, c. 568)

**§ 32.1-283.4. Confidentiality of certain information and records collected and maintained by the Office of the Chief Medical Examiner.**

This is a new section that provides for confidentiality of various records of the Office of the Chief Medical Examiner (OCME). Among other provisions, it provides that records provided to OCME by public or private entities during the course of a death investigation are not subject to FOIA. [HB 1030](2005 Acts of Assembly, c. 37)

**§ 37.1-70.13. Conditional release; criteria; conditions; reports.**

A new subsection is added to this existing section. The new subsection requires the Department of Corrections to provide criminal history, medical and mental health, and other records to the Department of Mental Health, Mental Retardation, and Substance Abuse Services, or to the person's parole or probation officer when a person is placed on conditional release. The new subsection provides that these records are not subject to disclosure under FOIA. [HB 1997] (2005 Acts of Assembly, c. 914)

**§ 59.1-443.2. Personal Information Privacy Act; restricted use of social security numbers.**

This is a new section which sets forth restrictions on the use of social security numbers by any person. This new section, however, provides that it shall not apply to public bodies as defined in FOIA, nor shall it limit access to records pursuant to FOIA. [HB 2482] (2005 Acts of Assembly, c. 640)

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