



VIRGINIA FREEDOM OF INFORMATION ADVISORY COUNCIL

COMMONWEALTH OF VIRGINIA

Senator R. Edward Houck, Chair

Maria J.K. Everett, Esq., Executive Director
Alan Gernhardt, Esq., Staff Attorney
foiacouncil@leg.state.va.us

General Assembly Building ~ 910 Capitol Street, Second Floor ~ Richmond, Virginia 23219
804-225-3056 ~ (Toll Free) 1-866-448-4100 ~ (Fax) 804-371-0169 ~ <http://dls.state.va.us/foiacouncil.htm>

2006 FOIA LEGISLATIVE UPDATE

I. Introduction

The General Assembly passed a total of 16 bills amending the Virginia Freedom of Information Act (FOIA) in 2006. Fifteen of those bills were passed during the 2006 Regular Session; one was passed during the 2006 Special Session I. One bill was recommended by the Freedom of Information Advisory Council: SB 76 (Houck), concerning the release of certain records under the Public-Private Transportation Act of 1995 (PPTA) and the Public-Private Education Facilities and Infrastructure Act of 2002 (PPEA). SB 5011, passed during the 2006 Special Session I, also concerned the release of certain records and corresponding closed meetings under the PPTA and PPEA.

Of the 16 bills, seven bills created five new record exemptions to FOIA:

- HB 348 and SB 39 add an identical exemption for certain records furnished to the state Board of Education;
- SB 443 adds an exemption for certain records of the Brown v. Board of Education Scholarship Awards Committee;
- HB 122 adds an exemption for certain records submitted to the Department of Minority Business Enterprise;
- HB 1458 adds an exemption for certain records of the Tobacco Indemnification and Community Revitalization Commission;
- HB 984 and SB 559 add an identical exemption for certain records of the Sex Offenders and Crimes Against Minors Registry maintained by the Department of State Police.

Four of the 16 bills add three new closed meeting exemptions to § 2.2-3711:

- HB 845 and SB 557 add an identical exemption for certain closed meetings of the Forensic Science Board or the Scientific Advisory Committee;
- HB 1467 adds an exemption for certain closed meetings of the Virginia Port Authority;
- SB 443, in addition to the records exemption already mentioned, also adds a corresponding exemption for certain closed meetings of the Brown v. Board of Education Scholarship Program Awards Committee.

In addition to SB 76 and SB 5011, described above, four other bills amend existing provisions of FOIA:

- HB 1404 and SB 706 amend the records exemption for certain proprietary records of cable television franchisees found in § 2.2-3705.6;
- SB 21 corrects references to the Internet throughout the Code, including § 2.2-3707.1 of FOIA;
- HB 564 amends § 2.2-3707.1 to clarify the requirements for posting minutes by state public bodies in the executive branch.¹

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 2006 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, 2006.

II. Amendments to the Freedom of Information Act

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

¹ SB 21 strikes certain language from § 2.2-3707.1. HB 564 strikes the same and other language from the same section, and replaces it with new language. For practical purposes, once both bills go into effect, the language of § 2.2-3707.1 will be that contained in HB 564.

Adds an exemption for certain records furnished to the state Board of Education in connection with the review or investigation of any alleged breach in security, unauthorized alteration, or improper administration of tests by local school board employees responsible for the distribution or administration of the tests. HB 348 (2006 Acts of Assembly, c. 95), SB 39 (2006 Acts of Assembly, c. 25)

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

Adds an exemption for certain records pertaining to applicants and recipients of scholarships awarded by the Brown v. Board of Education Scholarship Awards Committee. SB 443 (2006 Acts of Assembly, c. 518)

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

Adds an exemption for certain trade secrets and financial records submitted to the Department of Minority Business Enterprise. HB 122 (2006 Acts of Assembly, c.831)

Amends subdivision 13 of § 2.2-3705.6, concerning certain proprietary records of cable television system franchisees, to refer to Article 1.2 (§ 15.2-2108.19 et seq.) of Chapter 21 of Title 15.2 of the Code of Virginia, and the current reference to § 15.2-2100 is stricken. HB 1404 (2006 Acts of Assembly, c. 76), SB 706 (2006 Acts of Assembly, c. 73)

Adds an exemption for certain proprietary records of the Tobacco Indemnification and Community Revitalization Commission. HB 1458 (2006 Acts of Assembly, c. 467)

Amends the current exemption for certain procurement records under the Public-Private Transportation Act of 1995 (PPTA) and the Public-Private Education Facilities and Infrastructure Act of 2002 (PPEA). SB 76 (2006 Acts of Assembly, c. 936)

Amends certain provisions of the current exemption for certain procurement records under the PPTA and PPEA. The provisions of this bill expire July 1, 2007. SB 5011 (2006 Acts of Assembly Special Session I, c. 1)

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

Adds an exemption for certain records of the Sex Offenders and Crimes Against Minors Registry maintained by the Department of State Police. HB 984 (2006 Acts of Assembly, c. 857), SB 559 (2006 Acts of Assembly, c. 914)

§ 2.2-3707.1. Posting of minutes for state boards and commissions.

Amends the existing section to clarify that all boards, commissions, councils, and other public bodies created in the executive branch of state government shall post minutes of their meetings on such body's website, if any, and on the Virginia Regulatory Town Hall. HB 564 (2006 Acts of Assembly, c. 595)

Amends the existing section as part of simplifying and updating all references to the Internet in the Code of Virginia. SB 21 (2006 Acts of Assembly, c. 474)

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

Adds an exemption for closed meetings of the Forensic Science Board or the Scientific Advisory Committee when discussing or considering certain records relating to a criminal investigation or prosecution, records that are excluded from disclosure pursuant to subdivision F 1 of § 2.2-3706. HB 845 (2006 Acts of Assembly, c. 430), SB 557 (2006 Acts of Assembly, c. 430)

Adds an exemption for closed meetings of the Virginia Port Authority for discussion or consideration of certain records excluded from disclosure pursuant to subdivision 1 of § 2.2-3705.6. HB 1467 (2006 Acts of Assembly, c. 560)

Adds an exemption for certain closed meetings of the Brown v. Board of Education Scholarship Program Awards Committee. SB 443 (2006 Acts of Assembly, c. 518)

III. Other Access-Related Legislation

[Uncodified Act; see HB 1502, SB 675.] Higher educational institutions; management agreements, report.

Provides management agreements between the Commonwealth and Virginia Polytechnic Institute and State University, The College of William and Mary in Virginia, and the University of Virginia, respectively, pursuant to the Restructured Higher Education Financial and Administrative Operations Act. Contains various provisions regarding FOIA as applied to these particular institutions. HB 1502 (2006 Acts of Assembly, c. 933), SB 675 (2006 Acts of Assembly, c. 943)

§ 2.2-609. Copies of state publications furnished to Librarian of Virginia.

Amends § 2.2-609 and adds in Title 42.1 a chapter numbered 8, consisting of sections numbered 42.1-92 through 42.1-97. Amends the State Publications Depository Program to include electronic publications, and clarifies that the requirements of the Program apply to all state agencies in any branch of government. Among other new provisions, explicitly states that the new chapter does not alter or diminish the responsibilities of public bodies with respect to public records under FOIA or the Virginia Public Records Act. HB 210 (2006 Acts of Assembly, c. 59)

§ 2.2-3808.2. Posting and availability of certain information on the Internet; prohibitions.

Removes sunset provision from § 2.2-3808.2, which prohibits the posting of certain personal information on court-controlled websites. Amends various other provisions in § 17.1-279 concerning online access to land records held by the court. HB 563 (2006 Acts of Assembly, c. 647)

§ 2.2-4343. Exemption from operation of chapter for certain transactions.

Amends § 2.2-4343 and adds two new sections in Title 37.2, §§ 37.2-512 and 37.2-615. Permits community services boards and behavioral health authorities to enter into joint agreements for certain purposes. Permits the

parties to such an agreement to create an administrator or management body to provide treatment, habilitation, or support services, subject to certain conditions. One such condition is that the administrator or management body is subject to all statutory and regulatory requirements that apply to community services boards, including FOIA. HB 774 (2006 Acts of Assembly, c. 656)

§ 9.1-177.1. Confidentiality of records of and reports on adult persons under investigation by or placed on probation supervision with a local community-based probation program.

Provides that presentencing investigation reports compiled by local probation officers for general district courts are to remain confidential and are exempt from FOIA. HB 1417 (2006 Acts of Assembly, c. 289)

§ 33.1-56.4. Release of personal information; penalty.

Adds subsections in § 33.1-56.4 and § 46.2-819.1 exempting from public disclosure certain records collected by photo-enforcement systems of toll facilities, in addition to other changes in provisions concerning toll facilities made to other Code sections. HB 1000 (2006 Acts of Assembly, c. 859)

§ 55-248.9:1. Confidentiality of tenant records.

Among amendments to other sections, adds two exceptions to a landlord's holding a tenant's records confidential under § 55-248.9:1, which exceptions are for information requested (i) pursuant to a subpoena in a civil case and (ii) by a contract purchaser of the landlord's property, provided the contract purchaser agrees in writing to maintain the confidentiality of such records. HB 907 (2006 Acts of Assembly, c. 667)

§ 58.1-344.3. Voluntary contributions of refunds requirements.

Amends § 58.1-344.3 and adds new § 44-102.2. Establishes the Virginia Military Relief Fund, which requires submission of an annual report to the Governor and certain members of the General Assembly. Provides that certain information in the report concerning recipients and others shall not be subject to public disclosure. HB 628 (2006 Acts of Assembly, c. 103)

§ 63.2-1251. Furnishing information; confidentiality; penalty.

Among other changes, creates a Putative Father Registry in the Department of Social Services. New § 63.2-1251 restricts the dissemination of information from the registry to certain parties and exempts information contained in the registry from disclosure under FOIA. SB 534 (2006 Acts of Assembly, c. 825).

IV. Resolutions

HJ 206/SJ 173: Commend the Virginia Coalition for Open Government (VCOG), founded in 1996, on the occasion of its 10th anniversary.

SJ 170: Designates March 16, in 2006 and every succeeding year, as Freedom of Information Day in Virginia.