

SENATE BILL NO. _____ HOUSE BILL NO. _____

1 A BILL to amend and reenact §§ 2.2-3701, 2.2-3705.7, and 2.2-3713 of the Code of Virginia, relating to
2 the Virginia Freedom of Information Act; discretionary exemption for social media records of
3 members of the General Assembly.

4 **Be it enacted by the General Assembly of Virginia:**

5 **1. That §§ 2.2-3701, 2.2-3705.7, and 2.2-3713 of the Code of Virginia are amended and reenacted as**
6 **follows:**

7 **§ 2.2-3701. Definitions.**

8 As used in this chapter, unless the context requires a different meaning:

9 "Closed meeting" means a meeting from which the public is excluded.

10 "Electronic communication" means the use of technology having electrical, digital, magnetic,
11 wireless, optical, electromagnetic, or similar capabilities to transmit or receive information.

12 "Emergency" means an unforeseen circumstance rendering the notice required by this chapter
13 impossible or impracticable and which circumstance requires immediate action.

14 "Information" as used in the exclusions established by §§ 2.2-3705.1 through 2.2-3705.7, means
15 the content within a public record that references a specifically identified subject matter, and shall not be
16 interpreted to require the production of information that is not embodied in a public record.

17 "Meeting" or "meetings" means the meetings including work sessions, when sitting physically, or
18 through electronic communication means pursuant to § 2.2-3708.2, as a body or entity, or as an informal
19 assemblage of (i) as many as three members or (ii) a quorum, if less than three, of the constituent
20 membership, wherever held, with or without minutes being taken, whether or not votes are cast, of any
21 public body. Neither the gathering of employees of a public body nor the gathering or attendance of two
22 or more members of a public body (a) at any place or function where no part of the purpose of such
23 gathering or attendance is the discussion or transaction of any public business, and such gathering or
24 attendance was not called or prearranged with any purpose of discussing or transacting any business of
25 the public body, or (b) at a public forum, candidate appearance, or debate, the purpose of which is to

26 inform the electorate and not to transact public business or to hold discussions relating to the transaction
27 of public business, even though the performance of the members individually or collectively in the conduct
28 of public business may be a topic of discussion or debate at such public meeting, shall be deemed a
29 "meeting" subject to the provisions of this chapter.

30 "Open meeting" or "public meeting" means a meeting at which the public may be present.

31 "Public body" means any legislative body, authority, board, bureau, commission, district or agency
32 of the Commonwealth or of any political subdivision of the Commonwealth, including cities, towns and
33 counties, municipal councils, governing bodies of counties, school boards and planning commissions;
34 governing boards of public institutions of higher education; and other organizations, corporations or
35 agencies in the Commonwealth supported wholly or principally by public funds. It shall include (i) the
36 Virginia Birth-Related Neurological Injury Compensation Program and its board of directors established
37 pursuant to Chapter 50 (§ 38.2-5000 et seq.) of Title 38.2 and (ii) any committee, subcommittee, or other
38 entity however designated, of the public body created to perform delegated functions of the public body
39 or to advise the public body. It shall not exclude any such committee, subcommittee or entity because it
40 has private sector or citizen members. Corporations organized by the Virginia Retirement System are
41 "public bodies" for purposes of this chapter.

42 For the purposes of the provisions of this chapter applicable to access to public records,
43 constitutional officers and private police departments as defined in § 9.1-101 shall be considered public
44 bodies and, except as otherwise expressly provided by law, shall have the same obligations to disclose
45 public records as other custodians of public records.

46 "Public records" means all writings and recordings that consist of letters, words or numbers, or
47 their equivalent, set down by handwriting, typewriting, printing, photostating, photography, magnetic
48 impulse, optical or magneto-optical form, mechanical or electronic recording or other form of data
49 compilation, however stored, and regardless of physical form or characteristics, prepared or owned by, or
50 in the possession of a public body or its officers, employees or agents in the transaction of public business.

51 Records that are not prepared or owned by, or in the possession of, a public body or its officers, employees,
52 or agents in the transaction of public business are not public records.

53 "Regional public body" means a unit of government organized as provided by law within defined
54 boundaries, as determined by the General Assembly, which unit includes two or more localities.

55 "Scholastic records" means those records containing information directly related to a student or an
56 applicant for admission and maintained by a public body that is an educational agency or institution or by
57 a person acting for such agency or institution.

58 **§ 2.2-3705.7. Exclusions to application of chapter; records of specific public bodies and**
59 **certain other limited exclusions.**

60 The following information contained in a public record is excluded from the mandatory disclosure
61 provisions of this chapter but may be disclosed by the custodian in his discretion, except where such
62 disclosure is prohibited by law. Redaction of information excluded under this section from a public record
63 shall be conducted in accordance with § 2.2-3704.01.

64 1. State income, business, and estate tax returns, personal property tax returns, and confidential
65 records held pursuant to § 58.1-3.

66 2. a. Working papers and correspondence of the Office of the Governor, the Lieutenant Governor,
67 or the Attorney General; the members of the General Assembly, the Division of Legislative Services, or
68 the Clerks of the House of Delegates or the Senate of Virginia; the mayor or chief executive officer of any
69 political subdivision of the Commonwealth; or the president or other chief executive officer of any public
70 institution of higher education in the Commonwealth. However, no information that is otherwise open to
71 inspection under this chapter shall be deemed excluded by virtue of the fact that it has been attached to or
72 incorporated within any working paper or correspondence. Further, information publicly available or not
73 otherwise subject to an exclusion under this chapter or other provision of law that has been aggregated,
74 combined, or changed in format without substantive analysis or revision shall not be deemed working
75 papers. Nothing in this subdivision shall be construed to authorize the withholding of any resumes or
76 applications submitted by persons who are appointed by the Governor pursuant to § 2.2-106 or 2.2-107.

77 b. Social media records of the members of the General Assembly when such records (i) relate to
78 the use of a social media account by a member in such member's individual capacity and (ii) are not

79 prepared or owned by, or in the possession of, a public body or its officers, employees, or agents in the
80 transaction of public business.

81 As used in this subdivision 2:

82 "Members of the General Assembly" means each member of the Senate of Virginia and the House
83 of Delegates and their legislative aides when working on behalf of such member.

84 "Office of the Governor" means the Governor; the Governor's chief of staff, counsel, director of
85 policy, and Cabinet Secretaries; the Assistant to the Governor for Intergovernmental Affairs; and those
86 individuals to whom the Governor has delegated his authority pursuant to § 2.2-104.

87 "Social media account" means a personal account with an electronic medium, service, or
88 application through which users may create, share, or view user-generated content, including, without
89 limitation, videos, photographs, blogs, podcasts, messages, emails, and website profiles and locations.

90 "Working papers" means those records prepared by or for a public official identified in this
91 subdivision for his personal or deliberative use.

92 3. Information contained in library records that can be used to identify (i) both (a) any library
93 patron who has borrowed material from a library and (b) the material such patron borrowed or (ii) any
94 library patron under 18 years of age. For the purposes of clause (ii), access shall not be denied to the
95 parent, including a noncustodial parent, or guardian of such library patron.

96 4. Contract cost estimates prepared for the confidential use of the Department of Transportation in
97 awarding contracts for construction or the purchase of goods or services, and records and automated
98 systems prepared for the Department's Bid Analysis and Monitoring Program.

99 5. Lists of registered owners of bonds issued by a political subdivision of the Commonwealth,
100 whether the lists are maintained by the political subdivision itself or by a single fiduciary designated by
101 the political subdivision.

102 6. Information furnished by a member of the General Assembly to a meeting of a standing
103 committee, special committee, or subcommittee of his house established solely for the purpose of
104 reviewing members' annual disclosure statements and supporting materials filed under § 30-110 or of
105 formulating advisory opinions to members on standards of conduct, or both.

106 7. Customer account information of a public utility affiliated with a political subdivision of the
107 Commonwealth, including the customer's name and service address, but excluding the amount of utility
108 service provided and the amount of money charged or paid for such utility service.

109 8. Personal information, as defined in § 2.2-3801, (i) filed with the Virginia Housing Development
110 Authority concerning individuals who have applied for or received loans or other housing assistance or
111 who have applied for occupancy of or have occupied housing financed, owned or otherwise assisted by
112 the Virginia Housing Development Authority; (ii) concerning persons participating in or persons on the
113 waiting list for federally funded rent-assistance programs; (iii) filed with any local redevelopment and
114 housing authority created pursuant to § 36-4 concerning persons participating in or persons on the waiting
115 list for housing assistance programs funded by local governments or by any such authority; or (iv) filed
116 with any local redevelopment and housing authority created pursuant to § 36-4 or any other local
117 government agency concerning persons who have applied for occupancy or who have occupied affordable
118 dwelling units established pursuant to § 15.2-2304 or 15.2-2305. However, access to one's own
119 information shall not be denied.

120 9. Information regarding the siting of hazardous waste facilities, except as provided in § 10.1-
121 1441, if disclosure of such information would have a detrimental effect upon the negotiating position of a
122 governing body or on the establishment of the terms, conditions, and provisions of the siting agreement.

123 10. Information on the site-specific location of rare, threatened, endangered, or otherwise
124 imperiled plant and animal species, natural communities, caves, and significant historic and archaeological
125 sites if, in the opinion of the public body that has the responsibility for such information, disclosure of the
126 information would jeopardize the continued existence or the integrity of the resource. This exclusion shall
127 not apply to requests from the owner of the land upon which the resource is located.

128 11. Memoranda, graphics, video or audio tapes, production models, data, and information of a
129 proprietary nature produced by or for or collected by or for the Virginia Lottery relating to matters of a
130 specific lottery game design, development, production, operation, ticket price, prize structure, manner of
131 selecting the winning ticket, manner of payment of prizes to holders of winning tickets, frequency of
132 drawings or selections of winning tickets, odds of winning, advertising, or marketing, where such

133 information not been publicly released, published, copyrighted, or patented. Whether released, published,
134 or copyrighted, all game-related information shall be subject to public disclosure under this chapter upon
135 the first day of sales for the specific lottery game to which it pertains.

136 12. Information held by the Virginia Retirement System, acting pursuant to § 51.1-124.30, or a
137 local retirement system, acting pursuant to § 51.1-803, or by a local finance board or board of trustees of
138 a trust established by one or more local public bodies to invest funds for post-retirement benefits other
139 than pensions, acting pursuant to Article 8 (§ 15.2-1544 et seq.) of Chapter 15 of Title 15.2, or by the
140 board of visitors of the University of Virginia, acting pursuant to § 23.1-2210, or by the board of visitors
141 of The College of William and Mary in Virginia, acting pursuant to § 23.1-2803, or by the Virginia College
142 Savings Plan, acting pursuant to § 23.1-704, relating to the acquisition, holding, or disposition of a security
143 or other ownership interest in an entity, where such security or ownership interest is not traded on a
144 governmentally regulated securities exchange, if disclosure of such information would (i) reveal
145 confidential analyses prepared for the board of visitors of the University of Virginia, prepared for the
146 board of visitors of The College of William and Mary in Virginia, prepared by the retirement system, a
147 local finance board or board of trustees, or the Virginia College Savings Plan, or provided to the retirement
148 system, a local finance board or board of trustees, or the Virginia College Savings Plan under a promise
149 of confidentiality of the future value of such ownership interest or the future financial performance of the
150 entity and (ii) have an adverse effect on the value of the investment to be acquired, held, or disposed of
151 by the retirement system, a local finance board or board of trustees, the board of visitors of the University
152 of Virginia, the board of visitors of The College of William and Mary in Virginia, or the Virginia College
153 Savings Plan. Nothing in this subdivision shall be construed to prevent the disclosure of information
154 relating to the identity of any investment held, the amount invested, or the present value of such
155 investment.

156 13. Financial, medical, rehabilitative, and other personal information concerning applicants for or
157 recipients of loan funds submitted to or maintained by the Assistive Technology Loan Fund Authority
158 under Chapter 11 (§ 51.5-53 et seq.) of Title 51.5.

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

175 15. Information held by the Department of Environmental Quality, the State Water Control Board,
176 the State Air Pollution Control Board, or the Virginia Waste Management Board relating to (i) active
177 federal environmental enforcement actions that are considered confidential under federal law and (ii)
178 enforcement strategies, including proposed sanctions for enforcement actions. Upon request, such
179 information shall be disclosed after a proposed sanction resulting from the investigation has been proposed
180 to the director of the agency. This subdivision shall not be construed to prevent the disclosure of
181 information related to inspection reports, notices of violation, and documents detailing the nature of any
182 environmental contamination that may have occurred or similar documents.

183 16. Information related to the operation of toll facilities that identifies an individual, vehicle, or
184 travel itinerary, including vehicle identification data or vehicle enforcement system information; video or
185 photographic images; Social Security or other identification numbers appearing on driver's licenses; credit

186 card or bank account data; home addresses; phone numbers; or records of the date or time of toll facility
187 use.

188 17. Information held by the Virginia Lottery pertaining to (i) the social security number, tax
189 identification number, state sales tax number, home address and telephone number, personal and lottery
190 banking account and transit numbers of a retailer, and financial information regarding the nonlottery
191 operations of specific retail locations and (ii) individual lottery winners, except that a winner's name,
192 hometown, and amount won shall be disclosed.

193 18. Information held by the Board for Branch Pilots relating to the chemical or drug testing of a
194 person regulated by the Board, where such person has tested negative or has not been the subject of a
195 disciplinary action by the Board for a positive test result.

196 19. Information pertaining to the planning, scheduling, and performance of examinations of holder
197 records pursuant to the Uniform Disposition of Unclaimed Property Act (§ 55-210.1 et seq.) prepared by
198 or for the State Treasurer or his agents or employees or persons employed to perform an audit or
199 examination of holder records.

200 20. Information held by the Virginia Department of Emergency Management or a local governing
201 body relating to citizen emergency response teams established pursuant to an ordinance of a local
202 governing body that reveal the name, address, including e-mail address, telephone or pager numbers, or
203 operating schedule of an individual participant in the program.

204 21. Information held by state or local park and recreation departments and local and regional park
205 authorities concerning identifiable individuals under the age of 18 years. However, nothing in this
206 subdivision shall operate to prevent the disclosure of information defined as directory information under
207 regulations implementing the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, unless the
208 public body has undertaken the parental notification and opt-out requirements provided by such
209 regulations. Access shall not be denied to the parent, including a noncustodial parent, or guardian of such
210 person, unless the parent's parental rights have been terminated or a court of competent jurisdiction has
211 restricted or denied such access. For such information of persons who are emancipated, the right of access
212 may be asserted by the subject thereof. Any parent or emancipated person who is the subject of the

213 information may waive, in writing, the protections afforded by this subdivision. If the protections are so
214 waived, the public body shall open such information for inspection and copying.

215 22. Information submitted for inclusion in the Statewide Alert Network administered by the
216 Department of Emergency Management that reveal names, physical addresses, email addresses, computer
217 or internet protocol information, telephone numbers, pager numbers, other wireless or portable
218 communications device information, or operating schedules of individuals or agencies, where the release
219 of such information would compromise the security of the Statewide Alert Network or individuals
220 participating in the Statewide Alert Network.

221 23. Information held by the Judicial Inquiry and Review Commission made confidential by § 17.1-
222 913.

223 24. Information held by the Virginia Retirement System acting pursuant to § 51.1-124.30, a local
224 retirement system acting pursuant to § 51.1-803 (hereinafter collectively referred to as the retirement
225 system), or the Virginia College Savings Plan, acting pursuant to § 23.1-704 relating to:

226 a. Internal deliberations of or decisions by the retirement system or the Virginia College Savings
227 Plan on the pursuit of particular investment strategies, or the selection or termination of investment
228 managers, prior to the execution of such investment strategies or the selection or termination of such
229 managers, if disclosure of such information would have an adverse impact on the financial interest of the
230 retirement system or the Virginia College Savings Plan; and

231 b. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), provided by a
232 private entity to the retirement system or the Virginia College Savings Plan if disclosure of such records
233 would have an adverse impact on the financial interest of the retirement system or the Virginia College
234 Savings Plan.

235 For the records specified in subdivision b to be excluded from the provisions of this chapter, the
236 entity shall make a written request to the retirement system or the Virginia College Savings Plan:

237 (1) Invoking such exclusion prior to or upon submission of the data or other materials for which
238 protection from disclosure is sought;

239 (2) Identifying with specificity the data or other materials for which protection is sought; and

240 (3) Stating the reasons why protection is necessary.

241 The retirement system or the Virginia College Savings Plan shall determine whether the requested
242 exclusion from disclosure meets the requirements set forth in subdivision b.

243 Nothing in this subdivision shall be construed to prevent the disclosure of the identity or amount
244 of any investment held or the present value and performance of all asset classes and subclasses.

245 25. Information held by the Department of Corrections made confidential by § 53.1-233.

246 26. Information maintained by the Department of the Treasury or participants in the Local
247 Government Investment Pool (§ 2.2-4600 et seq.) and required to be provided by such participants to the
248 Department to establish accounts in accordance with § 2.2-4602.

249 27. Personal information, as defined in § 2.2-3801, contained in the Veterans Care Center Resident
250 Trust Funds concerning residents or patients of the Department of Veterans Services Care Centers, except
251 that access shall not be denied to the person who is the subject of the information.

252 28. Information maintained in connection with fundraising activities by the Veterans Services
253 Foundation pursuant to § 2.2-2716 that reveal the address, electronic mail address, facsimile or telephone
254 number, social security number or other identification number appearing on a driver's license, or credit
255 card or bank account data of identifiable donors, except that access shall not be denied to the person who
256 is the subject of the information. Nothing in this subdivision, however, shall be construed to prevent the
257 disclosure of information relating to the amount, date, purpose, and terms of the pledge or donation or the
258 identity of the donor, unless the donor has requested anonymity in connection with or as a condition of
259 making a pledge or donation. The exclusion provided by this subdivision shall not apply to protect from
260 disclosure (i) the identities of sponsors providing grants to or contracting with the foundation for the
261 performance of services or other work or (ii) the terms and conditions of such grants or contracts.

262 29. Information prepared for and utilized by the Commonwealth's Attorneys' Services Council in
263 the training of state prosecutors or law-enforcement personnel, where such information is not otherwise
264 available to the public and the disclosure of such information would reveal confidential strategies,
265 methods, or procedures to be employed in law-enforcement activities or materials created for the
266 investigation and prosecution of a criminal case.

267 30. Information provided to the Department of Aviation by other entities of the Commonwealth in
268 connection with the operation of aircraft where the information would not be subject to disclosure by the
269 entity providing the information. The entity providing the information to the Department of Aviation shall
270 identify the specific information to be protected and the applicable provision of this chapter that excludes
271 the information from mandatory disclosure.

272 31. Information created or maintained by or on the behalf of the judicial performance evaluation
273 program related to an evaluation of any individual justice or judge made confidential by § 17.1-100.

274 32. Information reflecting the substance of meetings in which (i) individual sexual assault cases
275 are discussed by any sexual assault team established pursuant to § 15.2-1627.4 or (ii) individual child
276 abuse or neglect cases or sex offenses involving a child are discussed by multidisciplinary child abuse
277 teams established pursuant to § 15.2-1627.5. The findings of any such team may be disclosed or published
278 in statistical or other aggregated form that does not disclose the identity of specific individuals.

279 33. Information contained in the strategic plan, marketing plan, or operational plan prepared by
280 the Virginia Economic Development Partnership Authority pursuant to § 2.2-2237.1 regarding target
281 companies, specific allocation of resources and staff for marketing activities, and specific marketing
282 activities that would reveal to the Commonwealth's competitors for economic development projects the
283 strategies intended to be deployed by the Commonwealth, thereby adversely affecting the financial interest
284 of the Commonwealth. The executive summaries of the strategic plan, marketing plan, and operational
285 plan shall not be redacted or withheld pursuant to this subdivision.

286 **§ 2.2-3713. Proceedings for enforcement of chapter.**

287 A. Any person, including the attorney for the Commonwealth acting in his official or individual
288 capacity, denied the rights and privileges conferred by this chapter may proceed to enforce such rights and
289 privileges by filing a petition for mandamus or injunction, supported by an affidavit showing good cause.
290 Such petition may be brought in the name of the person notwithstanding that a request for public records
291 was made by the person's attorney in his representative capacity. Venue for the petition shall be addressed
292 as follows:

293 1. In a case involving a local public body, to the general district court or circuit court of the county
294 or city from which the public body has been elected or appointed to serve and in which such rights and
295 privileges were so denied;

296 2. In a case involving a regional public body, to the general district or circuit court of the county
297 or city where the principal business office of such body is located; and

298 3. In a case involving a board, bureau, commission, authority, district, institution, or agency of the
299 state government, including a public institution of higher education, or a standing or other committee of
300 the General Assembly, to the general district court or the circuit court of the residence of the aggrieved
301 party or of the City of Richmond.

302 B. In any action brought before a general district court, a corporate petitioner may appear through
303 its officer, director or managing agent without the assistance of counsel, notwithstanding any provision of
304 law or Rule of the Supreme Court of Virginia to the contrary.

305 C. Notwithstanding the provisions of § 8.01-644, the petition for mandamus or injunction shall be
306 heard within seven days of the date when the same is made, provided the party against whom the petition
307 is brought has received a copy of the petition at least three working days prior to filing. The hearing on
308 any petition made outside of the regular terms of the circuit court of a locality that is included in a judicial
309 circuit with another locality or localities shall be given precedence on the docket of such court over all
310 cases that are not otherwise given precedence by law.

311 D. The petition shall allege with reasonable specificity the circumstances of the denial of the rights
312 and privileges conferred by this chapter. A single instance of denial of the rights and privileges conferred
313 by this chapter shall be sufficient to invoke the remedies granted herein. If the court finds the denial to be
314 in violation of the provisions of this chapter, the petitioner shall be entitled to recover reasonable costs,
315 ~~including costs and reasonable fees for expert witnesses,~~ and ~~attorneys' attorney~~ fees from the public body,
316 such costs including costs and reasonable fees for expert witnesses, if the petitioner substantially prevails
317 on the merits of the case, unless special circumstances would make an award unjust. In making this
318 determination, a court may consider, among other things, the reliance of a public body on an opinion of
319 the Attorney General or a decision of a court that substantially supports the public body's position.

320 E. In any action to enforce the provisions of this chapter, the public body shall bear the burden of
321 proof to establish an exclusion by a preponderance of the evidence. No court shall be required to accord
322 any weight to the determination of a public body as to whether an exclusion applies. Any failure by a
323 public body to follow the procedures established by this chapter shall be presumed to be a violation of this
324 chapter.

325 F. Failure by any person to request and receive notice of the time and place of meetings as provided
326 in § 2.2-3707 shall not preclude any person from enforcing his rights and privileges conferred by this
327 chapter.

328 G. The public body shall be a necessary party to any enforcement proceeding brought pursuant to
329 this section even though an officer, employee, or member may also be named in his official capacity.

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