

Use of "Proprietary" in FOIA (§ 2.2-3700 et seq.):

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

6. Vendor **proprietary** information software that may be in the public records of a public body. For the purpose of this subdivision, "vendor **proprietary** information software" means computer programs acquired from a vendor for purposes of processing data for agencies or political subdivisions of the Commonwealth.

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

4. Information of a **proprietary** nature produced or collected by or for faculty or staff of public institutions of higher education, other than the institutions' financial or administrative records, in the conduct of or as a result of study or research on medical, scientific, technical or scholarly issues, whether sponsored by the institution alone or in conjunction with a governmental body or a private concern, where such information has not been publicly released, published, copyrighted or patented.

5. Information held by the University of Virginia or the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, that contain **proprietary**, business-related information pertaining to the operations of the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, including business development or marketing strategies and activities with existing or future joint venturers, partners, or other parties with whom the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, has formed, or forms, any arrangement for the delivery of health care, if disclosure of such information would be harmful to the competitive position of the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be.

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

4. Investigative notes; **proprietary** information not published, copyrighted or patented; information obtained from employee personnel records; personally identifiable information regarding residents, clients or other recipients of services; other correspondence and information furnished in confidence to the Department of Social Services in connection with an active investigation of an applicant or licensee pursuant to Chapters 17 (63.2-1700 et seq.) and 18 (63.2-1800 et seq.) of Title 63.2; and information furnished to the Office of the Attorney General in connection with an investigation or litigation pursuant to Article 19.1 (8.01-216.1 et seq.) of Chapter 3 of Title 8.01 and Chapter 9 (32.1-310 et seq.) of Title 32.1. Information from the records of completed investigations shall be disclosed in a form that does not reveal the identity of complainants, persons supplying information, or other individuals involved in the investigation.

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

1. **Proprietary** information gathered by or for the Virginia Port Authority as provided in 62.1-132.4 or 62.1-134.1.
3. **Proprietary** information, voluntarily provided by private business pursuant to a promise of confidentiality from a public body, used by the public body for business, trade, and tourism development or retention; and memoranda, working papers, or other information related to businesses that are considering locating or expanding in Virginia, prepared by a public body, where competition or bargaining is involved and where disclosure of such information would adversely affect the financial interest of the public body.
7. **Proprietary** information related to inventory and sales, voluntarily provided by private energy suppliers to the Department of Mines, Minerals and Energy, used by that Department for energy contingency planning purposes or for developing consolidated statistical information on energy supplies.
8. Confidential **proprietary** information furnished to the Board of Medical Assistance Services or the Medicaid Prior Authorization Advisory Committee pursuant to Article 4 (32.1-331.12 et seq.) of Chapter 10 of Title 32.1.
9. **Proprietary**, commercial or financial information, balance sheets, trade secrets, and revenue and cost projections provided by a private transportation business to the Virginia Department of Transportation and the Department of Rail and Public Transportation for the purpose of conducting transportation studies needed to obtain grants or other financial assistance under the Transportation Equity Act for the 21st Century (P.L. 105-178) for transportation projects if disclosure of such information is exempt under the federal Freedom of Information Act or the federal Interstate Commerce Act or other laws administered by the Surface Transportation Board or the Federal Railroad Administration with respect to data provided in confidence to the Surface Transportation Board and the Federal Railroad Administration. However, the exclusion provided by this subdivision shall not apply to any wholly owned subsidiary of a public body.
10. Confidential information designated as provided in subsection F of 2.2-4342 as trade secrets or **proprietary** information by any person in connection with a procurement transaction or by any person who has submitted to a public body an application for prequalification to bid on public construction projects in accordance with subsection B of 2.2-4317.
12. Confidential **proprietary** information or trade secrets, not publicly available, provided by a private person or entity pursuant to a promise of confidentiality to the Virginia Resources Authority or to a fund administered in connection with financial assistance rendered or to be rendered by the Virginia Resources Authority where, if such information were made public, the financial interest of the private person or entity would be adversely affected.
13. Trade secrets, as defined in the Uniform Trade Secrets Act (59.1-336 et seq.), or confidential **proprietary** information that is not generally available to the public through regulatory disclosure or otherwise, provided by a (i) bidder or applicant for a franchise or (ii) franchisee under Chapter

21 (15.2-2100 et seq.) of Title 15.2 to the applicable franchising authority pursuant to a promise of confidentiality from the franchising authority, to the extent the information relates to the bidder's, applicant's, or franchisee's financial capacity or provision of new services, adoption of new technologies or implementation of improvements, where such new services, technologies, or improvements have not been implemented by the franchisee on a nonexperimental scale in the franchise area, and where, if such information were made public, the competitive advantage or financial interests of the franchisee would be adversely affected.

In order for trade secrets or confidential **proprietary** information to be excluded from the provisions of this chapter, the bidder, applicant, or franchisee shall (a) invoke such exclusion upon submission of the data or other materials for which protection from disclosure is sought, (b) identify the data or other materials for which protection is sought, and (c) state the reason why protection is necessary.

No bidder, applicant, or franchisee may invoke the exclusion provided by this subdivision if the bidder, applicant, or franchisee is owned or controlled by a public body or if any representative of the applicable franchising authority serves on the management board or as an officer of the bidder, applicant, or franchisee.

14. Information of a **proprietary** nature furnished by a supplier of charitable gaming supplies to the Department of Agriculture and Consumer Services pursuant to subsection E of 18.2-340.34.

17. Information relating to a grant or loan application, or accompanying a grant or loan application, to the Innovation and Entrepreneurship Investment Authority pursuant to Article 3 (2.2-2233.1 et seq.) of Chapter 22 of Title 2.2 or to the Commonwealth Health Research Board pursuant to Chapter 5.3 (32.1-162.23 et seq.) of Title 32.1 if disclosure of such information would (i) reveal **proprietary** business or research-related information produced or collected by the applicant in the conduct of or as a result of study or research on medical, rehabilitative, scientific, technical, technological, or scholarly issues, when such information has not been publicly released, published, copyrighted, or patented, and (ii) be harmful to the competitive position of the applicant.

18. Confidential **proprietary** information and trade secrets developed and held by a local public body (i) providing telecommunication services pursuant to 56-265.4:4 and (ii) providing cable television services pursuant to Article 1.1 (15.2-2108.2 et seq.) of Chapter 21 of Title 15.2 if disclosure of such information would be harmful to the competitive position of the locality.

In order for confidential **proprietary** information or trade secrets to be excluded from the provisions of this chapter, the locality in writing shall (a) invoke the protections of this subdivision, (b) identify with specificity the information for which protection is sought, and (c) state the reasons why protection is necessary. However, the exemption provided by this subdivision shall not apply to any authority created pursuant to the BVU Authority Act (15.2-7200 et seq.).

19. Confidential **proprietary** information and trade secrets developed by or for a local authority created in accordance with the Virginia Wireless Service Authorities Act (15.2-5431.1 et seq.) to provide qualifying communications services as authorized by Article 5.1 (56-484.7:1 et seq.) of Chapter 15 of Title 56, where disclosure of such information would be harmful to the competitive position of the authority, except that information required to be maintained in accordance with 15.2-2160 shall be released.

21. Information of a **proprietary** or confidential nature disclosed by a carrier to the State Health Commissioner pursuant to 32.1-276.5:1 and 32.1-276.7:1.

25. Information of a **proprietary** nature furnished by an agricultural landowner or operator to the Department of Conservation and Recreation, the Department of Environmental Quality, the Department of Agriculture and Consumer Services, or any political subdivision, agency, or board of the Commonwealth pursuant to 10.1-104.7, 10.1-104.8, and 10.1-104.9, other than when required as part of a state or federal regulatory enforcement action.

27. Information of a **proprietary** nature furnished by a licensed public-use airport to the Department of Aviation for funding from programs administered by the Department of Aviation or the Virginia Aviation Board, where if such information was made public, the financial interest of the public-use airport would be adversely affected.

In order for the information specified in this subdivision to be excluded from the provisions of this chapter, the public-use airport shall make a written request to the Department of Aviation:

- a. Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;
- b. Identifying with specificity the data or other materials for which protection is sought; and
- c. Stating the reasons why protection is necessary.

28. Records submitted as a grant or loan application, or accompanying a grant or loan application, for an award from the Virginia Research Investment Fund pursuant to Article 8 (23.1-3130 et seq.) of Chapter 31 of Title 23.1, to the extent that such records contain **proprietary** business or research-related information produced or collected by the applicant in the conduct of or as a result of study or research on medical, rehabilitative, scientific, technical, technological, or scholarly issues, when such information has not been publicly released, published, copyrighted, or patented, if the disclosure of such information would be harmful to the competitive position of the applicant.

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

11. Memoranda, graphics, video or audio tapes, production models, data, and information of a **proprietary** nature produced by or for or collected by or for the Virginia Lottery relating to matters of a specific lottery game design, development, production, operation, ticket price, prize structure, manner of selecting the winning ticket, manner of payment of prizes to holders of winning tickets, frequency of drawings or selections of winning tickets, odds of winning, advertising, or marketing, where such information not been publicly released, published, copyrighted, or patented. Whether released, published, or copyrighted, all game-related information shall be subject to public disclosure under this chapter upon the first day of sales for the specific lottery game to which it pertains.

15. Information held by the Virginia Commonwealth University Health System Authority pertaining to any of the following: an individual's qualifications for or continued membership on its medical or teaching staffs; **proprietary** information gathered by or in the possession of the Authority from third parties pursuant to a promise of confidentiality; contract cost estimates prepared for confidential use in awarding contracts for construction or the purchase of goods or services; information of a **proprietary** nature produced or collected by or for the Authority or members of its medical or teaching staffs; financial statements not publicly available that may be filed with the Authority from third parties; the identity, accounts, or account status of any customer of the Authority; consulting or other reports paid for by the Authority to assist the Authority in connection with its strategic planning and goals; the determination of marketing and operational strategies where disclosure of such strategies would be harmful to the competitive position of the Authority; and information of a **proprietary** nature produced or collected by or for employees of the Authority, other than the Authority's financial or administrative records, in the conduct of or as a result of study or research on medical, scientific, technical, or scholarly issues, whether sponsored by the Authority alone or in conjunction with a governmental body or a private concern, when such information has not been publicly released, published, copyrighted, or patented. This exclusion shall also apply when such information is in the possession of Virginia Commonwealth University.

34. **(Effective July 1, 2018)** Information held by the Virginia Alcoholic Beverage Control Authority that contains (i) information of a **proprietary** nature gathered by or in the possession of the Authority from a private entity pursuant to a promise of confidentiality; (ii) trade secrets, as defined in the Uniform Trade Secrets Act (59.1-336 et seq.), of any private entity; (iii) financial information of a private entity, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise; (iv) contract cost estimates prepared for the (a) confidential use in awarding contracts for construction or (b) purchase of goods or services; or (v) the determination of marketing and operational strategies where disclosure of such strategies would be harmful to the competitive position of the Authority.

16. Deliberations of the Virginia Lottery Board in a licensing appeal action conducted pursuant to subsection D of 58.1-4007 regarding the denial or revocation of a license of a lottery sales agent; and discussion, consideration or review of Virginia Lottery matters related to

proprietary lottery game information and studies or investigations exempted from disclosure under subdivision 6 of 2.2-3705.3 and subdivision 11 of 2.2-3705.7.

22. Those portions of meetings of the University of Virginia Board of Visitors or the Eastern Virginia Medical School Board of Visitors, as the case may be, and those portions of meetings of any persons to whom management responsibilities for the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, have been delegated, in which there is discussed **proprietary**, business-related information pertaining to the operations of the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, including business development or marketing strategies and activities with existing or future joint venturers, partners, or other parties with whom the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, has formed, or forms, any arrangement for the delivery of health care, if disclosure of such information would adversely affect the competitive position of the Medical Center or Eastern Virginia Medical School, as the case may be.

33. Discussion or consideration of confidential **proprietary** information and trade secrets excluded from this chapter pursuant to subdivision 18 of 2.2-3705.6. However, the exemption provided by this subdivision shall not apply to any authority created pursuant to the BVU Authority Act (15.2-7200 et seq.).

34. Discussion or consideration by a local authority created in accordance with the Virginia Wireless Service Authorities Act (15.2-5431.1 et seq.) of confidential **proprietary** information and trade secrets excluded from this chapter pursuant to subdivision 19 of 2.2-3705.6.

46. Discussion or consideration of personal and **proprietary** information that are excluded from the provisions of this chapter pursuant to (i) subdivision 25 of 2.2-3705.6 or (ii) subsection E of 10.1-104.7. This exclusion shall not apply to the discussion or consideration of records that contain information that has been certified for release by the person who is the subject of the information or transformed into a statistical or aggregate form that does not allow identification of the person who supplied, or is the subject of, the information.