



VIRGINIA FREEDOM OF INFORMATION ADVISORY COUNCIL

COMMONWEALTH OF VIRGINIA

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2017 FOIA LEGISLATIVE UPDATE

NOTE: Unless otherwise stated, the changes in the law described herein will take effect July 1, 2017.

I. Introduction

The General Assembly passed a total of twenty-two bills amending the Virginia Freedom of Information Act (FOIA) during the 2017 Session. The Council in 2016 completed the third year of the three-year study of FOIA directed by House Joint Resolution No. 96 (2014), and as a result of that study the Council recommend two pieces of omnibus legislation to the 2017 Session of the General Assembly incorporating all of its recommend changes. Both omnibus bills, HB 1539, the records omnibus bill, and HB 1540, the meetings omnibus bill, passed the General Assembly. Two additional bills passed the General Assembly that were recommended by the FOIA Council: HB 1734, which requires guidance documents of the Virginia Parole Board to be available as public records under FOIA, and HB 1876, which excludes from mandatory disclosure library records that can be used to identify any library patron under the age of 18 years.

Five bills add three new records exemptions in FOIA as follows:

- Excludes from the mandatory disclosure provisions of FOIA proprietary information, voluntarily provided by a private business under a promise of confidentiality from a public body, used by the public body for a solar services agreement. The bill requires the private business to specify the records for which protection is sought before submitting them to the public body and to state the reasons why protection is necessary. The bill also (i) allows a solar services agreement contractor or provider to designate specific provisions in a solar services agreement as proprietary information not subject to disclosure and (ii) authorizes a city to withhold from disclosure such information provided by a private entity in connection with a franchise, lease, or use under a solar services agreement. SB 1226 adding a new exemption in § 2.2-3705.6.
- Establishes the Emergency Department Care Coordination Program in the Department of Health to provide a single, statewide technology solution that

connects all hospital emergency departments in the Commonwealth to facilitate real-time communication and collaboration between physicians, other health care providers, and other clinical and care management personnel for patients receiving services in hospital emergency departments, for the purpose of improving the quality of patient care services. The bill creates a FOIA records exclusion for records of and information held by the Emergency Department Care Coordination Program required to be kept confidential pursuant to § 32.1-372. SB 1561 and HB 2209 adding a new exemption in § 2.2-3705.5. [NOTE: *The bill does not become effective unless and until the Commonwealth receives federal Health Information Technology for Economic and Clinical Health (HITECH) Act funds to implement its provisions.*]

- Requires the Office of the Executive Secretary of the Supreme Court to provide electronic data, including individually identifiable information, on proceedings pursuant to Article 16 of Chapter 11 of Title 16.1 and Chapter 8 of Title 37.2 to the Department of Behavioral Health and Developmental Services upon request and provides that the Department may use such data for the purpose of developing and maintaining statistical archives, conducting research on the outcome of such proceedings, and preparing analyses and reports for use by the Department. The bill requires the Department to take all necessary steps to protect the security and privacy of the records and information provided pursuant to the provisions of the bill in accordance with the requirements of state and federal law and regulations governing health privacy. The bill creates a corresponding records exemption for such electronic data. SB 1006 and HB 1551 adding a new exemption in § 2.2-3705.5.

Three bills add three new meetings exemptions in FOIA as follows:

- Restructures the membership of the board of directors (the Board) of the Virginia Economic Development Partnership Authority (the Authority), designates the Board as a supervisory board within the statutory definition of "supervisory," sets out the minimum qualifications for appointments to the Board, and sets out additional powers and duties required of the Board, including development of a strategic plan for economic development, a marketing plan, and an operational plan. The bill also establishes a Division of Incentives within the Authority to track, manage, and coordinate economic development incentives. Among other provisions, the bill requires the Virginia Employment Commission to provide certain employment information to the Authority as may be necessary to facilitate the administration and enforcement by the Authority of performance agreements with businesses that have received incentive awards. The bill creates a record exemption for portions of the strategic, marketing, or operational plan that would adversely affect the financial interests of the Commonwealth, as well as a corresponding meetings exemption for discussion of such information. The bill also establishes a subcommittee of the Board to receive and review such information in order to assist the Division of Incentives with the verification of employment and wage claims of those businesses that have received incentive

awards, and creates a corresponding meetings exemption for meetings of the subcommittee. SB 1574 and HB 2471 adding a new exemption in § 2.2-3711.

- Excludes the records of a multidisciplinary team as they relate to individual child abuse or neglect cases or sex offenses involving a child from mandatory disclosure under the Virginia Freedom of Information Act. The bill also provides an exemption from open meeting requirements to such teams and sexual assault response teams. HB 1971 amending § 2.2-3705.7 and adding a new exemption in § 2.2-3711.

Fourteen bills amend existing provisions of FOIA as follows:

- Provides that personal contact information provided to a public body for the purpose of receiving electronic mail from the public body is excluded from the mandatory disclosure provisions of FOIA, provided that the electronic mail recipient has requested that the public body not disclose such information. The bill defines "personal contact information" as the home or business (i) address, (ii) email address, or (iii) telephone number or comparable number assigned to any other electronic communication device. Current law excludes "personal information," which is defined as including a broader range of information than the limited definition of personal contact information in the bill. SB 1040 amending § 2.2-3705.1.
- Requires that records of completed unattended death investigations be released to the parent or spouse of the decedent or, if there is no living parent or spouse, to the most immediate family member of the decedent, provided the person is not a person of interest or a suspect. The bill also defines "unattended death" and "immediate family member." SB 1102 amending § 2.2-3706.
- Among other provisions, clarifies that the exemption from mandatory disclosure of records under the Freedom of Information Act by applicants for grants and loans from the Virginia Research Investment Committee applies to certain financial records, trade secrets, and research-related information. The bill requires an applicant seeking to invoke the protections of the exemption to submit a written request to the Committee identifying the records or data for which protection is sought and stating the reason why protection is necessary. The exemption would also apply to documents prepared exclusively for the application review by the Committee, its staff, or a reviewing entity conducting a scientific review at the request of the Committee. The bill also amends the closed meeting exemption to include interviews of applicants by the Committee or a reviewing entity conducting a scientific review. SB 1371 and HB 2245 amending §§ 2.2-3705 and 2.2-3711.
- Clarifies the definition of public record. The bill also (i) defines "personal contact information" that is excluded from FOIA's mandatory disclosure provisions in certain cases; (ii) clarifies that a requester has the right to inspect records or

receive copies at his option; (iii) clarifies language in certain record exclusions under FOIA that certain records may be disclosed at the discretion of the custodian; (iv) consolidates the personnel record exclusion with the limitation on the application of that exclusion, and specifically clarifies that the name, in addition to position, job classification, and salary, of a public employee is public information as per opinions of the Attorney General and the FOIA Council; (v) eliminates, effective July 1, 2018, the exclusion for the Alcoholic Beverage Control Authority relating to operating and marketing strategies; (vi) eliminates the exclusion for correspondence of local officials as unnecessary; (vii) consolidates various public safety exclusions relating to building plans and drawings and critical infrastructure into a single exclusion; (viii) eliminates the exclusion for administrative investigations of the Department of Human Resource Management, as the exclusion is already covered under the personnel records exclusion; (ix) expands the exclusion for personal information provided to the Virginia College Savings Plan to cover qualified beneficiaries, designated survivors, and authorized individuals, which terms are defined in the bill; (x) consolidates the various record exclusions for the Department of Health Professions and the Department of Health into single exclusions for each Department; (xi) clarifies certain Department of Social Services exclusions; (xii) provides an exclusion for local finance boards that provide postemployment benefits other than pensions; and (xiii) eliminates the record exclusion for Virginia Wildlife Magazine. The bill also limits the application of the working papers exemption by stating that information publicly available or not otherwise subject to an exclusion under FOIA or other provision of law that has been aggregated, combined, or changed in format without substantive analysis or revision shall not be deemed working papers. The bill contains numerous technical amendments. This bill is a recommendation of the Freedom of Information Advisory Council pursuant to the HJR 96 FOIA study (2014-2016). HB 1539 amending §§ 2.2-3701, 2.2-3704, 2.2-3704.1, 2.2-3704.2, 2.2-3705.1 through 2.2-3705.8, 2.2-3711, 2.2-3714, 2.2-3806, 22.1-253.13:3, 22.1-279.8, 23.1-2425, 32.1-48.08, 32.1-48.011, 32.1-48.015, 32.1-283.1, 32.1-283.2, 32.1-283.3, 32.1-283.5, 32.1-283.6, 44-146.18, 44-146.22, 54.1-2517, and 54.1-2523.

- Revises FOIA's various open meeting exemptions relating to legal matters, litigation, certain museums, and the Virginia Commonwealth University Health System Authority. The bill also (i) clarifies where meeting notices and minutes are to be posted, (ii) requires copies of proposed agendas to be made available, (iii) eliminates reporting to the Joint Commission on Science and Technology when a state public body convenes an electronic communication meeting, and (iv) makes technical corrections to several open meeting exemptions to provide context for those meeting exemptions that currently only cross-reference corollary records exemptions. The bill also clarifies closed meeting procedures. The bill contains numerous technical corrections. This bill is a recommendation of the Freedom of Information Advisory Council pursuant to the HJR 96 FOIA study (2014-2016). HB 1540 amending §§ 2.2-3701, 2.2-3707, 2.2-3707.1, 2.2-3708,

2.2-3708.1, 2.2-3711, 2.2-3712, 10.1-104.7, 15.2-1416, 23.1-1303, and 54.1-2400.2.

- Requires guidance documents of the Virginia Parole Board to be available as public records under FOIA. HB 1734 amending § 2.2-3703.
- Excludes from mandatory disclosure library records that can be used to identify any library patron under the age of 18 years. The bill provides that access shall not be denied to the parent, including a noncustodial parent, or guardian of such library patron. HB 1876 amending § 2.2-3705.7.
- Clarifies that at the end of the appointed term of a nonlegislative citizen member of the FOIA Advisory Council, the nonlegislative citizen member shall continue to serve until a successor is appointed. This bill is a recommendation of the Virginia Freedom of Information Advisory Council. HB 1932 amending § 30-178.
- Requires the Freedom of Information Advisory Council to maintain on its website a listing of all FOIA officers, including name, contact information, and the name of the public body such FOIA officers serve. The bill requires the name and contact information of FOIA officers trained by legal counsel of a public body to be submitted to the Council by July 1 of each year on a form developed by the Council for that purpose and to be updated in a timely manner in the event of any changes to such information. The bill also provides that training through an online course offered by the Council shall satisfy the annual training requirement for FOIA officers. HB 2143 amending § 2.2-3704.2.
- Increases the Virginia Freedom of Information Advisory Council from 12 members to 14 members by adding one additional member from the House of Delegates and one additional member from the Senate. The bill also provides that if any nonlegislative citizen member of the Council fails to attend a majority of meetings of the Council in a calendar year, the Council shall notify the member's appointing authority, who may, upon receipt of such notification, remove the member and appoint a successor as soon as practicable. HB 2144 amending § 30-178.
- Requires the Freedom of Information Advisory Council to develop an online public comment form to be posted on its official public government website to enable any requester to comment on the quality of assistance provided to the requester by a public body. The bill also requires all state public bodies subject to the provisions of FOIA and any county or city, and any town with a population of more than 250, to post a link on its official public government website to the online public comment form. HB 2146 amending §§ 2.2-3704.1 and 30-179.
- Expands the existing FOIA record exclusion for information of a proprietary nature furnished by a supplier of charitable gaming supplies to the Virginia

Department of Agriculture and Consumer Services to include such information submitted by manufacturers of charitable gaming supplies. The bill also expands the exclusion to include information submitted by suppliers and manufacturers of charitable gaming supplies pursuant to regulations promulgated by the Charitable Gaming Board related to approval of electronic and mechanical equipment. HB 2178 amending § 2.2-3705.6.

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 2017 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 will become effective July 1, 2017.

II. Amendments to the Freedom of Information Act

§ 2.2-3701 Definitions.

Virginia Freedom of Information Act (FOIA); public access to records of public bodies. Clarifies the definition of public record. The bill also (i) defines "personal contact information" that is excluded from FOIA's mandatory disclosure provisions in certain cases; (ii) clarifies that a requester has the right to inspect records or receive copies at his option; (iii) clarifies language in certain record exclusions under FOIA that certain records may be disclosed at the discretion of the custodian; (iv) consolidates the personnel record exclusion with the limitation on the application of that exclusion, and specifically clarifies that the name, in addition to position, job classification, and salary, of a public employee is public information as per opinions of the Attorney General and the FOIA Council; (v) eliminates, effective July 1, 2018, the exclusion for the Alcoholic Beverage Control Authority relating to operating and marketing strategies; (vi) eliminates the exclusion for correspondence of local officials as unnecessary; (vii) consolidates various public safety exclusions relating to building plans and drawings and critical infrastructure into a single exclusion; (viii) eliminates the exclusion for administrative investigations of the Department of Human Resource Management, as the exclusion is already covered under the personnel records exclusion; (ix) expands the exclusion for personal information provided to the Virginia College Savings Plan to cover qualified beneficiaries, designated survivors, and authorized individuals, which terms are defined in the bill; (x) consolidates the various record exclusions for the Department of Health Professions and the Department of Health into single exclusions for each Department; (xi) clarifies certain Department of Social Services exclusions; (xii) provides an exclusion for local finance boards that provide postemployment benefits other than pensions; and (xiii) eliminates the record exclusion for Virginia Wildlife Magazine. The bill also limits the application of the working papers exemption by stating that information publicly available or not otherwise subject to an exclusion under FOIA or other provision of law that has been aggregated, combined, or changed in format without

substantive analysis or revision shall not be deemed working papers. The bill contains numerous technical amendments. This bill is a recommendation of the Freedom of Information Advisory Council pursuant to the HJR 96 FOIA study (2014-2016). HB 1539 (2017 Acts of Assembly, c. 778).

Virginia Freedom of Information Act (FOIA); public access to meetings of public bodies. Revises FOIA's various open meeting exemptions relating to legal matters, litigation, certain museums, and the Virginia Commonwealth University Health System Authority. The bill also (i) clarifies where meeting notices and minutes are to be posted, (ii) requires copies of proposed agendas to be made available, (iii) eliminates reporting to the Joint Commission on Science and Technology when a state public body convenes an electronic communication meeting, and (iv) makes technical corrections to several open meeting exemptions to provide context for those meeting exemptions that currently only cross-reference corollary records exemptions. The bill also clarifies closed meeting procedures. The bill contains numerous technical corrections. This bill is a recommendation of the Freedom of Information Advisory Council pursuant to the HJR 96 FOIA study (2014-2016). HB 1540 (2017 Acts of Assembly, c. 616).

§ 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.

Virginia Parole Board; exceptions to the Virginia Freedom of Information Act (FOIA). Requires guidance documents of the Virginia Parole Board to be available as public records under FOIA. HB 1734 (2017 Acts of Assembly, c. 620).

§ 2.2-3704. Public records to be open to inspection; procedure for requesting records and responding to request; charges; transfer of records for storage, etc.

Virginia Freedom of Information Act (FOIA); public access to records of public bodies. Clarifies the definition of public record. *See summary under § 2.2-3701, supra.* HB 1539 (2017 Acts of Assembly, c. 778).

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

Virginia Freedom of Information Act (FOIA); public access to records of public bodies. Clarifies the definition of public record. *See summary under § 2.2-3701, supra.* HB 1539 (2017 Acts of Assembly, c. 778).

Virginia Freedom of Information Act (FOIA); Freedom of Information Advisory Council; online public comment form. Requires the Freedom of Information Advisory Council to develop an online public comment form to be posted on its official public government website to enable any requester to comment on the quality of assistance provided to the requester by a public body. The bill also requires all state public bodies subject to the provisions of FOIA and any county or city, and any town with a population of more than 250, to post a link on its official public government website to the online public comment form. HB 2146 (2017 Acts of Assembly, c. 645).

§ 2.2-3704.2. Public bodies to designate FOIA officer.

Virginia Freedom of Information Act (FOIA); public access to records of public bodies. Clarifies the definition of public record. *See summary under § 2.2-3701, supra.* HB 1539 (2017 Acts of Assembly, c. 778).

Virginia Freedom of Information Act (FOIA); training provided by the Virginia Freedom of Information Advisory Council. Requires the Freedom of Information Advisory Council to maintain on its website a listing of all FOIA officers, including name, contact information, and the name of the public body such FOIA officers serve. The bill requires the name and contact information of FOIA officers trained by legal counsel of a public body to be submitted to the Council by July 1 of each year on a form developed by the Council for that purpose and to be updated in a timely manner in the event of any changes to such information. The bill also provides that training through an online course offered by the Council shall satisfy the annual training requirement for FOIA officers. HB 2143 (2017 Acts of Assembly, c. 290).

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

Virginia Freedom of Information Act (FOIA); public access to records of public bodies. Clarifies the definition of public record. *See summary under § 2.2-3701, supra.* HB 1539 (2017 Acts of Assembly, c. 778).

Virginia Freedom of Information Act (FOIA); record exclusion for personal contact information; limitation. Provides that personal contact information provided to a public body for the purpose of receiving electronic mail from the public body is excluded from the mandatory disclosure provisions of FOIA, provided that the electronic mail recipient has requested that the public body not disclose such information. The bill defines "personal contact information" as the home or business (i) address, (ii) email address, or (iii) telephone number or comparable number assigned to any other electronic communication device. Current law excludes "personal information," which is defined as including a broader range of information than the limited definition of personal contact information in the bill. SB 1040 (2017 Acts of Assembly, c. 140).

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

Virginia Freedom of Information Act (FOIA); public access to records of public bodies. Clarifies the definition of public record. *See summary under § 2.2-3701, supra.* HB 1539 (2017 Acts of Assembly, c. 778).

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

Virginia Freedom of Information Act (FOIA); public access to records of public bodies. Clarifies the definition of public record. *See summary under § 2.2-3701, supra.* HB 1539 (2017 Acts of Assembly, c. 778).

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

Virginia Freedom of Information Act (FOIA); public access to records of public bodies. Clarifies the definition of public record. *See summary under § 2.2-3701, supra.* HB 1539 (2017 Acts of Assembly, c. 778).

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

Virginia Freedom of Information Act (FOIA); public access to records of public bodies. Clarifies the definition of public record. *See summary under § 2.2-3701, supra.* HB 1539 (2017 Acts of Assembly, c. 778).

Emergency Department Care Coordination Program established. Establishes the Emergency Department Care Coordination Program in the Department of Health to provide a single, statewide technology solution that connects all hospital emergency departments in the Commonwealth to facilitate real-time communication and collaboration between physicians, other health care providers, and other clinical and care management personnel for patients receiving services in hospital emergency departments, for the purpose of improving the quality of patient care services. The bill creates a FOIA records exclusion for records of and information held by the Emergency Department Care Coordination Program required to be kept confidential pursuant to § 32.1-372. SB 1561 (2017 Acts of Assembly, c. 475) and HB 2209 (2017 Acts of Assembly, c. 600). [**NOTE:** *The bill does not become effective unless and until the Commonwealth receives federal Health Information Technology for Economic and Clinical Health (HITECH) Act funds to implement its provisions.*]

Commitment hearings; sharing of records and information. Requires the Office of the Executive Secretary of the Supreme Court to provide electronic data, including individually identifiable information, on proceedings pursuant to Article 16 of Chapter 11 of Title 16.1 and Chapter 8 of Title 37.2 to the Department of Behavioral Health and Developmental Services upon request and provides that the Department may use such data for the purpose of developing and maintaining statistical archives, conducting research on the outcome of such proceedings, and preparing analyses and reports for use by the Department. The bill requires the Department to take all necessary steps to protect the security and privacy of the records and information provided pursuant to the provisions of the bill in accordance with the requirements of state and federal law and regulations governing health privacy. The bill creates a corresponding records exemption for such electronic data. SB 1006 (2017 Acts of Assembly, c. 719) and HB 1551 (2017 Acts of Assembly, c. 188).

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

Virginia Freedom of Information Act (FOIA); public access to records of public bodies. Clarifies the definition of public record. *See summary under § 2.2-3701, supra.* HB 1539 (2017 Acts of Assembly, c. 778).

Virginia Freedom of Information Act; record exclusion for proprietary records and trade secrets; solar energy agreements. Excludes from the mandatory disclosure provisions of FOIA proprietary information, voluntarily provided by a private business under a promise of confidentiality from a public body, used by the public body for a solar services agreement. The bill requires the private business to specify the records for which protection is sought before submitting them to the public body and to state the reasons why protection is necessary. The bill also (i) allows a solar services agreement contractor or provider to designate specific provisions in a solar services agreement as proprietary information not subject to disclosure and (ii) authorizes a city to withhold from disclosure such information provided by a private entity in connection with a franchise, lease, or use under a solar services agreement. SB 1226 (2017 Acts of Assembly, c. 737).

Virginia Research Investment Committee. Among other provisions, clarifies that the exemption from mandatory disclosure of records under the Freedom of Information Act by applicants for grants and loans from the Virginia Research Investment Committee applies to certain financial records, trade secrets, and research-related information. The bill requires an applicant seeking to invoke the protections of the exemption to submit a written request to the Committee identifying the records or data for which protection is sought and stating the reason why protection is necessary. The exemption would also apply to documents prepared exclusively for the application review by the Committee, its staff, or a reviewing entity conducting a scientific review at the request of the Committee. The bill also amends the closed meeting exemption to include interviews of applicants by

the Committee or a reviewing entity conducting a scientific review. SB 1371 (2017 Acts of Assembly, c. 816) and HB 2245 (2017 Acts of Assembly, c. 796).

Virginia Freedom of Information Act (FOIA); proprietary records and trade secrets; charitable gaming supplies. Expands the existing FOIA record exclusion for information of a proprietary nature furnished by a supplier of charitable gaming supplies to the Virginia Department of Agriculture and Consumer Services to include such information submitted by manufacturers of charitable gaming supplies. The bill also expands the exclusion to include information submitted by suppliers and manufacturers of charitable gaming supplies pursuant to regulations promulgated by the Charitable Gaming Board related to approval of electronic and mechanical equipment. HB 2178 (2017 Acts of Assembly, c. 662).

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

Virginia Freedom of Information Act (FOIA); public access to records of public bodies. Clarifies the definition of public record. *See summary under § 2.2-3701, supra.* HB 1539 (2017 Acts of Assembly, c. 778).

Virginia Freedom of Information Act; record and meeting exclusions for multidisciplinary child abuse teams. Excludes the records of a multidisciplinary team as they relate to individual child abuse or neglect cases or sex offenses involving a child from mandatory disclosure under the Virginia Freedom of Information Act. The bill also provides an exemption from open meeting requirements to such teams and sexual assault response teams. HB 1971 (2017 Acts of Assembly, c. 587).

Virginia Freedom of Information Act; public access to library records of minors. Excludes from mandatory disclosure library records that can be used to identify any library patron under the age of 18 years. The bill provides that access shall not be denied to the parent, including a noncustodial parent, or guardian of such library patron. HB 1876 (2017 Acts of Assembly, c. 642).

§ 2.2-3705.8. Limitation on record exclusions.

Virginia Freedom of Information Act (FOIA); public access to records of public bodies. Clarifies the definition of public record. *See summary under § 2.2-3701, supra.* HB 1539 (2017 Acts of Assembly, c. 778).

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

Virginia Freedom of Information Act; completed unattended death investigations; mandatory disclosure. Requires that records of completed unattended death

investigations be released to the parent or spouse of the decedent or, if there is no living parent or spouse, to the most immediate family member of the decedent, provided the person is not a person of interest or a suspect. The bill also defines "unattended death" and "immediate family member." SB 1102 (2017 Acts of Assembly, c. 828).

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

Virginia Freedom of Information Act (FOIA); public access to meetings of public bodies. *See summary under § 2.2-3701, supra.* HB 1540 (2017 Acts of Assembly, c. 616).

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

Virginia Freedom of Information Act (FOIA); public access to meetings of public bodies. *See summary under § 2.2-3701, supra.* HB 1540 (2017 Acts of Assembly, c. 616).

§ 2.2-3708. Electronic communication meetings; applicability; physical quorum required; exceptions; notice; report.

Virginia Freedom of Information Act (FOIA); public access to meetings of public bodies. *See summary under § 2.2-3701, supra.* HB 1540 (2017 Acts of Assembly, c. 616).

§ 2.2-3708.1. Participation in meetings in event of emergency or personal matter; certain disabilities; distance from meeting location for certain public bodies.

Virginia Freedom of Information Act (FOIA); public access to meetings of public bodies. *See summary under § 2.2-3701, supra.* HB 1540 (2017 Acts of Assembly, c. 616).

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

Virginia Freedom of Information Act (FOIA); public access to records of public bodies. Clarifies the definition of public record. *See summary under § 2.2-3701, supra.* HB 1539 (2017 Acts of Assembly, c. 778).

Virginia Freedom of Information Act (FOIA); public access to meetings of public bodies. *See summary under § 2.2-3701, supra.* HB 1540 (2017 Acts of Assembly, c. 616).

Virginia Economic Development Partnership Authority; membership; powers and duties. Restructures the membership of the board of directors (the Board) of the Virginia Economic Development Partnership Authority (the Authority), designates the Board as a supervisory board within the statutory definition of "supervisory," sets out the minimum qualifications for appointments to the Board, and sets out additional powers and duties required of the Board, including development of a strategic plan for economic development, a marketing plan, and an operational plan. The bill also establishes a Division of Incentives within the Authority to track, manage, and coordinate economic development incentives. Under the bill, the Division is required to obtain certification from the Attorney General prior to certifying that an approved project has met the investment and job creation requirements and the review of the Attorney General prior to seeking the repayment of any public funds from an approved project due to a failure of the project to meet the investment and job creation requirements set forth in the contract or memorandum of understanding. The bill establishes a position of internal auditor and two advisory committees and requires (i) each commissioner of the revenue to provide certain tax information and (ii) the Virginia Employment Commission to provide certain employment information to the Authority as may be necessary to facilitate the administration and enforcement by the Authority of performance agreements with businesses that have received incentive awards. The bill creates a record exemption for portions of the strategic, marketing, or operational plan that would adversely affect the financial interests of the Commonwealth, as well as a corresponding meetings exemption for discussion of such information. The bill also creates a meeting exemption for those portions of meetings of the subcommittee of the Board of the Authority established pursuant to subsection F of § 2.2-2237.3 to review and discuss information received from the Virginia Employment Commission pursuant to subdivision C 2 of § 60.2-114. The bill contains an emergency clause. SB 1574 (2017 Acts of Assembly, c. 824) and HB 2471 (2017 Acts of Assembly, c. 804).

Virginia Freedom of Information Act; record and meeting exclusions for multidisciplinary child abuse teams. *See summary under § 2.2-3705.7, supra.* HB 1971 (2017 Acts of Assembly, c. 587).

Virginia Research Investment Committee. *See summary under § 2.2-3705.6, supra.* SB 1371 (2017 Acts of Assembly, c. 816) and HB 2245 (2017 Acts of Assembly, c. 796).

§ 2.2-3712. Closed meetings procedures; certification of proceedings.

Virginia Freedom of Information Act (FOIA); public access to meetings of public bodies. *See summary under § 2.2-3701, supra.* HB 1540 (2017 Acts of Assembly, c. 616).

§ 2.2-3714. Violations and penalties.

Virginia Freedom of Information Act (FOIA); public access to records of public bodies. Clarifies the definition of public record. *See summary under § 2.2-3701, supra.* HB 1539 (2017 Acts of Assembly, c. 778).

§ 30-178. Virginia Freedom of Information Advisory Council; membership; terms; quorum; expenses.

Virginia Freedom of Information (FOIA) Advisory Council; terms of nonlegislative citizen members. Clarifies that at the end of the appointed term of a nonlegislative citizen member of the FOIA Advisory Council, the nonlegislative citizen member shall continue to serve until a successor is appointed. This bill is a recommendation of the Virginia Freedom of Information Advisory Council. HB 1932 (2017 Acts of Assembly, c. 141).

Virginia Freedom of Information Advisory Council; membership; effect of missing meetings. Increases the Virginia Freedom of Information Advisory Council from 12 members to 14 members by adding one additional member from the House of Delegates and one additional member from the Senate. The bill also provides that if any nonlegislative citizen member of the Council fails to attend a majority of meetings of the Council in a calendar year, the Council shall notify the member's appointing authority, who may, upon receipt of such notification, remove the member and appoint a successor as soon as practicable. HB 2144 (2017 Acts of Assembly, c. 644).

§ 30-179. Powers and duties of the Council.

Virginia Freedom of Information Act (FOIA); Freedom of Information Advisory Council; online public comment form. *See summary under § 2.2-3704.1, supra.* HB 2146 (2017 Acts of Assembly, c. 645).

III. Other Access-Related Legislation

Title 2.2 Administration of Government.

Digital certification of government records. Provides for the Secretary of the Commonwealth, in cooperation with the Virginia Information Technologies Agency, to develop standards for the use of digital signatures by government agencies on electronic records generated by such agencies. The bill further provides that such agencies may provide copies of digital records, via a website or upon request, and may charge a fee of \$5 for each digitally certified copy of an electronic record. Any digitally certified record submitted to a court in the Commonwealth shall be deemed to be authenticated by the

custodian of the record. The bill defines "agency" to include all state agencies and local government entities, including constitutional officers, except circuit court clerks. SB 1341 (2017 Acts of Assembly, c. 738).

Secure Commonwealth Panel; membership and duties. Revises the membership of the Secure Commonwealth Panel, renamed the Secure and Resilient Commonwealth Panel, and requires the Panel to create an Emergency Management Awareness Group consisting of the Secretary of Public Safety and Homeland Security, the Lieutenant Governor, the Attorney General, the Executive Secretary of the Supreme Court of Virginia, and the Chairmen of the House Committee on Militia, Police and Public Safety and the Senate Committee on General Laws and Technology. The bill requires the Group to meet during a state of emergency to review critical information concerning such situation to facilitate communication between the executive, legislative, and judicial branches of state government. The bill dissolves the Virginia Emergency Response Council and transfers its duties to the Panel. The bill also requires the Panel, on or before October 1st of each year, to report to the Governor, the Senate Committee on Finance, the Senate Committee on General Laws and Technology, the House Committee on Appropriations, and the House Committee on Militia, Police and Public Safety concerning the state of the Commonwealth's emergency prevention, protection, mitigation, response, and recovery efforts and the resources necessary to implement them. The bill provides that such report may, with the concurrence of the Governor, include sensitive information, which information shall be excluded from disclosure in accordance with subdivisions 2, 3, 4, and 6 of § 2.2-3705.2 and which, if revealed publicly, would jeopardize or compromise security plans and procedures in the Commonwealth designed to protect (i) the public or (ii) public or private critical infrastructure. The bill further provides that sensitive information presented to any committee of the General Assembly shall be discussed in a closed meeting as provided in subdivision 19 of § 2.2-3711. The bill contains technical amendments. HB 1998 (2017 Acts of Assembly, c. 512).

Title 9.1 Commonwealth Public Safety.

Line of Duty Act. Clarifies provisions of the Line of Duty Act, including clarifying that suspension or reinstatement of health insurance benefits begins and ends at the beginning of a health insurance plan year rather than in the middle of a plan year and recognizing current practice that the Line of Duty Act administrator provides materials for training. The bill codifies certain provisions of the Line of Duty Act that currently are in the appropriation act. The bill modifies the provision that would have disqualified, effective July 1, 2017, the surviving spouse of a deceased member who remarried from receiving health insurance benefits, by restricting the disqualification to surviving spouses who remarry on or after July 1, 2017. The bill provides that evidence and documents obtained by or created by, and the report of investigation prepared by the Virginia Retirement System, or the Department of Human Resource Management, in addition to the Virginia State Police, shall (i) be deemed confidential, (ii) be exempt from disclosure under the Freedom of Information Act (§ 2.2-3700 et seq.), and (iii) not be released in whole or in part by any person to any person except as provided in the Line of Duty Act. The bill

provides that notwithstanding the prohibition, VRS may release to necessary parties such information, documents, and reports for purposes of administering appeals under the Line of Duty Act. The bill also provides that notwithstanding the prohibition, the Department of State Police and the Department of Accounts shall, upon request, share with the Virginia Retirement System and the Department of Human Resource Management any information, evidence, documents, and reports of investigation related to existing and past claims for benefits provided under the Line of Duty Act. The bill provides that such information, evidence, documents, and reports of investigation shall be exempt from disclosure under the Virginia Freedom of Information Act (§ 2.2-3700 et seq.). The bill contains an emergency clause. HB 2243 (2017 Acts of Assembly, c. 439).

Title 15.2 Counties, Cities, and Towns.

Virginia Wireless Services Authority Act; rates and charges. Provides that a wireless services authority may fix rates, fees, and charges for services provided, or facilities owned, operated, or maintained by the authority, for which the authority has received loan funding. Currently, an authority may do so only if it has issued revenue bonds. A similar change authorizes rates to be set at levels to provide for payment of loans. The measure also requires each authority to maintain records demonstrating compliance with certain provisions and to make the records available for inspection and copying by the public pursuant to the Virginia Freedom of Information Act. HB 2108 (2017 Acts of Assembly, c. 389).

Title 17.1 Courts of Record.

Online access to nonconfidential court records; date of birth verification. Provides that the Supreme Court and any other court clerk may provide online access to subscribers who have entered into an agreement with the clerk to have secure remote access to court records of nonconfidential criminal case information to confirm the complete date of birth of a defendant. SB 1044 (2017 Acts of Assembly, c. 92) and HB 1713 (2017 Acts of Assembly, c. 78).

Title 19.2 Criminal Procedure.

Juror information; confidentiality. Limits to name and home address the personal information of a juror impaneled in a criminal case that the court may only regulate the disclosure of upon a showing of good cause, which includes a likelihood of bribery, tampering, or physical injury to or harassment of a juror. The bill limits the release of any additional personal information, defined in the bill as any information other than a name and home address, of a juror impaneled in a criminal case to the counsel of record in the case or a pro se defendant. The bill also provides that the court may, upon the motion of either party or its own motion, and for good cause shown, authorize the disclosure of such personal information to any other person, subject to any restrictions imposed by the

court on further dissemination of such personal information. HB 1546 (2017 Acts of Assembly, c. 753).

Title 30 General Assembly.

Legislative drafting requests. Provides that legislative drafting files related to laws enacted beginning with the 1989 Session of the General Assembly are the property of the requester. This is consistent with the treatment of laws enacted prior to 1989 and consistent with legislative privilege accorded to members of the General Assembly. The Division of Legislative Services would release legislative drafting files upon obtaining consent of the requester. SB 969 (2017 Acts of Assembly, c. 489).

Title 33.2 Highways and Other Surface Transportation Systems.

Washington Metrorail Safety Commission Interstate Compact. Authorizes Virginia to become a signatory to the Washington Metrorail Safety Commission Interstate Compact. The compact establishes a state safety oversight authority for the Washington Metropolitan Area Transit Authority (WMATA) Rail System, pursuant to the mandate of federal law, to review, approve, oversee, and enforce the safety of the WMATA Rail System. The bill requires the Secretary of Transportation to negotiate, on the Commonwealth's behalf, the terms for revision of the WMATA Compact with the other signatories to the WMATA Compact. The bill requires the Commission to adopt the Federal Freedom of Information Act, 5 U.S.C. § 552(a)-(d) and (g), and Government in the Sunshine Act, codified at 5 U.S.C. 552b, as both may be amended from time to time, as its freedom of information policy and open meeting policy, respectively, and provides that the Commission shall not be subject to the comparable laws or policies of any Signatory. The bill contains an emergency clause. SB 1251 (2017 Acts of Assembly, c. 705) and HB 2136 (2017 Acts of Assembly, c. 696).

Title 46.2 Motor Vehicles.

State Police motor vehicle safety inspection data. Authorizes the Superintendent of State Police to provide, upon request, verification of the inspection status of a vehicle and to charge a reasonable fee for providing such information. Fees shall not be charged to government or other public entities. The bill also provides that vehicle information, including all descriptive vehicle data, submitted to or received from the Department of State Police related to such a request shall not be considered a public record for the purposes of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.). SB 1250 (2017 Acts of Assembly, c.) and HB 2269 (2017 Acts of Assembly, c. 322).

Transportation network company partner vehicle registration repeal. Removes the requirement that a transportation network company (TNC) partner register his personal vehicle for use as a TNC partner vehicle with the Department of Motor Vehicles (DMV).

The bill allows the Department of State Police to recognize another state's annual motor vehicle safety inspection in lieu of a Virginia inspection and clarifies that a TNC partner can keep proof of inspection in or on the vehicle. The bill also removes an exemption from the Virginia Freedom of Information Act for certain records submitted by a TNC partner to DMV. The bill contains an emergency clause. SB 1366 (2017 Acts of Assembly, c. 708) and HB 2019 (2017 Acts of Assembly, c. 694).

Title 54.1 Professions and Occupations.

Cannabidiol oil and THC-A oil; permitting of pharmaceutical processors to manufacture and provide. Authorizes a pharmaceutical processor, after obtaining a permit from the Board of Pharmacy (the Board) and under the supervision of a licensed pharmacist, to manufacture and provide cannabidiol oil and THC-A oil to be used for the treatment of intractable epilepsy. The bill sets limits on the number of permits that the Board may issue and requires that the Board adopt regulations establishing health, safety, and security requirements for permitted processors. The bill provides that only a licensed practitioner of medicine or osteopathy who is a neurologist or who specializes in the treatment of epilepsy may issue a written certification to a patient for the use of cannabidiol oil or THC-A oil. The bill also requires that a practitioner who issues a written certification for cannabidiol oil or THC-A oil, the patient issued such certification, and, if the patient is a minor or incapacitated, the patient's parent or legal guardian register with the Board. The bill requires further that a pharmaceutical processor shall not provide cannabidiol oil or THC-A oil to a patient or a patient's parent or legal guardian without first verifying that the patient, the patient's parent or legal guardian if the patient is a minor or incapacitated, and the practitioner who issued the written certification have registered with the Board. Finally, the bill provides an affirmative defense for agents and employees of pharmaceutical processors in a prosecution for the manufacture, possession, or distribution of marijuana. The bill provides that information obtained under the registration process shall be confidential and shall not be subject to the disclosure provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.). The bill further provides, however, that reasonable access to registry information shall be provided to (i) the Chairmen of the House and Senate Committees for Courts of Justice, (ii) state and federal agencies or local law enforcement for the purpose of investigating or prosecuting a specific individual for a specific violation of law, (iii) licensed physicians or pharmacists for the purpose of providing patient care and drug therapy management and monitoring of drugs obtained by a registered patient, (iv) a pharmaceutical processor involved in the treatment of a registered patient, or (v) a registered patient or, if such patient is a minor or an incapacitated adult as defined in § 18.2-369, the patient's parent or legal guardian, but only with respect to information related to such registered patient. The bill contains an emergency clause. SB 1027 (2017 Acts of Assembly, c. 613).

Title 55 Property and Conveyances.

Landlord and tenant law; residential tenancies; landlord and tenant obligations and remedies. Provides that the Virginia Residential Landlord and Tenant Act (§ 55-248.2 et seq.) (the Act) shall apply to all residential tenancies; however, a landlord who is a natural person, an estate, or a legal entity that owns no more than two single-family residential dwelling units in its own name subject to a rental agreement may opt out of the Act by stating so in the rental agreement. The bill conforms general landlord and tenant law relating to residential tenancies to the Act, including the security deposits, lease terms, notice, and disclosure provisions. The bill also allows the landlord, for unclaimed security deposits, to submit such funds to the State Treasurer rather than the Virginia Housing Trust Fund and changes the requirement that a landlord make reasonable efforts to advise the tenant of the right to be present at the landlord's inspection to a requirement that written notice of the right be provided. The bill provides for a landlord to provide a tenant with a written statement of charges and payments over the previous 12 months rather than an accounting as required under current law. In addition, the bill includes any activity that involves or constitutes a criminal or willful act that also poses a threat to health and safety by the tenant or authorized occupants, guests, or invitees as an immediate nonremediable violation for which the landlord may terminate the tenancy. The bill also authorizes a landlord to dispose of the property of a deceased tenant if a personal representative has not been appointed by the circuit court. The landlord may proceed with the disposal after providing 10 days' notice. The bill (i) provides that authorized occupants, guests, or invitees must vacate the dwelling unit after the death of a sole tenant; (ii) allows a landlord to request during the pendency of an unlawful detainer action an order requiring the tenant to provide the landlord with access to the dwelling unit; (iii) adds oil to the utilities that may be included in ratio utility billing; (iv) requires the landlord to provide a written security deposit disposition statement following a move-out inspection and provides for the landlord to seek recovery for additional damages discovered after the security deposit disposition has been made, provided, however, that the tenant may present evidence of the move-out report to support the tenant's position that such additional damages did not exist at the time of the move-out inspection; and (v) authorizes a landlord to retain an attorney to prepare or provide any required written notice and permits the use of an electronic signature or an electronic notarization. The bill also provides that no landlord or managing agent shall release information about a tenant or prospective tenant in the possession of the landlord to a third party unless, among other things, the information is a matter of public record as defined in § 2.2-3701. HB 2033 (2017 Acts of Assembly, c. 730).

Title 58.1 Taxation.

Purchase of cigarettes for resale; penalties. Creates a new requirement that purchasers of cigarettes for resale must apply for a special cigarette exemption certificate from the Department of Taxation in order to not be liable for the payment of sales tax at the time of purchase. The bill sets forth numerous requirements that a taxpayer must meet in order to qualify for a cigarette exemption certificate and establishes processes and procedures

for the application, renewal, denial, and revocation of the certificates. The bill creates new recordkeeping requirements for the sale or distribution of any quantity of cigarettes in excess of 50 cartons, or with a value greater than \$10,000 in any single sale. The bill provides that such records shall be exempt from disclosure under the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) The bill also contains technical amendments. The provisions of the bill requiring the use of a cigarette exemption certificate have a delayed effective date of January 1, 2018. SB 1390 (2017 Acts of Assembly, c. 453) and HB 1913 (2017 Acts of Assembly, c. 112).