

SENATE BILL NO. _____ HOUSE BILL NO. _____

1 A BILL to amend and reenact §§ 2.2-3701, 2.2-3704.1, 2.2-3705.1 through 2.2-3705.7, 2.2-3711, 2.2-
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,
3 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
4 of the Code of Virginia, relating to the Virginia Freedom of Information Act; public access to
5 records of public bodies.

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

7 **1. That §§ 2.2-3701, 2.2-3704.1, 2.2-3705.1 through 2.2-3705.7, 2.2-3711, 2.2-3806, 22.1-253.13:3,**
8 **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-**
9 **283.5, 32.1-283.6, 44-146.18, 44-146.22, 54.1-2517, and 54.1-2523of the Code of Virginia are**
10 **amended and reenacted as follows:**

11 **§ 2.2-3701. Definitions.**

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

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

14 "Electronic communication" means any audio or combined audio and visual communication
15 method.

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

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

21 "Meeting" or "meetings" means the meetings including work sessions, when sitting physically,
22 or through telephonic or video equipment pursuant to § 2.2-3708 or 2.2-3708.1, as a body or entity, or as
23 an informal assemblage of (i) as many as three members or (ii) a quorum, if less than three, of the
24 constituent membership, wherever held, with or without minutes being taken, whether or not votes are
25 cast, of any public body. Neither the gathering of employees of a public body nor the gathering or

26 attendance of two or more members of a public body (i) at any place or function where no part of the
27 purpose of such gathering or attendance is the discussion or transaction of any public business, and such
28 gathering or attendance was not called or prearranged with any purpose of discussing or transacting any
29 business of the public body, or (ii) at a public forum, candidate appearance, or debate, the purpose of
30 which is to inform the electorate and not to transact public business or to hold discussions relating to the
31 transaction of public business, even though the performance of the members individually or collectively
32 in the conduct of public business may be a topic of discussion or debate at such public meeting, shall be
33 deemed a "meeting" subject to the provisions of this chapter.

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

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

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

50 "Public records" means all writings and recordings that consist of letters, words or numbers, or
51 their equivalent, set down by handwriting, typewriting, printing, photostating, photography, magnetic
52 impulse, optical or magneto-optical form, mechanical or electronic recording or other form of data

53 compilation, however stored, and regardless of physical form or characteristics, prepared or owned by,
54 or in the possession of a public body or its officers, employees or agents in the transaction of public
55 business. ~~Records that are not prepared for or used in the transaction of public business are not public~~
56 ~~records.~~

57 "Regional public body" means a unit of government organized as provided by law within defined
58 boundaries, as determined by the General Assembly, whose members are appointed by the participating
59 local governing bodies, and such unit includes two or more counties or cities.

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

63 **§ 2.2-3704.1. Posting of notice of rights and responsibilities by state and local public bodies;**
64 **assistance by the Freedom of Information Advisory Council.**

65 A. All state public bodies subject to the provisions of this chapter and any county or city, and any
66 town with a population of more than 250, shall make available the following information to the public
67 upon request and shall post a link to such information on the homepage of their respective public
68 government websites:

69 1. A plain English explanation of the rights of a requester under this chapter, the procedures to
70 obtain public records from the public body, and the responsibilities of the public body in complying with
71 this chapter. For purposes of this section, "plain English" means written in nontechnical, readily
72 understandable language using words of common everyday usage and avoiding legal terms and phrases
73 or other terms and words of art whose usage or special meaning primarily is limited to a particular field
74 or profession;

75 2. Contact information for the FOIA officer designated by the public body pursuant to § 2.2-
76 3704.2 to (i) assist a requester in making a request for records or (ii) respond to requests for public
77 records;

78 3. A general description, summary, list, or index of the types of public records maintained by
79 such ~~state~~ public body;

80 4. A general description, summary, list, or index of any exemptions in law that permit or require
81 such public records to be withheld from release;

82 5. Any policy the public body has concerning the type of public records it routinely withholds
83 from release as permitted by this chapter or other law; and

84 6. The following statement: "A public body may make reasonable charges not to exceed its
85 actual cost incurred in accessing, duplicating, supplying, or searching for the requested records. No
86 public body shall impose any extraneous, intermediary, or surplus fees or expenses to recoup the general
87 costs associated with creating or maintaining records or transacting the general business of the public
88 body. Any duplicating fee charged by a public body shall not exceed the actual cost of duplication. All
89 charges for the supplying of requested records shall be estimated in advance at the request of the citizen
90 as set forth in subsection F of § 2.2-3704 of the Code of Virginia."

91 B. The Freedom of Information Advisory Council, created pursuant to § 30-178, shall assist in
92 the development and implementation of the provisions of subsection A, upon request.

93 **§ 2.2-3705.1. Exclusions to application of chapter; exclusions of general application to**
94 **public bodies.**

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

99 1. Personnel information concerning identifiable individuals, except that access shall not be
100 denied to the person who is the subject thereof. Any person who is the subject of such information and
101 who is 18 years of age or older may waive, in writing, the protections afforded by this subdivision. If the
102 protections are so waived, such information shall be disclosed. Nothing in this subdivision shall be
103 construed to authorize the withholding of any resumes or applications submitted by persons who are
104 appointed by the Governor pursuant to § 2.2-106 or 2.2-107.

105 2. Written advice of legal counsel to state, regional or local public bodies or the officers or
106 employees of such public bodies, and any other information protected by the attorney-client privilege.

107 3. Legal memoranda and other work product compiled specifically for use in litigation or for use
108 in an active administrative investigation concerning a matter that is properly the subject of a closed
109 meeting under § 2.2-3711.

110 4. Any test or examination used, administered or prepared by any public body for purposes of
111 evaluation of (i) any student or any student's performance, (ii) any employee or employment seeker's
112 qualifications or aptitude for employment, retention, or promotion, or (iii) qualifications for any license
113 or certificate issued by a public body.

114 As used in this subdivision, "test or examination" shall include (a) any scoring key for any such
115 test or examination and (b) any other document that would jeopardize the security of the test or
116 examination. Nothing contained in this subdivision shall prohibit the release of test scores or results as
117 provided by law, or limit access to individual records as provided by law. However, the subject of such
118 employment tests shall be entitled to review and inspect all records relative to his performance on such
119 employment tests.

120 When, in the reasonable opinion of such public body, any such test or examination no longer has
121 any potential for future use, and the security of future tests or examinations will not be jeopardized, the
122 test or examination shall be made available to the public. However, minimum competency tests
123 administered to public school children shall be made available to the public contemporaneously with
124 statewide release of the scores of those taking such tests, but in no event shall such tests be made
125 available to the public later than six months after the administration of such tests.

126 5. Records recorded in or compiled exclusively for use in closed meetings lawfully held pursuant
127 to § 2.2-3711. However, no record that is otherwise open to inspection under this chapter shall be
128 deemed exempt by virtue of the fact that it has been reviewed or discussed in a closed meeting.

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

133 7. Computer software developed by or for a state agency, state-supported institution of higher
134 education or political subdivision of the Commonwealth.

135 8. Appraisals and cost estimates of real property subject to a proposed purchase, sale, or lease,
136 prior to the completion of such purchase, sale, or lease.

137 9. Information concerning reserves established in specific claims administered by the
138 Department of the Treasury through its Division of Risk Management as provided in Article 5 (§ 2.2-
139 1832 et seq.) of Chapter 18, or by any county, city, or town; and investigative notes, correspondence and
140 information furnished in confidence with respect to an investigation of a claim or a potential claim
141 against a public body's insurance policy or self-insurance plan. However, nothing in this subdivision
142 shall authorize the withholding of information taken from inactive reports upon expiration of the period
143 of limitations for the filing of a civil suit.

144 10. Personal [contact](#) information, ~~as defined in § 2.2-3801~~, including electronic mail addresses,
145 furnished to a public body for the purpose of receiving electronic mail from the public body, provided
146 that the electronic mail recipient has requested that the public body not disclose such information.
147 However, access shall not be denied to the person who is the subject of the record. [As used in this](#)
148 [subdivision, "personal contact information" means home address, home telephone number, personal cell](#)
149 [phone number, personal email address, or work address or telephone number.](#)

150 11. Communications and materials required to be kept confidential pursuant to § 2.2-4119 of the
151 Virginia Administrative Dispute Resolution Act (§ 2.2-4115 et seq.).

152 12. Information relating to the negotiation and award of a specific contract where competition or
153 bargaining is involved and where the release of such information would adversely affect the bargaining
154 position or negotiating strategy of the public body. Such information shall not be withheld after the
155 public body has made a decision to award or not to award the contract. In the case of procurement
156 transactions conducted pursuant to the Virginia Public Procurement Act (§ 2.2-4300 et seq.), the
157 provisions of this subdivision shall not apply, and any release of information relating to such
158 transactions shall be governed by the Virginia Public Procurement Act.

159 13. Account numbers or routing information for any credit card, debit card, or other account with
160 a financial institution of any person or public body. However, access shall not be denied to the person
161 who is the subject of the information. For the purposes of this subdivision, "financial institution" means
162 any organization authorized to do business under state or federal laws relating to financial institutions,
163 including, without limitation, banks and trust companies, savings banks, savings and loan companies or
164 associations, and credit unions.

165 **§ 2.2-3705.2. Exclusions to application of chapter; records relating to public safety.**

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

170 1. Confidential information, including victim identity, provided to or obtained by staff in a rape
171 crisis center or a program for battered spouses.

172 2. ~~Information contained in engineering and construction drawings and plans submitted for the~~
173 ~~sole purpose of complying with the Building Code in obtaining a building permit if disclosure of such~~
174 ~~information would identify specific trade secrets or other information that would be harmful to the~~
175 ~~competitive position of the owner or lessee. However, such information shall be exempt only until the~~
176 ~~building is completed. Information relating to the safety or environmental soundness of any building~~
177 ~~shall not be exempt from disclosure.~~

178 ~~Information contained in engineering and construction drawings and plans that reveal critical~~
179 ~~structural components, security equipment and systems, ventilation systems, fire protection equipment,~~
180 ~~mandatory building emergency equipment or systems, elevators, electrical systems, telecommunications~~
181 ~~equipment and systems, and other utility equipment and systems submitted for the purpose of complying~~
182 ~~with the Uniform Statewide Building Code (§ 36-97 et seq.) or the Statewide Fire Prevention Code (§~~
183 ~~27-94 et seq.) if disclosure of such information would jeopardize the safety or security of any public or~~
184 ~~private commercial office, multifamily residential, or retail building or its occupants in the event of~~
185 ~~terrorism or other threat to public safety. In order for the information to be excluded from mandatory~~

186 ~~disclosure, the owner or lessee of such property, equipment, or system in writing shall (i) invoke the~~
187 ~~protections of this paragraph; (ii) identify the drawings, plans, or other materials to be protected; and~~
188 ~~(iii) state the reasons why protection is necessary.~~

189 ~~Nothing in this subdivision shall authorize the withholding of information relating to any~~
190 ~~building in connection with an inquiry into the performance of that building after it has been subjected~~
191 ~~to fire, explosion, natural disaster, or other catastrophic event.~~

192 ~~3. Information that describes the design, function, operation, or access control features of any~~
193 ~~security system, whether manual or automated, which is used to control access to or use of any~~
194 ~~automated data processing or telecommunications system.~~

195 ~~4. Information concerning the prevention or response to terrorist activity or cyber attacks,~~
196 ~~including (i) critical infrastructure information; (ii) vulnerability assessments, operational, procedural,~~
197 ~~transportation, and tactical planning or training manuals, and staff meeting minutes; (iii) engineering or~~
198 ~~architectural plans or drawings, or information derived from such plans or drawings; and (iv)~~
199 ~~information not lawfully available to the public regarding specific cybersecurity threats or vulnerabilities~~
200 ~~or security plans and measures of an entity, facility, building, structure, information technology system,~~
201 ~~or software program if disclosure of such information would (a) reveal the location or operation of~~
202 ~~security equipment and systems, elevators, ventilation, fire protection, emergency, electrical,~~
203 ~~telecommunications or utility equipment and systems of any public building, structure or information~~
204 ~~storage facility, or telecommunications or utility equipment or systems or (b) jeopardize the safety of~~
205 ~~any person.~~

206 ~~The same categories of information concerning any person or entity submitted to a public body~~
207 ~~for the purpose of antiterrorism response planning or cybersecurity planning or protection may be~~
208 ~~withheld from disclosure if such person or entity in writing (1) invokes the protections of this~~
209 ~~subdivision, (2) identifies with specificity the information for which protection is sought, and (3) states~~
210 ~~with reasonable particularity why the protection of such information from public disclosure is necessary~~
211 ~~to meet the objective of antiterrorism, cybersecurity planning or protection, or critical infrastructure~~

212 ~~information security and resilience. Such statement shall be a public record and shall be disclosed upon~~
213 ~~request.~~

214 ~~Any public body receiving a request for records excluded under this subdivision shall notify the~~
215 ~~Secretary of Public Safety and Homeland Security or his designee of such request and the response~~
216 ~~made by the public body in accordance with § 2.2-3704.~~

217 ~~Nothing in this subdivision shall be construed to authorize the withholding of information~~
218 ~~relating to the structural or environmental soundness of any building, nor shall it authorize the~~
219 ~~withholding of information relating to any building in connection with an inquiry into the performance~~
220 ~~of that building after it has been subjected to fire, explosion, natural disaster, or other catastrophic event.~~

221 ~~As used in this subdivision, "critical infrastructure information" means the same as that term is~~
222 ~~defined in 6 U.S.C. § 131.~~

223 ~~5.3.~~ Information that would disclose the security aspects of a system safety program plan
224 adopted pursuant to 49 C.F.R. Part 659 by the Commonwealth's designated Rail Fixed Guideway
225 Systems Safety Oversight agency; and information in the possession of such agency, the release of
226 which would jeopardize the success of an ongoing investigation of a rail accident or other incident
227 threatening railway safety.

228 ~~6. Information contained in engineering and architectural drawings, operational, procedural,~~
229 ~~tactical planning or training manuals, or staff meeting minutes if disclosure of such information would~~
230 ~~(i) reveal surveillance techniques, personnel deployments, alarm or security systems or technologies, or~~
231 ~~operational and transportation plans or protocols or (ii) jeopardize the security of any governmental~~
232 ~~facility, building, or structure or the safety of persons using such facility, building, or structure.~~

233 ~~7.4.~~ Information concerning security plans and specific assessment components of school safety
234 audits, as provided in § 22.1-279.8.

235 Nothing in this subdivision shall be construed to authorize the withholding of information
236 relating to the effectiveness of security plans after (i) any school building or property has been subjected
237 to fire, explosion, natural disaster, or other catastrophic event or (ii) any person on school property has
238 suffered or been threatened with any personal injury.

239 | ~~8-5.~~ Information concerning the mental health assessment of an individual subject to
240 | commitment as a sexually violent predator under Chapter 9 (§ 37.2-900 et seq.) of Title 37.2 held by the
241 | Commitment Review Committee; except that in no case shall information identifying the victims of a
242 | sexually violent predator be disclosed.

243 | ~~9-6.~~ Subscriber data provided directly or indirectly by a telecommunications carrier to a public
244 | body that operates a 911 or E-911 emergency dispatch system or an emergency notification or reverse
245 | 911 system if the data is in a form not made available by the telecommunications carrier to the public
246 | generally. Nothing in this subdivision shall authorize the withholding of subscriber data generated in
247 | connection with specific calls to a 911 emergency system, where the requester is seeking to obtain
248 | public records about the use of the system in response to a specific crime, emergency or other event as to
249 | which a citizen has initiated a 911 call.

250 | For the purposes of this subdivision, "subscriber data" means the name, address, telephone
251 | number, and any other information identifying a subscriber of a telecommunications carrier.

252 | ~~10-7.~~ Subscriber data collected by a local governing body in accordance with the Enhanced
253 | Public Safety Telephone Services Act (§ 56-484.12 et seq.) and other identifying information of a
254 | personal, medical, or financial nature provided to a local governing body in connection with a 911 or E-
255 | 911 emergency dispatch system or an emergency notification or reverse 911 system if such records are
256 | not otherwise publicly available.

257 | Nothing in this subdivision shall authorize the withholding of subscriber data generated in
258 | connection with specific calls to a 911 emergency system, where the requester is seeking to obtain
259 | public records about the use of the system in response to a specific crime, emergency or other event as to
260 | which a citizen has initiated a 911 call.

261 | For the purposes of this subdivision, "subscriber data" means the name, address, telephone
262 | number, and any other information identifying a subscriber of a telecommunications carrier.

263 | ~~11-8.~~ Information held by the Virginia Military Advisory Council or any commission created by
264 | executive order for the purpose of studying and making recommendations regarding preventing closure
265 | or realignment of federal military and national security installations and facilities located in Virginia and

266 relocation of such facilities to Virginia, or a local or regional military affairs organization appointed by a
267 local governing body, that would (i) reveal strategies under consideration or development by the Council
268 or such commission or organizations to prevent the closure or realignment of federal military
269 installations located in Virginia or the relocation of national security facilities located in Virginia, to
270 limit the adverse economic effect of such realignment, closure, or relocation, or to seek additional tenant
271 activity growth from the Department of Defense or federal government or (ii) disclose trade secrets, as
272 defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), provided to the Council or such
273 commission or organizations in connection with their work.

274 In order to invoke the trade secret protection provided by clause (ii), the submitting entity shall,
275 in writing and at the time of submission (a) invoke this exclusion, (b) identify with specificity the
276 information for which such protection is sought, and (c) state the reason why such protection is
277 necessary. Nothing in this subdivision shall be construed to authorize the withholding of all or part of
278 any record, other than a trade secret that has been specifically identified as required by this subdivision,
279 after the Department of Defense or federal agency has issued a final, unappealable decision, or in the
280 event of litigation, a court of competent jurisdiction has entered a final, unappealable order concerning
281 the closure, realignment, or expansion of the military installation or tenant activities, or the relocation of
282 the national security facility, for which records are sought.

283 12-9. Information, as determined by the State Comptroller, that describes the design, function,
284 operation, or implementation of internal controls over the Commonwealth's financial processes and
285 systems, and the assessment of risks and vulnerabilities of those controls, including the annual
286 assessment of internal controls mandated by the State Comptroller, if disclosure of such information
287 would jeopardize the security of the Commonwealth's financial assets. However, records relating to the
288 investigation of and findings concerning the soundness of any fiscal process shall be disclosed in a form
289 that does not compromise internal controls. Nothing in this subdivision shall be construed to prohibit the
290 Auditor of Public Accounts or the Joint Legislative Audit and Review Commission from reporting
291 internal control deficiencies discovered during the course of an audit.

292 ~~13-10.~~ Information relating to the Statewide Agencies Radio System (STARS) or any other
293 similar local or regional public safety communications system that (i) describes the design, function,
294 programming, operation, or access control features of the overall system, components, structures,
295 individual networks, and subsystems of the STARS or any other similar local or regional
296 communications system or (ii) relates to radio frequencies assigned to or utilized by STARS or any other
297 similar local or regional communications system, code plugs, circuit routing, addressing schemes, talk
298 groups, fleet maps, encryption, or programming maintained by or utilized by STARS or any other
299 similar local or regional public safety communications system; ~~those engineering and construction~~
300 ~~drawings and plans that reveal critical structural components, interconnectivity, security equipment and~~
301 ~~systems, network monitoring, network operation center, master sites, ventilation systems, fire protection~~
302 ~~equipment, mandatory building emergency equipment, electrical systems, and other utility equipment~~
303 ~~and systems related to STARS or any other similar local or regional public safety communications~~
304 ~~system; and special event plans, operational plans, storm plans, or other pre-arranged programming, if~~
305 ~~disclosure of such information would (a) reveal surveillance techniques, personnel deployments, alarm~~
306 ~~or security systems or technologies, or operational and transportation plans or protocols or (b) jeopardize~~
307 ~~the security of any governmental facility, building, or structure or the safety of any person.~~

308 ~~14-11.~~ Information concerning a salaried or volunteer Fire/EMS company or Fire/EMS
309 department if disclosure of such information would reveal the telephone numbers for cellular telephones,
310 pagers, or comparable portable communication devices provided to its personnel for use in the
311 performance of their official duties.

312 ~~15-12.~~ Information concerning the disaster recovery plans or the evacuation plans in the event of
313 fire, explosion, natural disaster, or other catastrophic event for hospitals and nursing homes regulated by
314 the Board of Health pursuant to Chapter 5 (§ 32.1-123 et seq.) of Title 32.1 provided to the Department
315 of Health. Nothing in this subdivision shall be construed to authorize the withholding of information
316 relating to the effectiveness of executed evacuation plans after the occurrence of fire, explosion, natural
317 disaster, or other catastrophic event.

318 ~~16-13.~~ Records received by the Department of Criminal Justice Services pursuant to §§ 9.1-184,
319 22.1-79.4, and 22.1-279.8 or for purposes of evaluating threat assessment teams established by a public
320 institution of higher education pursuant to § 23.1-805 or by a private nonprofit institution of higher
321 education, to the extent such records reveal security plans, walk-through checklists, or vulnerability and
322 threat assessment components.

323 14. Information contained in (i) engineering, architectural, or construction drawings; (ii)
324 operational, procedural, tactical planning, or training manuals; (iii) staff meeting minutes; or (iv) other
325 records that reveal any of the following, the disclosure of which would jeopardize the safety or security
326 of any person; governmental facility, building, or structure or persons using such facility, building, or
327 structure; or public or private commercial office, multifamily residential, or retail building or its
328 occupants:

329 a. Critical structural information or the location or operation of security equipment and systems
330 of any public building, structure, or information storage facility, including ventilation systems, fire
331 protection equipment, mandatory building emergency equipment or systems, elevators, electrical
332 systems, telecommunications equipment and systems, or utility equipment and systems;

333 b. Vulnerability assessments, information not lawfully available to the public regarding specific
334 cybersecurity threats or vulnerabilities, or security plans and measures of an entity, facility, building
335 structure, information technology system, or software program;

336 c. Surveillance techniques, personnel deployments, alarm or security systems or technologies, or
337 operational or transportation plans or protocols; or

338 d. Interconnectivity, network monitoring, network operation centers, master sites, or systems
339 related to the Statewide Agencies Radio System (STARS) or any other similar local or regional public
340 safety communications system.

341 The same categories of records of any person or entity submitted to a public body for the purpose
342 of antiterrorism response planning or cybersecurity planning or protection may be withheld from
343 disclosure if such person or entity in writing (a) invokes the protections of this subdivision, (b) identifies
344 with specificity the records or portions thereof for which protection is sought, and (c) states with

345 reasonable particularity why the protection of such records from public disclosure is necessary to meet
346 the objective of antiterrorism, cybersecurity planning or protection, or critical infrastructure information
347 security and resilience. Such statement shall be a public record and shall be disclosed upon request.

348 Any public body receiving a request for records excluded under clauses (a) and (b) of this
349 subdivision 14 shall notify the Secretary of Public Safety and Homeland Security or his designee of such
350 request and the response made by the public body in accordance with § 2.2-3704.

351 Nothing in this subdivision 14 shall authorize the withholding of records relating to (1) the
352 structural or environmental soundness of any such facility, building, or structure or (2) an inquiry into
353 the performance of such facility, building, or structure after it has been subjected to fire, explosion,
354 natural disaster, or other catastrophic event.

355 As used in this subdivision, "critical infrastructure information" means the same as that term is
356 defined in 6 U.S.C. § 131.

357 **§ 2.2-3705.3. Exclusions to application of chapter; records relating to administrative**
358 **investigations.**

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

363 1. (Effective until July 1, 2018) Information relating to investigations of applicants for licenses
364 and permits, and of all licensees and permittees, made by or submitted to the Alcoholic Beverage
365 Control Board, the Virginia Lottery, the Virginia Racing Commission, the Department of Agriculture
366 and Consumer Services relating to investigations and applications pursuant to Article 1.1:1 (§ 18.2-
367 340.15 et seq.) of Chapter 8 of Title 18.2, or the Private Security Services Unit of the Department of
368 Criminal Justice Services.

369 1. (Effective July 1, 2018) Information relating to investigations of applicants for licenses and
370 permits, and of all licensees and permittees, made by or submitted to the Virginia Alcoholic Beverage
371 Control Authority, the Virginia Lottery, the Virginia Racing Commission, the Department of

372 Agriculture and Consumer Services relating to investigations and applications pursuant to Article 1.1:1
373 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2, or the Private Security Services Unit of the
374 Department of Criminal Justice Services.

375 2. Records of active investigations being conducted by the Department of Health Professions or
376 by any health regulatory board in the Commonwealth pursuant to § 54.1-108.

377 3. Investigator notes, and other correspondence and information, furnished in confidence with
378 respect to an active investigation of individual employment discrimination complaints made to the
379 Department of Human Resource Management, to such personnel of any local public body, including
380 local school boards, as are responsible for conducting such investigations in confidence, or to any public
381 institution of higher education. Information contained in inactive reports shall be disclosed in a form that
382 does not reveal the identity of charging parties, persons supplying the information, or other individuals
383 involved in the investigation.

384 4. Records of active investigations being conducted by the Department of Medical Assistance
385 Services pursuant to Chapter 10 (§ 32.1-323 et seq.) of Title 32.1.

386 5. Investigative notes and other correspondence and information furnished in confidence with
387 respect to an investigation or conciliation process involving an alleged unlawful discriminatory practice
388 under the Virginia Human Rights Act (§ 2.2-3900 et seq.) or under any local ordinance adopted in
389 accordance with the authority specified in § 2.2-524, or adopted pursuant to § 15.2-965, or adopted prior
390 to July 1, 1987, in accordance with applicable law, relating to local human rights or human relations
391 commissions. Information contained in inactive reports shall be disclosed in a form that does not reveal
392 the identity of the parties involved or other persons supplying information.

393 6. Information relating to studies and investigations by the Virginia Lottery of (i) lottery agents,
394 (ii) lottery vendors, (iii) lottery crimes under §§ 58.1-4014 through 58.1-4018, (iv) defects in the law or
395 regulations that cause abuses in the administration and operation of the lottery and any evasions of such
396 provisions, or (v) the use of the lottery as a subterfuge for organized crime and illegal gambling where
397 such information has not been publicly released, published or copyrighted. All studies and investigations

398 referred to under clauses (iii), (iv), and (v) shall be open to inspection and copying upon completion of
399 the study or investigation.

400 7. Investigative notes, correspondence and information furnished in confidence, and records
401 otherwise exempted by this chapter or any Virginia statute, provided to or produced by or for (i) the
402 Auditor of Public Accounts; (ii) the Joint Legislative Audit and Review Commission; (iii) an appropriate
403 authority as defined in § 2.2-3010 with respect to an allegation of wrongdoing or abuse under the Fraud
404 and Abuse Whistle Blower Protection Act (§ 2.2-3009 et seq.); (iv) the Office of the State Inspector
405 General with respect to an investigation initiated through the Fraud, Waste and Abuse Hotline or an
406 investigation initiated pursuant to Chapter 3.2 (§ 2.2-307 et seq.); (v) internal auditors appointed by the
407 head of a state agency or by any public institution of higher education; (vi) the committee or the auditor
408 with respect to an investigation or audit conducted pursuant to § 15.2-825; or (vii) the auditors,
409 appointed by the local governing body of any county, city, or town or a school board, who by charter,
410 ordinance, or statute have responsibility for conducting an investigation of any officer, department, or
411 program of such body. Information contained in completed investigations shall be disclosed in a form
412 that does not reveal the identity of the complainants or persons supplying information to investigators.
413 Unless disclosure is excluded by this subdivision, the information disclosed shall include the agency
414 involved, the identity of the person who is the subject of the complaint, the nature of the complaint, and
415 the actions taken to resolve the complaint. If an investigation does not lead to corrective action, the
416 identity of the person who is the subject of the complaint may be released only with the consent of the
417 subject person. Local governing bodies shall adopt guidelines to govern the disclosure required by this
418 subdivision.

419 ~~8. Information furnished in confidence to the Department of Human Resource Management with~~
420 ~~respect to an investigation, consultation, or mediation under § 2.2-1202.1, and memoranda,~~
421 ~~correspondence and other records resulting from any such investigation, consultation or mediation.~~
422 ~~Information contained in inactive reports shall be disclosed in a form that does not reveal the identity of~~
423 ~~the parties involved or other persons supplying information.~~

424 | ~~9.~~ The names, addresses and telephone numbers of complainants furnished in confidence with
425 | respect to an investigation of individual zoning enforcement complaints or complaints relating to the
426 | Uniform Statewide Building Code (§ 36-97 et seq.) or the Statewide Fire Prevention Code (§ 27-94 et
427 | seq.) made to a local governing body.

428 | ~~10-9.~~ Records of active investigations being conducted by the Department of Criminal Justice
429 | Services pursuant to Article 4 (§ 9.1-138 et seq.), Article 4.1 (§ 9.1-150.1 et seq.), Article 11 (§ 9.1-185
430 | et seq.), and Article 12 (§ 9.1-186 et seq.) of Chapter 1 of Title 9.1.

431 | ~~11-10.~~ Information furnished to or prepared by the Board of Education pursuant to subsection D
432 | of § 22.1-253.13:3 in connection with the review or investigation of any alleged breach in security,
433 | unauthorized alteration, or improper administration of tests by local school board employees responsible
434 | for the distribution or administration of the tests. However, this section shall not prohibit the disclosure
435 | of such information to (i) a local school board or division superintendent for the purpose of permitting
436 | such board or superintendent to consider or to take personnel action with regard to an employee or (ii)
437 | any requester, after the conclusion of a review or investigation, in a form that (a) does not reveal the
438 | identity of any person making a complaint or supplying information to the Board on a confidential basis
439 | and (b) does not compromise the security of any test mandated by the Board.

440 | ~~12-11.~~ Information contained in (i) an application for licensure or renewal of a license for
441 | teachers and other school personnel, including transcripts or other documents submitted in support of an
442 | application, and (ii) an active investigation conducted by or for the Board of Education related to the
443 | denial, suspension, cancellation, revocation, or reinstatement of teacher and other school personnel
444 | licenses including investigator notes and other correspondence and information, furnished in confidence
445 | with respect to such investigation. However, this subdivision shall not prohibit the disclosure of such (a)
446 | application information to the applicant at his own expense or (b) investigation information to a local
447 | school board or division superintendent for the purpose of permitting such board or superintendent to
448 | consider or to take personnel action with regard to an employee. Information contained in completed
449 | investigations shall be disclosed in a form that does not reveal the identity of any complainant or person
450 | supplying information to investigators. The completed investigation information disclosed shall include

451 information regarding the school or facility involved, the identity of the person who was the subject of
452 the complaint, the nature of the complaint, and the actions taken to resolve the complaint. If an
453 investigation fails to support a complaint or does not lead to corrective action, the identity of the person
454 who was the subject of the complaint may be released only with the consent of the subject person. No
455 personally identifiable information regarding a current or former student shall be released except as
456 permitted by state or federal law.

457 ~~13.~~ 12. Information provided in confidence and related to an investigation by the Attorney
458 General under Article 1 (§ 3.2-4200 et seq.) or Article 3 (§ 3.2-4204 et seq.) of Chapter 42 of Title 3.2,
459 Article 10 (§ 18.2-246.6 et seq.) of Chapter 6 or Chapter 13 (§ 18.2-512 et seq.) of Title 18.2, or Article
460 1 (§ 58.1-1000) of Chapter 10 of Title 58.1. However, information related to an investigation that has
461 been inactive for more than six months shall, upon request, be disclosed provided such disclosure is not
462 otherwise prohibited by law and does not reveal the identity of charging parties, complainants, persons
463 supplying information, witnesses, or other individuals involved in the investigation.

464 **§ 2.2-3705.4. Exclusions to application of chapter; educational records and certain records**
465 **of educational institutions.**

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

470 1. Scholastic records containing information concerning identifiable individuals, except that such
471 access shall not be denied to the person who is the subject thereof, or the parent or legal guardian of the
472 student. However, no student shall have access to (i) financial records of a parent or guardian or (ii)
473 records of instructional, supervisory, and administrative personnel and educational personnel ancillary
474 thereto, that are in the sole possession of the maker thereof and that are not accessible or revealed to any
475 other person except a substitute.

476 The parent or legal guardian of a student may prohibit, by written request, the release of any
477 individual information regarding that student until the student reaches the age of 18 years. For scholastic

478 records of students under the age of 18 years, the right of access may be asserted only by his legal
479 guardian or parent, including a noncustodial parent, unless such parent's parental rights have been
480 terminated or a court of competent jurisdiction has restricted or denied such access. For scholastic
481 records of students who are emancipated or attending a state-supported institution of higher education,
482 the right of access may be asserted by the student.

483 Any person who is the subject of any scholastic record and who is 18 years of age or older may
484 waive, in writing, the protections afforded by this subdivision. If the protections are so waived, such
485 records shall be disclosed.

486 2. Confidential letters and statements of recommendation placed in the records of educational
487 agencies or institutions respecting (i) admission to any educational agency or institution, (ii) an
488 application for employment or promotion, or (iii) receipt of an honor or honorary recognition.

489 3. Information held by the Brown v. Board of Education Scholarship Awards Committee that
490 would reveal personally identifiable information, including scholarship applications, personal financial
491 information, and confidential correspondence and letters of recommendation.

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

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

504 the competitive position of the University of Virginia Medical Center or Eastern Virginia Medical
505 School, as the case may be.

506 6. Personal information, as defined in § 2.2-3801, provided to the Board of the Virginia College
507 Savings Plan or its employees by or on behalf of individuals who have requested information about,
508 applied for, or entered into prepaid tuition contracts or savings trust account agreements pursuant to
509 Chapter 7 (§ 23.1-700 et seq.) of Title 23.1, including personal information related to (i) qualified
510 beneficiaries as that term is defined in § 23.1-700, (ii) designated survivors, or (iii) authorized
511 individuals. However, information in a statistical or other form that does not identify individuals or
512 provide personal information shall be disclosed and may be published by the Board. Individuals shall be
513 provided access to their own personal information.

514 For purposes of this subdivision:

515 "Authorized individual" means an individual who may be named by the account owner to receive
516 information regarding the account but who does not have any control or authority over the account.

517 "Designated survivor" means the person who will assume account ownership in the event of the
518 account owner's death.

519 7. Information maintained in connection with fundraising activities by or for a public institution
520 of higher education that would reveal (i) personal fundraising strategies relating to identifiable donors or
521 prospective donors or (ii) wealth assessments; estate, financial, or tax planning information; health-
522 related information; employment, familial, or marital status information; electronic mail addresses,
523 facsimile or telephone numbers; birth dates or social security numbers of identifiable donors or
524 prospective donors. Nothing in this subdivision, however, shall be construed to authorize the
525 withholding of information relating to the amount, date, purpose, and terms of the pledge or donation, or
526 the identity of the donor unless the donor has requested anonymity in connection with or as a condition
527 of making a pledge or donation. The exclusion provided by this subdivision shall not apply to protect
528 from disclosure (i) the identities of sponsors providing grants to or contracting with the institution for
529 the performance of research services or other work or (ii) the terms and conditions of such grants or
530 contracts.

531 8. Information held by a threat assessment team established by a local school board pursuant to §
532 22.1-79.4 or by a public institution of higher education pursuant to § 23.1-805 relating to the assessment
533 or intervention with a specific individual. However, in the event an individual who has been under
534 assessment commits an act, or is prosecuted for the commission of an act that has caused the death of, or
535 caused serious bodily injury, including any felony sexual assault, to another person, such information of
536 the threat assessment team concerning the individual under assessment shall be made available as
537 provided by this chapter, with the exception of any criminal history records obtained pursuant to § 19.2-
538 389 or 19.2-389.1, health records obtained pursuant to § 32.1-127.1:03, or scholastic records as defined
539 in § 22.1-289. The public body providing such information shall remove personally identifying
540 information of any person who provided information to the threat assessment team under a promise of
541 confidentiality.

542 **§ 2.2-3705.5. Exclusions to application of chapter; health and social services records.**

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

547 1. Health records, except that such records may be personally reviewed by the individual who is
548 the subject of such records, as provided in subsection F of § 32.1-127.1:03.

549 Where the person who is the subject of health records is confined in a state or local correctional
550 facility, the administrator or chief medical officer of such facility may assert such confined person's right
551 of access to the health records if the administrator or chief medical officer has reasonable cause to
552 believe that such confined person has an infectious disease or other medical condition from which other
553 persons so confined need to be protected. Health records shall only be reviewed and shall not be copied
554 by such administrator or chief medical officer. The information in the health records of a person so
555 confined shall continue to be confidential and shall not be disclosed by the administrator or chief
556 medical officer of the facility to any person except the subject or except as provided by law.

557 Where the person who is the subject of health records is under the age of 18, his right of access
558 may be asserted only by his guardian or his parent, including a noncustodial parent, unless such parent's
559 parental rights have been terminated, a court of competent jurisdiction has restricted or denied such
560 access, or a parent has been denied access to the health record in accordance with § 20-124.6. In
561 instances where the person who is the subject thereof is an emancipated minor, a student in a public
562 institution of higher education, or is a minor who has consented to his own treatment as authorized by §
563 16.1-338 or 54.1-2969, the right of access may be asserted by the subject person.

564 For the purposes of this chapter, statistical summaries of incidents and statistical data concerning
565 abuse of individuals receiving services compiled by the Commissioner of Behavioral Health and
566 Developmental Services shall be disclosed. No such summaries or data shall include any information
567 that identifies specific individuals receiving services.

568 2. Applications for admission to examinations or for licensure and scoring records maintained by
569 the Department of Health Professions or any board in that department on individual licensees or
570 applicants. ~~However, such material may be made available during normal working hours for copying, at~~
571 ~~the requester's expense, by the individual who is the subject thereof, in the offices of the Department of~~
572 ~~Health Professions or in the offices of any health regulatory board, whichever may possess the material;~~
573 information required to be provided to the Department of Health Professions by certain licensees
574 pursuant to § 54.1-2506.1; information held by the Health Practitioners' Monitoring Program Committee
575 within the Department of Health Professions that identifies any practitioner who may be, or who is
576 actually, impaired to the extent that disclosure is prohibited by § 54.1-2517; and information relating to
577 the prescribing and dispensing of covered substances to recipients and any abstracts from such
578 information that are in the possession of the Prescription Monitoring Program (Program) pursuant to
579 Chapter 25.2 (§ 54.1-2519 et seq.) of Title 54.1 and any material relating to the operation or security of
580 the Program.

581 3. Reports, documentary evidence, and other information as specified in §§ 51.5-122, and 51.5-
582 141, ~~and 63.2-104~~ Chapter 1 (§ 63.2-100 et seq.) of Title 63.2 and information and statistical registries
583 required to be kept confidential pursuant to Chapter 1 (§ 63.2-100 et seq.) of Title 63.2.

584 4. Investigative notes; proprietary information not published, copyrighted or patented;
585 information obtained from employee personnel records; personally identifiable information regarding
586 residents, clients or other recipients of services; other correspondence and information furnished in
587 confidence to the Department of Social Services in connection with an active investigation of an
588 applicant or licensee pursuant to Chapters 17 (§ 63.2-1700 et seq.) and 18 (§ 63.2-1800 et seq.) of Title
589 63.2; and information furnished to the Office of the Attorney General in connection with an
590 investigation or litigation pursuant to Article 19.1 (§ 8.01-216.1 et seq.) of Chapter 3 of Title 8.01 and
591 Chapter 9 (§ 32.1-310 et seq.) of Title 32.1. Information from the records of completed investigations
592 shall be disclosed in a form that does not reveal the identity of complainants, persons supplying
593 information, or other individuals involved in the investigation.

594 5. Information collected for the designation and verification of trauma centers and other specialty
595 care centers within the Statewide Emergency Medical Services System and Services pursuant to Article
596 2.1 (§ 32.1-111.1 et seq.) of Chapter 4 of Title 32.1.

597 6. Reports and court documents relating to involuntary admission required to be kept confidential
598 pursuant to § 37.2-818.

599 ~~7. Data formerly required to be submitted to the Commissioner of Health relating to the
600 establishment of new or the expansion of existing clinical health services, acquisition of major medical
601 equipment, or certain projects requiring capital expenditures pursuant to former § 32.1-102.3:4.~~

602 ~~8. Information required to be provided to the Department of Health Professions by certain
603 licensees pursuant to § 54.1-2506.1.~~

604 ~~9.~~ Information acquired (i) during a review of any child death conducted by the State Child
605 Fatality Review team established pursuant to § 32.1-283.1 or by a local or regional child fatality review
606 team to the extent that such information is made confidential by § 32.1-283.2; (ii) during a review of any
607 death conducted by a family violence fatality review team to the extent that such information is made
608 confidential by § 32.1-283.3; or (iii) during a review of any adult death conducted by the Adult Fatality
609 Review Team to the extent made confidential by § 32.1-283.5 or by a local or regional adult fatality
610 review team to the extent that such information is made confidential by § 32.1-283.6.

611 ~~10-8.~~ Patient level data collected by the Board of Health and not yet processed, verified, and
612 released, pursuant to § 32.1-276.9, to the Board by the nonprofit organization with which the
613 Commissioner of Health has contracted pursuant to § 32.1-276.4.

614 ~~11. Information held by the Health Practitioners' Monitoring Program Committee within the~~
615 ~~Department of Health Professions that may identify any practitioner who may be, or who is actually,~~
616 ~~impaired and disclosure of such information is prohibited by § 54.1-2517.~~

617 ~~12-9.~~ Information relating to a grant application, or accompanying a grant application, submitted
618 to the Commonwealth Neurotrauma Initiative Advisory Board pursuant to Article 12 (§ 51.5-178 et seq.)
619 of Chapter 14 of Title 51.5 that would (i) reveal (a) medical or mental health records or other data
620 identifying individual patients or (b) proprietary business or research-related information produced or
621 collected by the applicant in the conduct of or as a result of study or research on medical, rehabilitative,
622 scientific, technical, or scholarly issues, when such information has not been publicly released,
623 published, copyrighted, or patented, and (ii) be harmful to the competitive position of the applicant.

624 ~~13-10.~~ Any information copied, recorded, or received by the Commissioner of Health in the
625 course of an examination, investigation, or review of a managed care health insurance plan licensee
626 pursuant to §§ 32.1-137.4 and 32.1-137.5, including books, records, files, accounts, papers, documents,
627 and any or all computer or other recordings.

628 ~~14. Information and statistical registries required to be kept confidential pursuant to §§ 63.2-102~~
629 ~~and 63.2-104.~~

630 ~~15. Information relating to the prescribing and dispensing of covered substances to recipients and~~
631 ~~any abstracts from such information that are in the possession of the Prescription Monitoring Program~~
632 ~~pursuant to Chapter 25.2 (§ 54.1-2519 et seq.) of Title 54.1 and any material relating to the operation or~~
633 ~~security of the Program.~~

634 ~~16-11.~~ Records of the Virginia Birth-Related Neurological Injury Compensation Program
635 required to be kept confidential pursuant to § 38.2-5002.2.

636 ~~17-12.~~ Information held by the State Health Commissioner relating to the health of any person
637 subject to an order of quarantine or an order of isolation pursuant to Article 3.02 (§ 32.1-48.05 et seq.)

638 of Chapter 2 of Title 32.1. However, nothing in this subdivision shall be construed to authorize the
639 withholding of statistical summaries, abstracts, or other information in aggregate form.

640 ~~18-13.~~ The names and addresses or other contact information of persons receiving transportation
641 services from a state or local public body or its designee under Title II of the Americans with
642 Disabilities Act, (42 U.S.C. § 12131 et seq.) or funded by Temporary Assistance for Needy Families
643 (TANF) created under § 63.2-600.

644 ~~19-14.~~ Information held by certain health care committees and entities that may be withheld
645 from discovery as privileged communications pursuant to § 8.01-581.17.

646 **§ 2.2-3705.6. Exclusions to application of chapter; proprietary records and trade secrets.**

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

651 1. Proprietary information gathered by or for the Virginia Port Authority as provided in § 62.1-
652 132.4 or 62.1-134.1.

653 2. Financial statements not publicly available filed with applications for industrial development
654 financings in accordance with Chapter 49 (§ 15.2-4900 et seq.) of Title 15.2.

655 3. Proprietary information, voluntarily provided by private business pursuant to a promise of
656 confidentiality from a public body, used by the public body for business, trade, and tourism development
657 or retention; and memoranda, working papers, or other information related to businesses that are
658 considering locating or expanding in Virginia, prepared by a public body, where competition or
659 bargaining is involved and where disclosure of such information would adversely affect the financial
660 interest of the public body.

661 4. Information that was filed as confidential under the Toxic Substances Information Act (§ 32.1-
662 239 et seq.), as such Act existed prior to July 1, 1992.

663 5. Fisheries data that would permit identification of any person or vessel, except when required
664 by court order as specified in § 28.2-204.

665 6. Confidential financial statements, balance sheets, trade secrets, and revenue and cost
666 projections provided to the Department of Rail and Public Transportation, provided such information is
667 exempt under the federal Freedom of Information Act or the federal Interstate Commerce Act or other
668 laws administered by the Surface Transportation Board or the Federal Railroad Administration with
669 respect to data provided in confidence to the Surface Transportation Board and the Federal Railroad
670 Administration.

671 7. Proprietary information related to inventory and sales, voluntarily provided by private energy
672 suppliers to the Department of Mines, Minerals and Energy, used by that Department for energy
673 contingency planning purposes or for developing consolidated statistical information on energy supplies.

674 8. Confidential proprietary information furnished to the Board of Medical Assistance Services or
675 the Medicaid Prior Authorization Advisory Committee pursuant to Article 4 (§ 32.1-331.12 et seq.) of
676 Chapter 10 of Title 32.1.

677 9. Proprietary, commercial or financial information, balance sheets, trade secrets, and revenue
678 and cost projections provided by a private transportation business to the Virginia Department of
679 Transportation and the Department of Rail and Public Transportation for the purpose of conducting
680 transportation studies needed to obtain grants or other financial assistance under the Transportation
681 Equity Act for the 21st Century (P.L. 105-178) for transportation projects if disclosure of such
682 information is exempt under the federal Freedom of Information Act or the federal Interstate Commerce
683 Act or other laws administered by the Surface Transportation Board or the Federal Railroad
684 Administration with respect to data provided in confidence to the Surface Transportation Board and the
685 Federal Railroad Administration. However, the exclusion provided by this subdivision shall not apply to
686 any wholly owned subsidiary of a public body.

687 10. Confidential information designated as provided in subsection F of § 2.2-4342 as trade
688 secrets or proprietary information by any person in connection with a procurement transaction or by any
689 person who has submitted to a public body an application for prequalification to bid on public
690 construction projects in accordance with subsection B of § 2.2-4317.

691 11. a. Memoranda, staff evaluations, or other information prepared by the responsible public
692 entity, its staff, outside advisors, or consultants exclusively for the evaluation and negotiation of
693 proposals filed under the Public-Private Transportation Act of 1995 (§ 33.2-1800 et seq.) or the Public-
694 Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.) where (i) if such
695 information was made public prior to or after the execution of an interim or a comprehensive agreement,
696 § 33.2-1820 or 56-575.17 notwithstanding, the financial interest or bargaining position of the public
697 entity would be adversely affected and (ii) the basis for the determination required in clause (i) is
698 documented in writing by the responsible public entity; and

699 b. Information provided by a private entity to a responsible public entity, affected jurisdiction, or
700 affected local jurisdiction pursuant to the provisions of the Public-Private Transportation Act of 1995 (§
701 33.2-1800 et seq.) or the Public-Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1
702 et seq.) if disclosure of such information would reveal (i) trade secrets of the private entity as defined in
703 the Uniform Trade Secrets Act (§ 59.1-336 et seq.); (ii) financial information of the private entity,
704 including balance sheets and financial statements, that are not generally available to the public through
705 regulatory disclosure or otherwise; or (iii) other information submitted by the private entity where if
706 such information was made public prior to the execution of an interim agreement or a comprehensive
707 agreement, the financial interest or bargaining position of the public or private entity would be adversely
708 affected. In order for the information specified in clauses (i), (ii), and (iii) to be excluded from the
709 provisions of this chapter, the private entity shall make a written request to the responsible public entity:

710 (1) Invoking such exclusion upon submission of the data or other materials for which protection
711 from disclosure is sought;

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

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

714 The responsible public entity shall determine whether the requested exclusion from disclosure is
715 necessary to protect the trade secrets or financial information of the private entity. To protect other
716 information submitted by the private entity from disclosure, the responsible public entity shall determine
717 whether public disclosure prior to the execution of an interim agreement or a comprehensive agreement

718 would adversely affect the financial interest or bargaining position of the public or private entity. The
719 responsible public entity shall make a written determination of the nature and scope of the protection to
720 be afforded by the responsible public entity under this subdivision. Once a written determination is made
721 by the responsible public entity, the information afforded protection under this subdivision shall
722 continue to be protected from disclosure when in the possession of any affected jurisdiction or affected
723 local jurisdiction.

724 Except as specifically provided in subdivision 11 a, nothing in this subdivision shall be construed
725 to authorize the withholding of (a) procurement records as required by § 33.2-1820 or 56-575.17; (b)
726 information concerning the terms and conditions of any interim or comprehensive agreement, service
727 contract, lease, partnership, or any agreement of any kind entered into by the responsible public entity
728 and the private entity; (c) information concerning the terms and conditions of any financing arrangement
729 that involves the use of any public funds; or (d) information concerning the performance of any private
730 entity developing or operating a qualifying transportation facility or a qualifying project.

731 For the purposes of this subdivision, the terms "affected jurisdiction, " "affected local
732 jurisdiction, " "comprehensive agreement, " "interim agreement, " "qualifying project, " "qualifying
733 transportation facility, " "responsible public entity, " and "private entity" shall mean the same as those
734 terms are defined in the Public-Private Transportation Act of 1995 (§ 33.2-1800 et seq.) or in the Public-
735 Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.).

736 12. Confidential proprietary information or trade secrets, not publicly available, provided by a
737 private person or entity pursuant to a promise of confidentiality to the Virginia Resources Authority or
738 to a fund administered in connection with financial assistance rendered or to be rendered by the Virginia
739 Resources Authority where, if such information were made public, the financial interest of the private
740 person or entity would be adversely affected.

741 13. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), or
742 confidential proprietary information that is not generally available to the public through regulatory
743 disclosure or otherwise, provided by a (i) bidder or applicant for a franchise or (ii) franchisee under
744 Chapter 21 (§ 15.2-2100 et seq.) of Title 15.2 to the applicable franchising authority pursuant to a

745 promise of confidentiality from the franchising authority, to the extent the information relates to the
746 bidder's, applicant's, or franchisee's financial capacity or provision of new services, adoption of new
747 technologies or implementation of improvements, where such new services, technologies, or
748 improvements have not been implemented by the franchisee on a nonexperimental scale in the franchise
749 area, and where, if such information were made public, the competitive advantage or financial interests
750 of the franchisee would be adversely affected.

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

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

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

762 15. Information related to Virginia apple producer sales provided to the Virginia State Apple
763 Board pursuant to § 3.2-1215.

764 16. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.) of Title 59.1,
765 submitted by CMRS providers as defined in § 56-484.12 to the Wireless Carrier E-911 Cost Recovery
766 Subcommittee created pursuant to § 56-484.15, relating to the provision of wireless E-911 service.

767 17. Information relating to a grant or loan application, or accompanying a grant or loan
768 application, to the Innovation and Entrepreneurship Investment Authority pursuant to Article 3 (§ 2.2-
769 2233.1 et seq.) of Chapter 22 of Title 2.2 or to the Commonwealth Health Research Board pursuant to
770 Chapter 5.3 (§ 32.1-162.23 et seq.) of Title 32.1 if disclosure of such information would (i) reveal
771 proprietary business or research-related information produced or collected by the applicant in the

772 conduct of or as a result of study or research on medical, rehabilitative, scientific, technical,
773 technological, or scholarly issues, when such information has not been publicly released, published,
774 copyrighted, or patented, and (ii) be harmful to the competitive position of the applicant.

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

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

784 19. Confidential proprietary information and trade secrets developed by or for a local authority
785 created in accordance with the Virginia Wireless Service Authorities Act (§ 15.2-5431.1 et seq.) to
786 provide qualifying communications services as authorized by Article 5.1 (§ 56-484.7:1 et seq.) of
787 Chapter 15 of Title 56, where disclosure of such information would be harmful to the competitive
788 position of the authority, except that information required to be maintained in accordance with § 15.2-
789 2160 shall be released.

790 20. Trade secrets as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.) or financial
791 information of a business, including balance sheets and financial statements, that are not generally
792 available to the public through regulatory disclosure or otherwise, provided to the Department of Small
793 Business and Supplier Diversity as part of an application for certification as a small, women-owned, or
794 minority-owned business in accordance with Chapter 16.1 (§ 2.2-1603 et seq.). In order for such trade
795 secrets or financial information to be excluded from the provisions of this chapter, the business shall (i)
796 invoke such exclusion upon submission of the data or other materials for which protection from
797 disclosure is sought, (ii) identify the data or other materials for which protection is sought, and (iii) state
798 the reasons why protection is necessary.

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

801 22. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), including,
802 but not limited to, financial information, including balance sheets and financial statements, that are not
803 generally available to the public through regulatory disclosure or otherwise, and revenue and cost
804 projections supplied by a private or nongovernmental entity to the State Inspector General for the
805 purpose of an audit, special investigation, or any study requested by the Office of the State Inspector
806 General in accordance with law.

807 In order for the information specified in this subdivision to be excluded from the provisions of
808 this chapter, the private or nongovernmental entity shall make a written request to the State Inspector
809 General:

810 a. Invoking such exclusion upon submission of the data or other materials for which protection
811 from disclosure is sought;

812 b. Identifying with specificity the data or other materials for which protection is sought; and

813 c. Stating the reasons why protection is necessary.

814 The State Inspector General shall determine whether the requested exclusion from disclosure is
815 necessary to protect the trade secrets or financial information of the private entity. The State Inspector
816 General shall make a written determination of the nature and scope of the protection to be afforded by it
817 under this subdivision.

818 23. Information relating to a grant application, or accompanying a grant application, submitted to
819 the Tobacco Region Revitalization Commission that would (i) reveal (a) trade secrets as defined in the
820 Uniform Trade Secrets Act (§ 59.1-336 et seq.), (b) financial information of a grant applicant that is not
821 a public body, including balance sheets and financial statements, that are not generally available to the
822 public through regulatory disclosure or otherwise, or (c) research-related information produced or
823 collected by the applicant in the conduct of or as a result of study or research on medical, rehabilitative,
824 scientific, technical, technological, or scholarly issues, when such information has not been publicly
825 released, published, copyrighted, or patented, and (ii) be harmful to the competitive position of the

826 applicant; and memoranda, staff evaluations, or other information prepared by the Commission or its
827 staff exclusively for the evaluation of grant applications. The exclusion provided by this subdivision
828 shall apply to grants that are consistent with the powers of and in furtherance of the performance of the
829 duties of the Commission pursuant to § 3.2-3103.

830 In order for the information specified in this subdivision to be excluded from the provisions of
831 this chapter, the applicant shall make a written request to the Commission:

832 a. Invoking such exclusion upon submission of the data or other materials for which protection
833 from disclosure is sought;

834 b. Identifying with specificity the data, information or other materials for which protection is
835 sought; and

836 c. Stating the reasons why protection is necessary.

837 The Commission shall determine whether the requested exclusion from disclosure is necessary to
838 protect the trade secrets, financial information, or research-related information of the applicant. The
839 Commission shall make a written determination of the nature and scope of the protection to be afforded
840 by it under this subdivision.

841 24. a. Information held by the Commercial Space Flight Authority relating to rate structures or
842 charges for the use of projects of, the sale of products of, or services rendered by the Authority if
843 disclosure of such information would adversely affect the financial interest or bargaining position of the
844 Authority or a private entity providing the information to the Authority; or

845 b. Information provided by a private entity to the Commercial Space Flight Authority if
846 disclosure of such information would (i) reveal (a) trade secrets of the private entity as defined in the
847 Uniform Trade Secrets Act (§ 59.1-336 et seq.); (b) financial information of the private entity, including
848 balance sheets and financial statements, that are not generally available to the public through regulatory
849 disclosure or otherwise; or (c) other information submitted by the private entity and (ii) adversely affect
850 the financial interest or bargaining position of the Authority or private entity.

851 In order for the information specified in clauses (a), (b), and (c) of subdivision 24 b to be
852 excluded from the provisions of this chapter, the private entity shall make a written request to the
853 Authority:

854 (1) Invoking such exclusion upon submission of the data or other materials for which protection
855 from disclosure is sought;

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

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

858 The Authority shall determine whether the requested exclusion from disclosure is necessary to
859 protect the trade secrets or financial information of the private entity. To protect other information
860 submitted by the private entity from disclosure, the Authority shall determine whether public disclosure
861 would adversely affect the financial interest or bargaining position of the Authority or private entity. The
862 Authority shall make a written determination of the nature and scope of the protection to be afforded by
863 it under this subdivision.

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

869 26. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), provided to
870 the Department of Environmental Quality pursuant to the provisions of § 10.1-1458. In order for such
871 trade secrets to be excluded from the provisions of this chapter, the submitting party shall (i) invoke this
872 exclusion upon submission of the data or materials for which protection from disclosure is sought, (ii)
873 identify the data or materials for which protection is sought, and (iii) state the reasons why protection is
874 necessary.

875 27. Information of a proprietary nature furnished by a licensed public-use airport to the
876 Department of Aviation for funding from programs administered by the Department of Aviation or the

877 Virginia Aviation Board, where if such information was made public, the financial interest of the public-
878 use airport would be adversely affected.

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

881 a. Invoking such exclusion upon submission of the data or other materials for which protection
882 from disclosure is sought;

883 b. Identifying with specificity the data or other materials for which protection is sought; and

884 c. Stating the reasons why protection is necessary.

885 28. Records submitted as a grant or loan application, or accompanying a grant or loan
886 application, for an award from the Virginia Research Investment Fund pursuant to Article 8 (§ 23.1-
887 3130 et seq.) of Chapter 31 of Title 23.1, to the extent that such records contain proprietary business or
888 research-related information produced or collected by the applicant in the conduct of or as a result of
889 study or research on medical, rehabilitative, scientific, technical, technological, or scholarly issues, when
890 such information has not been publicly released, published, copyrighted, or patented, if the disclosure of
891 such information would be harmful to the competitive position of the applicant.

892 29. Information contained in engineering and construction drawings and plans submitted for the
893 sole purpose of complying with the Building Code in obtaining a building permit if disclosure of such
894 information would identify specific trade secrets or other information that would be harmful to the
895 competitive position of the owner or lessee. However, such information shall be exempt only until the
896 building is completed. Information relating to the safety or environmental soundness of any building
897 shall not be exempt from disclosure.

898 **§ 2.2-3705.7. Exclusions to application of chapter; records of specific public bodies and**
899 **certain other limited exclusions.**

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

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

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

918 As used in this subdivision:

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

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

924 "Working papers" means those records, including correspondence, prepared by or for ~~an above-~~
925 named a public official named in this subdivision for his personal or deliberative use.

926 3. Information contained in library records that can be used to identify both (i) any library patron
927 who has borrowed material from a library and (ii) the material such patron borrowed.

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

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

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

938 7. Customer account information of a public utility affiliated with a political subdivision of the
939 Commonwealth, including the customer's name and service address, but excluding the amount of utility
940 service provided and the amount of money [charged or](#) paid for such utility service.

941 8. Personal information, as defined in § 2.2-3801, (i) filed with the Virginia Housing
942 Development Authority concerning individuals who have applied for or received loans or other housing
943 assistance or who have applied for occupancy of or have occupied housing financed, owned or otherwise
944 assisted by the Virginia Housing Development Authority; (ii) concerning persons participating in or
945 persons on the waiting list for federally funded rent-assistance programs; (iii) filed with any local
946 redevelopment and housing authority created pursuant to § 36-4 concerning persons participating in or
947 persons on the waiting list for housing assistance programs funded by local governments or by any such
948 authority; or (iv) filed with any local redevelopment and housing authority created pursuant to § 36-4 or
949 any other local government agency concerning persons who have applied for occupancy or who have
950 occupied affordable dwelling units established pursuant to § 15.2-2304 or 15.2-2305. However, access
951 to one's own information shall not be denied.

952 9. Information regarding the siting of hazardous waste facilities, except as provided in § 10.1-
953 1441, if disclosure of such information would have a detrimental effect upon the negotiating position of
954 a governing body or on the establishment of the terms, conditions, and provisions of the siting
955 agreement.

956 10. Information on the site-specific location of rare, threatened, endangered, or otherwise
957 imperiled plant and animal species, natural communities, caves, and significant historic and

958 archaeological sites if, in the opinion of the public body that has the responsibility for such information,
959 disclosure of the information would jeopardize the continued existence or the integrity of the resource.
960 This exclusion shall not apply to requests from the owner of the land upon which the resource is located.

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

969 12. Information held by the Virginia Retirement System, acting pursuant to § 51.1-124.30, or a
970 local retirement system, acting pursuant to § 51.1-803, or by a local finance board or board of trustees of
971 a trust established by one or more local public bodies to invest funds for post-retirement benefits other
972 than pensions, acting pursuant to Article 8 (§ 15.2-1544 et seq.) of Chapter 15 of Title 15.2, or by the
973 Rector and Visitors of the University of Virginia, acting pursuant to § 23.1-2210, or by the Virginia
974 College Savings Plan, acting pursuant to § 23.1-704, relating to the acquisition, holding, or disposition
975 of a security or other ownership interest in an entity, where such security or ownership interest is not
976 traded on a governmentally regulated securities exchange, if disclosure of such information would (i)
977 reveal confidential analyses prepared for the Rector and Visitors of the University of Virginia, prepared
978 by the retirement system, a local finance board or board of trustees, or the Virginia College Savings
979 Plan, or provided to the retirement system, a local finance board or board of trustees, or the Virginia
980 College Savings Plan under a promise of confidentiality of the future value of such ownership interest or
981 the future financial performance of the entity and (ii) have an adverse effect on the value of the
982 investment to be acquired, held, or disposed of by the retirement system, a local finance board or board
983 of trustees, the Rector and Visitors of the University of Virginia, or the Virginia College Savings Plan.

984 Nothing in this subdivision shall be construed to authorize the withholding of information relating to the
985 identity of any investment held, the amount invested, or the present value of such investment.

986 ~~13. Names and addresses of subscribers to Virginia Wildlife magazine, published by the~~
987 ~~Department of Game and Inland Fisheries, provided the individual subscriber has requested in writing~~
988 ~~that the Department not release such information.~~

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

992 ~~15.~~ 14. Information held by the Virginia Commonwealth University Health System Authority
993 pertaining to any of the following: an individual's qualifications for or continued membership on its
994 medical or teaching staffs; proprietary information gathered by or in the possession of the Authority
995 from third parties pursuant to a promise of confidentiality; contract cost estimates prepared for
996 confidential use in awarding contracts for construction or the purchase of goods or services; information
997 of a proprietary nature produced or collected by or for the Authority or members of its medical or
998 teaching staffs; financial statements not publicly available that may be filed with the Authority from
999 third parties; the identity, accounts, or account status of any customer of the Authority; consulting or
1000 other reports paid for by the Authority to assist the Authority in connection with its strategic planning
1001 and goals; the determination of marketing and operational strategies where disclosure of such strategies
1002 would be harmful to the competitive position of the Authority; and information of a proprietary nature
1003 produced or collected by or for employees of the Authority, other than the Authority's financial or
1004 administrative records, in the conduct of or as a result of study or research on medical, scientific,
1005 technical, or scholarly issues, whether sponsored by the Authority alone or in conjunction with a
1006 governmental body or a private concern, when such information has not been publicly released,
1007 published, copyrighted, or patented. This exclusion shall also apply when such information is in the
1008 possession of Virginia Commonwealth University.

1009 ~~16.~~ 15. Information held by the Department of Environmental Quality, the State Water Control
1010 Board, the State Air Pollution Control Board, or the Virginia Waste Management Board relating to (i)

1011 active federal environmental enforcement actions that are considered confidential under federal law and
1012 (ii) enforcement strategies, including proposed sanctions for enforcement actions. Upon request, such
1013 information shall be disclosed after a proposed sanction resulting from the investigation has been
1014 proposed to the director of the agency. This subdivision shall not be construed to authorize the
1015 withholding of information related to inspection reports, notices of violation, and documents detailing
1016 the nature of any environmental contamination that may have occurred or similar documents.

1017 ~~17-16.~~ Information related to the operation of toll facilities that identifies an individual, vehicle,
1018 or travel itinerary, including vehicle identification data or vehicle enforcement system information;
1019 video or photographic images; Social Security or other identification numbers appearing on driver's
1020 licenses; credit card or bank account data; home addresses; phone numbers; or records of the date or
1021 time of toll facility use.

1022 ~~18-17.~~ Information held by the Virginia Lottery pertaining to (i) the social security number, tax
1023 identification number, state sales tax number, home address and telephone number, personal and lottery
1024 banking account and transit numbers of a retailer, and financial information regarding the nonlottery
1025 operations of specific retail locations and (ii) individual lottery winners, except that a winner's name,
1026 hometown, and amount won shall be disclosed.

1027 ~~19-18.~~ Information held by the Board for Branch Pilots relating to the chemical or drug testing
1028 of a person regulated by the Board, where such person has tested negative or has not been the subject of
1029 a disciplinary action by the Board for a positive test result.

1030 ~~20-19.~~ Information pertaining to the planning, scheduling, and performance of examinations of
1031 holder records pursuant to the Uniform Disposition of Unclaimed Property Act (§ 55-210.1 et seq.)
1032 prepared by or for the State Treasurer or his agents or employees or persons employed to perform an
1033 audit or examination of holder records.

1034 ~~21-20.~~ Information held by the Virginia Department of Emergency Management or a local
1035 governing body relating to citizen emergency response teams established pursuant to an ordinance of a
1036 local governing body that reveal the name, address, including e-mail address, telephone or pager
1037 numbers, or operating schedule of an individual participant in the program.

1038 | ~~22-21~~. Information held by state or local park and recreation departments and local and regional
1039 | park authorities concerning identifiable individuals under the age of 18 years. However, nothing in this
1040 | subdivision shall operate to authorize the withholding of information defined as directory information
1041 | under regulations implementing the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g,
1042 | unless the public body has undertaken the parental notification and opt-out requirements provided by
1043 | such regulations. Access shall not be denied to the parent, including a noncustodial parent, or guardian
1044 | of such person, unless the parent's parental rights have been terminated or a court of competent
1045 | jurisdiction has restricted or denied such access. For such information of persons who are emancipated,
1046 | the right of access may be asserted by the subject thereof. Any parent or emancipated person who is the
1047 | subject of the information may waive, in writing, the protections afforded by this subdivision. If the
1048 | protections are so waived, the public body shall open such information for inspection and copying.

1049 | ~~23-22~~. Information submitted for inclusion in the Statewide Alert Network administered by the
1050 | Department of Emergency Management that reveal names, physical addresses, email addresses,
1051 | computer or internet protocol information, telephone numbers, pager numbers, other wireless or portable
1052 | communications device information, or operating schedules of individuals or agencies, where the release
1053 | of such information would compromise the security of the Statewide Alert Network or individuals
1054 | participating in the Statewide Alert Network.

1055 | ~~24-23~~. Information held by the Judicial Inquiry and Review Commission made confidential by §
1056 | 17.1-913.

1057 | ~~25-24~~. Information held by the Virginia Retirement System acting pursuant to § 51.1-124.30, a
1058 | local retirement system acting pursuant to § 51.1-803 (hereinafter collectively referred to as the
1059 | retirement system), or the Virginia College Savings Plan, acting pursuant to § 23.1-704 relating to:

1060 | a. Internal deliberations of or decisions by the retirement system or the Virginia College Savings
1061 | Plan on the pursuit of particular investment strategies, or the selection or termination of investment
1062 | managers, prior to the execution of such investment strategies or the selection or termination of such
1063 | managers, if disclosure of such information would have an adverse impact on the financial interest of the
1064 | retirement system or the Virginia College Savings Plan; and

1065 b. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), provided by a
1066 private entity to the retirement system or the Virginia College Savings Plan if disclosure of such records
1067 would have an adverse impact on the financial interest of the retirement system or the Virginia College
1068 Savings Plan.

1069 For the records specified in subdivision b to be excluded from the provisions of this chapter, the
1070 entity shall make a written request to the retirement system or the Virginia College Savings Plan:

1071 (1) Invoking such exclusion prior to or upon submission of the data or other materials for which
1072 protection from disclosure is sought;

1073 (2) Identifying with specificity the data or other materials for which protection is sought; and

1074 (3) Stating the reasons why protection is necessary.

1075 The retirement system or the Virginia College Savings Plan shall determine whether the
1076 requested exclusion from disclosure meets the requirements set forth in subdivision b.

1077 Nothing in this subdivision shall be construed to authorize the withholding of the identity or
1078 amount of any investment held or the present value and performance of all asset classes and subclasses.

1079 ~~26-25.~~ Information held by the Department of Corrections made confidential by § 53.1-233.

1080 ~~27-26.~~ Information maintained by the Department of the Treasury or participants in the Local
1081 Government Investment Pool (§ 2.2-4600 et seq.) and required to be provided by such participants to the
1082 Department to establish accounts in accordance with § 2.2-4602.

1083 ~~28-27.~~ Personal information, as defined in § 2.2-3801, contained in the Veterans Care Center
1084 Resident Trust Funds concerning residents or patients of the Department of Veterans Services Care
1085 Centers, except that access shall not be denied to the person who is the subject of the information.

1086 ~~29-28.~~ Information maintained in connection with fundraising activities by the Veterans Services
1087 Foundation pursuant to § 2.2-2716 that reveal the address, electronic mail address, facsimile or
1088 telephone number, social security number or other identification number appearing on a driver's license,
1089 or credit card or bank account data of identifiable donors, except that access shall not be denied to the
1090 person who is the subject of the information. Nothing in this subdivision, however, shall be construed to
1091 authorize the withholding of information relating to the amount, date, purpose, and terms of the pledge

1092 or donation or the identity of the donor, unless the donor has requested anonymity in connection with or
1093 as a condition of making a pledge or donation. The exclusion provided by this subdivision shall not
1094 apply to protect from disclosure (i) the identities of sponsors providing grants to or contracting with the
1095 foundation for the performance of services or other work or (ii) the terms and conditions of such grants
1096 or contracts.

1097 ~~30.~~ 29. Names, physical addresses, telephone numbers, and email addresses contained in
1098 correspondence between an individual and a member of the governing body, school board, or other
1099 public body of the locality in which the individual is a resident, unless the correspondence relates to the
1100 transaction of public business. However, no information that is otherwise open to inspection under this
1101 chapter shall be deemed exempt by virtue of the fact that it has been attached to or incorporated within
1102 any such correspondence.

1103 ~~31.~~ 30. Information prepared for and utilized by the Commonwealth's Attorneys' Services
1104 Council in the training of state prosecutors or law-enforcement personnel, where such information is not
1105 otherwise available to the public and the disclosure of such information would reveal confidential
1106 strategies, methods, or procedures to be employed in law-enforcement activities or materials created for
1107 the investigation and prosecution of a criminal case.

1108 ~~32.~~ 31. Information provided to the Department of Aviation by other entities of the
1109 Commonwealth in connection with the operation of aircraft where the information would not be subject
1110 to disclosure by the entity providing the information. The entity providing the information to the
1111 Department of Aviation shall identify the specific information to be protected and the applicable
1112 provision of this chapter that excludes the information from mandatory disclosure.

1113 ~~33.~~ 32. Information created or maintained by or on the behalf of the judicial performance
1114 evaluation program related to an evaluation of any individual justice or judge made confidential by §
1115 17.1-100.

1116 ~~34.~~ 33. (Effective July 1, 2018) Information held by the Virginia Alcoholic Beverage Control
1117 Authority that contains (i) information of a proprietary nature gathered by or in the possession of the
1118 Authority from a private entity pursuant to a promise of confidentiality; (ii) trade secrets, as defined in

1119 the Uniform Trade Secrets Act (§ 59.1-336 et seq.), of any private entity; (iii) financial information of a
1120 private entity, including balance sheets and financial statements, that are not generally available to the
1121 public through regulatory disclosure or otherwise; (iv) contract cost estimates prepared for the (a)
1122 confidential use in awarding contracts for construction or (b) purchase of goods or services; or (v) the
1123 determination of marketing and operational strategies where disclosure of such strategies would be
1124 harmful to the competitive position of the Authority.

1125 In order for the information identified in clauses (i), (ii), or (iii) to be excluded from the
1126 provisions of this chapter, the private entity shall make a written request to the Authority:

- 1127 a. Invoking such exclusion upon submission of the data or other materials for which protection
1128 from disclosure is sought;
- 1129 b. Identifying with specificity the data or other materials for which protection is sought; and
1130 c. Stating the reasons why protection is necessary.

1131 The Authority shall determine whether the requested exclusion from disclosure is necessary to
1132 protect such information of the private entity. The Authority shall make a written determination of the
1133 nature and scope of the protection to be afforded by it under this subdivision.

1134 ~~35-~~34. Information reflecting the substance of meetings in which individual sexual assault cases
1135 are discussed by any sexual assault team established pursuant to § 15.2-1627.4. The findings of the team
1136 may be disclosed or published in statistical or other aggregated form that does not disclose the identity
1137 of specific individuals.

1138 **§ 2.2-3711. Closed meetings authorized for certain limited purposes.**

1139 A. Public bodies may hold closed meetings only for the following purposes:

- 1140 1. Discussion, consideration, or interviews of prospective candidates for employment;
1141 assignment, appointment, promotion, performance, demotion, salaries, disciplining, or resignation of
1142 specific public officers, appointees, or employees of any public body; and evaluation of performance of
1143 departments or schools of public institutions of higher education where such evaluation will necessarily
1144 involve discussion of the performance of specific individuals. Any teacher shall be permitted to be
1145 present during a closed meeting in which there is a discussion or consideration of a disciplinary matter

1146 that involves the teacher and some student and the student involved in the matter is present, provided the
1147 teacher makes a written request to be present to the presiding officer of the appropriate board. Nothing
1148 in this subdivision, however, shall be construed to authorize a closed meeting by a local governing body
1149 or an elected school board to discuss compensation matters that affect the membership of such body or
1150 board collectively.

1151 2. Discussion or consideration of admission or disciplinary matters or any other matters that
1152 would involve the disclosure of information contained in a scholastic record concerning any student of
1153 any Virginia public institution of higher education or any state school system. However, any such
1154 student, legal counsel and, if the student is a minor, the student's parents or legal guardians shall be
1155 permitted to be present during the taking of testimony or presentation of evidence at a closed meeting, if
1156 such student, parents, or guardians so request in writing and such request is submitted to the presiding
1157 officer of the appropriate board.

1158 3. Discussion or consideration of the acquisition of real property for a public purpose, or of the
1159 disposition of publicly held real property, where discussion in an open meeting would adversely affect
1160 the bargaining position or negotiating strategy of the public body.

1161 4. The protection of the privacy of individuals in personal matters not related to public business.

1162 5. Discussion concerning a prospective business or industry or the expansion of an existing
1163 business or industry where no previous announcement has been made of the business' or industry's
1164 interest in locating or expanding its facilities in the community.

1165 6. Discussion or consideration of the investment of public funds where competition or bargaining
1166 is involved, where, if made public initially, the financial interest of the governmental unit would be
1167 adversely affected.

1168 7. Consultation with legal counsel and briefings by staff members or consultants pertaining to
1169 actual or probable litigation, where such consultation or briefing in open meeting would adversely affect
1170 the negotiating or litigating posture of the public body; and consultation with legal counsel employed or
1171 retained by a public body regarding specific legal matters requiring the provision of legal advice by such
1172 counsel. For the purposes of this subdivision, "probable litigation" means litigation that has been

1173 specifically threatened or on which the public body or its legal counsel has a reasonable basis to believe
1174 will be commenced by or against a known party. Nothing in this subdivision shall be construed to permit
1175 the closure of a meeting merely because an attorney representing the public body is in attendance or is
1176 consulted on a matter.

1177 8. In the case of boards of visitors of public institutions of higher education, discussion or
1178 consideration of matters relating to gifts, bequests and fund-raising activities, and grants and contracts
1179 for services or work to be performed by such institution. However, the terms and conditions of any such
1180 gifts, bequests, grants, and contracts made by a foreign government, a foreign legal entity, or a foreign
1181 person and accepted by a public institution of higher education in Virginia shall be subject to public
1182 disclosure upon written request to the appropriate board of visitors. For the purpose of this subdivision,
1183 (i) "foreign government" means any government other than the United States government or the
1184 government of a state or a political subdivision thereof; (ii) "foreign legal entity" means any legal entity
1185 created under the laws of the United States or of any state thereof if a majority of the ownership of the
1186 stock of such legal entity is owned by foreign governments or foreign persons or if a majority of the
1187 membership of any such entity is composed of foreign persons or foreign legal entities, or any legal
1188 entity created under the laws of a foreign government; and (iii) "foreign person" means any individual
1189 who is not a citizen or national of the United States or a trust territory or protectorate thereof.

1190 9. In the case of the boards of trustees of the Virginia Museum of Fine Arts, the Virginia
1191 Museum of Natural History, the Jamestown-Yorktown Foundation, and The Science Museum of
1192 Virginia, discussion or consideration of matters relating to specific gifts, bequests, and grants.

1193 10. Discussion or consideration of honorary degrees or special awards.

1194 11. Discussion or consideration of tests, examinations, or other information excluded from this
1195 chapter pursuant to subdivision 4 of § 2.2-3705.1.

1196 12. Discussion, consideration, or review by the appropriate House or Senate committees of
1197 possible disciplinary action against a member arising out of the possible inadequacy of the disclosure
1198 statement filed by the member, provided the member may request in writing that the committee meeting
1199 not be conducted in a closed meeting.

1200 13. Discussion of strategy with respect to the negotiation of a hazardous waste siting agreement
1201 or to consider the terms, conditions, and provisions of a hazardous waste siting agreement if the
1202 governing body in open meeting finds that an open meeting will have an adverse effect upon the
1203 negotiating position of the governing body or the establishment of the terms, conditions and provisions
1204 of the siting agreement, or both. All discussions with the applicant or its representatives may be
1205 conducted in a closed meeting.

1206 14. Discussion by the Governor and any economic advisory board reviewing forecasts of
1207 economic activity and estimating general and nongeneral fund revenues.

1208 15. Discussion or consideration of medical and mental health records excluded from this chapter
1209 pursuant to subdivision 1 of § 2.2-3705.5.

1210 16. Deliberations of the Virginia Lottery Board in a licensing appeal action conducted pursuant
1211 to subsection D of § 58.1-4007 regarding the denial or revocation of a license of a lottery sales agent;
1212 and discussion, consideration or review of Virginia Lottery matters related to proprietary lottery game
1213 information and studies or investigations exempted from disclosure under subdivision 6 of § 2.2-3705.3
1214 and subdivision 11 of § 2.2-3705.7.

1215 17. Those portions of meetings by local government crime commissions where the identity of, or
1216 information tending to identify, individuals providing information about crimes or criminal activities
1217 under a promise of anonymity is discussed or disclosed.

1218 18. Those portions of meetings in which the Board of Corrections discusses or discloses the
1219 identity of, or information tending to identify, any prisoner who (i) provides information about crimes or
1220 criminal activities, (ii) renders assistance in preventing the escape of another prisoner or in the
1221 apprehension of an escaped prisoner, or (iii) voluntarily or at the instance of a prison official renders
1222 other extraordinary services, the disclosure of which is likely to jeopardize the prisoner's life or safety.

1223 19. Discussion of plans to protect public safety as it relates to terrorist activity or specific
1224 cybersecurity threats or vulnerabilities and briefings by staff members, legal counsel, or law-
1225 enforcement or emergency service officials concerning actions taken to respond to such matters or a
1226 related threat to public safety; discussion of information excluded from this chapter pursuant to

1227 subdivision ~~3 or 4~~ 2 or 14 of § 2.2-3705.2, where discussion in an open meeting would jeopardize the
1228 safety of any person or the security of any facility, building, structure, information technology system,
1229 or software program; or discussion of reports or plans related to the security of any governmental
1230 facility, building or structure, or the safety of persons using such facility, building or structure.

1231 ~~20. (Effective until October 1, 2016) Discussion by the Board of the Virginia Retirement System,~~
1232 ~~acting pursuant to § 51.1-124.30, or of any local retirement system, acting pursuant to § 51.1-803, or~~
1233 ~~of the Rector and Visitors of the University of Virginia, acting pursuant to § 23-76.1, or by the Board of~~
1234 ~~the Virginia College Savings Plan, acting pursuant to § 23-38.80, regarding the acquisition, holding or~~
1235 ~~disposition of a security or other ownership interest in an entity, where such security or ownership~~
1236 ~~interest is not traded on a governmentally regulated securities exchange, to the extent that such~~
1237 ~~discussion (i) concerns confidential analyses prepared for the Rector and Visitors of the University of~~
1238 ~~Virginia, prepared by the retirement system or by the Virginia College Savings Plan or provided to the~~
1239 ~~retirement system or the Virginia College Savings Plan under a promise of confidentiality, of the future~~
1240 ~~value of such ownership interest or the future financial performance of the entity, and (ii) would have an~~
1241 ~~adverse effect on the value of the investment to be acquired, held or disposed of by the retirement~~
1242 ~~system, the Rector and Visitors of the University of Virginia, or the Virginia College Savings Plan.~~
1243 ~~Nothing in this subdivision shall be construed to prevent the disclosure of information relating to the~~
1244 ~~identity of any investment held, the amount invested or the present value of such investment.~~

1245 20. (Effective October 1, 2016) Discussion by the Board of the Virginia Retirement System,
1246 acting pursuant to § 51.1-124.30, or of any local retirement system, acting pursuant to § 51.1-803, or by
1247 a local finance board or board of trustees of a trust established by one or more local public bodies to
1248 invest funds for postemployment benefits other than pensions, acting pursuant to Article 8 (§ 15.2-1544
1249 et seq.) of Chapter 15 of Title 15.2, or ~~of~~ by the Rector and Visitors of the University of Virginia, acting
1250 pursuant to § 23.1-2210, or by the Board of the Virginia College Savings Plan, acting pursuant to § 23.1-
1251 706, regarding the acquisition, holding or disposition of a security or other ownership interest in an
1252 entity, where such security or ownership interest is not traded on a governmentally regulated securities
1253 exchange, to the extent that such discussion (i) concerns confidential analyses prepared for the Rector

1254 and Visitors of the University of Virginia, prepared by the retirement system, or a local finance board or
1255 board of trustees, or ~~by~~ the Virginia College Savings Plan or provided to the retirement system, a local
1256 finance board or board of trustees, or the Virginia College Savings Plan under a promise of
1257 confidentiality, of the future value of such ownership interest or the future financial performance of the
1258 entity, and (ii) would have an adverse effect on the value of the investment to be acquired, held or
1259 disposed of by the retirement system, a local finance board or board of trustees, the Rector and Visitors
1260 of the University of Virginia, or the Virginia College Savings Plan. Nothing in this subdivision shall be
1261 construed to prevent the disclosure of information relating to the identity of any investment held, the
1262 amount invested or the present value of such investment.

1263 21. Those portions of meetings in which individual child death cases are discussed by the State
1264 Child Fatality Review team established pursuant to § 32.1-283.1, those portions of meetings in which
1265 individual child death cases are discussed by a regional or local child fatality review team established
1266 pursuant to § 32.1-283.2, those portions of meetings in which individual death cases are discussed by
1267 family violence fatality review teams established pursuant to § 32.1-283.3, those portions of meetings in
1268 which individual adult death cases are discussed by the state Adult Fatality Review Team established
1269 pursuant to § 32.1-283.5, and those portions of meetings in which individual adult death cases are
1270 discussed by a local or regional adult fatality review team established pursuant to § 32.1-283.6.

1271 22. Those portions of meetings of the University of Virginia Board of Visitors or the Eastern
1272 Virginia Medical School Board of Visitors, as the case may be, and those portions of meetings of any
1273 persons to whom management responsibilities for the University of Virginia Medical Center or Eastern
1274 Virginia Medical School, as the case may be, have been delegated, in which there is discussed
1275 proprietary, business-related information pertaining to the operations of the University of Virginia
1276 Medical Center or Eastern Virginia Medical School, as the case may be, including business development
1277 or marketing strategies and activities with existing or future joint venturers, partners, or other parties
1278 with whom the University of Virginia Medical Center or Eastern Virginia Medical School, as the case
1279 may be, has formed, or forms, any arrangement for the delivery of health care, if disclosure of such

1280 information would adversely affect the competitive position of the Medical Center or Eastern Virginia
1281 Medical School, as the case may be.

1282 23. In the case of the Virginia Commonwealth University Health System Authority, discussion
1283 or consideration of any of the following: the acquisition or disposition of real or personal property where
1284 disclosure would adversely affect the bargaining position or negotiating strategy of the Authority;
1285 operational plans that could affect the value of such property, real or personal, owned or desirable for
1286 ownership by the Authority; matters relating to gifts, bequests and fund-raising activities; grants and
1287 contracts for services or work to be performed by the Authority; marketing or operational strategies
1288 where disclosure of such strategies would adversely affect the competitive position of the Authority;
1289 members of its medical and teaching staffs and qualifications for appointments thereto; and
1290 qualifications or evaluations of other employees. This exclusion shall also apply when the foregoing
1291 discussions occur at a meeting of the Virginia Commonwealth University Board of Visitors.

1292 24. Those portions of the meetings of the Health Practitioners' Monitoring Program Committee
1293 within the Department of Health Professions to the extent such discussions identify any practitioner who
1294 may be, or who actually is, impaired pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of Title 54.1.

1295 25. Meetings or portions of meetings of the Board of the Virginia College Savings Plan wherein
1296 personal information, as defined in § 2.2-3801, which has been provided to the Board or its employees
1297 by or on behalf of individuals who have requested information about, applied for, or entered into prepaid
1298 tuition contracts or savings trust account agreements pursuant to Chapter 7 (§ 23.1-700 et seq.) of Title
1299 23.1 is discussed.

1300 26. Discussion or consideration, by the Wireless Carrier E-911 Cost Recovery Subcommittee
1301 created pursuant to § 56-484.15, of trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-
1302 336 et seq.), submitted by CMRS providers as defined in § 56-484.12, related to the provision of
1303 wireless E-911 service.

1304 27. Those portions of disciplinary proceedings by any regulatory board within the Department of
1305 Professional and Occupational Regulation, Department of Health Professions, or the Board of
1306 Accountancy conducted pursuant to § 2.2-4019 or 2.2-4020 during which the board deliberates to reach

1307 a decision or meetings of health regulatory boards or conference committees of such boards to consider
1308 settlement proposals in pending disciplinary actions or modifications to previously issued board orders
1309 as requested by either of the parties.

1310 28. Discussion or consideration of information excluded from this chapter pursuant to
1311 subdivision 11 of § 2.2-3705.6 by a responsible public entity or an affected locality or public entity, as
1312 those terms are defined in § 33.2-1800, or any independent review panel appointed to review
1313 information and advise the responsible public entity concerning such records.

1314 29. Discussion of the award of a public contract involving the expenditure of public funds,
1315 including interviews of bidders or offerors, and discussion of the terms or scope of such contract, where
1316 discussion in an open session would adversely affect the bargaining position or negotiating strategy of
1317 the public body.

1318 30. Discussion or consideration of grant or loan application information excluded from this
1319 chapter pursuant to subdivision 17 of § 2.2-3705.6 by (i) the Commonwealth Health Research Board or
1320 (ii) the Innovation and Entrepreneurship Investment Authority or the Research and Technology
1321 Investment Advisory Committee appointed to advise the Innovation and Entrepreneurship Investment
1322 Authority.

1323 31. Discussion or consideration by the Commitment Review Committee of information excluded
1324 from this chapter pursuant to subdivision ~~8~~5 of § 2.2-3705.2 relating to individuals subject to
1325 commitment as sexually violent predators under Chapter 9 (§ 37.2-900 et seq.) of Title 37.2.

1326 32. [Expired.]

1327 33. Discussion or consideration of confidential proprietary information and trade secrets
1328 excluded from this chapter pursuant to subdivision 18 of § 2.2-3705.6. However, the exemption
1329 provided by this subdivision shall not apply to any authority created pursuant to the BVU Authority Act
1330 (§ 15.2-7200 et seq.).

1331 34. Discussion or consideration by a local authority created in accordance with the Virginia
1332 Wireless Service Authorities Act (§ 15.2-5431.1 et seq.) of confidential proprietary information and
1333 trade secrets excluded from this chapter pursuant to subdivision 19 of § 2.2-3705.6.

1334 35. Discussion or consideration by the State Board of Elections or local electoral boards of
1335 voting security matters made confidential pursuant to § 24.2-625.1.

1336 36. Discussion or consideration by the Forensic Science Board or the Scientific Advisory
1337 Committee created pursuant to Article 2 (§ 9.1-1109 et seq.) of Chapter 11 of Title 9.1 of records
1338 excluded from this chapter pursuant to subdivision A 2 a of § 2.2-3706.

1339 37. Discussion or consideration by the Brown v. Board of Education Scholarship Program
1340 Awards Committee of information or confidential matters excluded from this chapter pursuant to
1341 subdivision 3 of § 2.2-3705.4, and meetings of the Committee to deliberate concerning the annual
1342 maximum scholarship award, review and consider scholarship applications and requests for scholarship
1343 award renewal, and cancel, rescind, or recover scholarship awards.

1344 38. Discussion or consideration by the Virginia Port Authority of information excluded from this
1345 chapter pursuant to subdivision 1 of § 2.2-3705.6.

1346 39. Discussion or consideration by the Board of Trustees of the Virginia Retirement System
1347 acting pursuant to § 51.1-124.30, by the Investment Advisory Committee appointed pursuant to § 51.1-
1348 124.26, by any local retirement system, acting pursuant to § 51.1-803, by the Board of the Virginia
1349 College Savings Plan acting pursuant to § 23.1-706, or by the Virginia College Savings Plan's
1350 Investment Advisory Committee appointed pursuant to § 23.1-702 of information excluded from this
1351 chapter pursuant to subdivision ~~25~~ 24 of § 2.2-3705.7.

1352 40. Discussion or consideration of information excluded from this chapter pursuant to
1353 subdivision 3 of § 2.2-3705.6.

1354 41. Discussion or consideration by the Board of Education of information relating to the denial,
1355 suspension, or revocation of teacher licenses excluded from this chapter pursuant to subdivision ~~12~~ 11 of
1356 § 2.2-3705.3.

1357 42. Those portions of meetings of the Virginia Military Advisory Council or any commission
1358 created by executive order for the purpose of studying and making recommendations regarding
1359 preventing closure or realignment of federal military and national security installations and facilities
1360 located in Virginia and relocation of such facilities to Virginia, or a local or regional military affairs

1361 organization appointed by a local governing body, during which there is discussion of information
1362 excluded from this chapter pursuant to subdivision ~~11~~ 8 of § 2.2-3705.2.

1363 43. Discussion or consideration by the Board of Trustees of the Veterans Services Foundation of
1364 information excluded from this chapter pursuant to subdivision ~~29~~ 28 of § 2.2-3705.7.

1365 44. Discussion or consideration by the Virginia Tobacco Region Revitalization Commission of
1366 information excluded from this chapter pursuant to subdivision 23 of § 2.2-3705.6.

1367 45. Discussion or consideration by the board of directors of the Commercial Space Flight
1368 Authority of information excluded from this chapter pursuant to subdivision 24 of § 2.2-3705.6.

1369 46. Discussion or consideration of personal and proprietary information that are excluded from
1370 the provisions of this chapter pursuant to (i) subdivision 25 of § 2.2-3705.6 or (ii) subsection E of §
1371 10.1-104.7. This exclusion shall not apply to the discussion or consideration of records that contain
1372 information that has been certified for release by the person who is the subject of the information or
1373 transformed into a statistical or aggregate form that does not allow identification of the person who
1374 supplied, or is the subject of, the information.

1375 47. (Effective July 1, 2018) Discussion or consideration by the Board of Directors of the Virginia
1376 Alcoholic Beverage Control Authority of information excluded from this chapter pursuant to subdivision
1377 1 of § 2.2-3705.3 or subdivision 34 of § 2.2-3705.7.

1378 48. Discussion or consideration of grant or loan application records excluded from this chapter
1379 pursuant to subdivision 28 of § 2.2-3705.6 related to the submission of an application for an award from
1380 the Virginia Research Investment Fund pursuant to Article 8 (§ 23.1-3130 et seq.) of Chapter 31 of Title
1381 23.1.

1382 49. Discussion or development of grant proposals by a regional council established pursuant to
1383 Article 26 (§ 2.2-2484 et seq.) of Chapter 24 to be submitted for consideration to the Virginia Growth
1384 and Opportunity Board.

1385 B. No resolution, ordinance, rule, contract, regulation or motion adopted, passed or agreed to in a
1386 closed meeting shall become effective unless the public body, following the meeting, reconvenes in

1387 open meeting and takes a vote of the membership on such resolution, ordinance, rule, contract,
1388 regulation, or motion that shall have its substance reasonably identified in the open meeting.

1389 C. Public officers improperly selected due to the failure of the public body to comply with the
1390 other provisions of this section shall be de facto officers and, as such, their official actions are valid until
1391 they obtain notice of the legal defect in their election.

1392 D. Nothing in this section shall be construed to prevent the holding of conferences between two
1393 or more public bodies, or their representatives, but these conferences shall be subject to the same
1394 procedures for holding closed meetings as are applicable to any other public body.

1395 E. This section shall not be construed to (i) require the disclosure of any contract between the
1396 Department of Health Professions and an impaired practitioner entered into pursuant to Chapter 25.1 (§
1397 54.1-2515 et seq.) of Title 54.1 or (ii) require the board of directors of any authority created pursuant to
1398 the Industrial Development and Revenue Bond Act (§ 15.2-4900 et seq.), or any public body empowered
1399 to issue industrial revenue bonds by general or special law, to identify a business or industry to which
1400 subdivision A 5 applies. However, such business or industry shall be identified as a matter of public
1401 record at least 30 days prior to the actual date of the board's authorization of the sale or issuance of such
1402 bonds.

1403 **§ 2.2-3806. Rights of data subjects.**

1404 A. Any agency maintaining personal information shall:

1405 1. Inform an individual who is asked to supply personal information about himself whether he is
1406 legally required, or may refuse, to supply the information requested, and also of any specific
1407 consequences that are known to the agency of providing or not providing the information.

1408 2. Give notice to a data subject of the possible dissemination of part or all of this information to
1409 another agency, nongovernmental organization or system not having regular access authority, and
1410 indicate the use for which it is intended, and the specific consequences for the individual, which are
1411 known to the agency, of providing or not providing the information. However documented permission
1412 for dissemination in the hands of the other agency or organization shall satisfy the requirement of this

1413 subdivision. The notice may be given on applications or other data collection forms prepared by data
1414 subjects.

1415 3. Upon request and proper identification of any data subject, or of his authorized agent, grant
1416 the data subject or agent the right to inspect, in a form comprehensible to him:

1417 a. All personal information about that data subject except as provided in subdivision 1 of § 2.2-
1418 3705.1, subdivision 1 of § 2.2-3705.4, and subdivision 1 of § 2.2-3705.5.

1419 b. The nature of the sources of the information.

1420 c. The names of recipients, other than those with regular access authority, of personal
1421 information about the data subject including the identity of all persons and organizations involved and
1422 their relationship to the system when not having regular access authority, except that if the recipient has
1423 obtained the information as part of an ongoing criminal investigation such that disclosure of the
1424 investigation would jeopardize law-enforcement action, then no disclosure of such access shall be made
1425 to the data subject.

1426 4. Comply with the following minimum conditions of disclosure to data subjects:

1427 a. An agency shall make disclosures to data subjects required under this chapter, during normal
1428 business hours, in accordance with the procedures set forth in subsections B and C of § 2.2-3704 for
1429 responding to requests under the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) or within a
1430 time period as may be mutually agreed upon by the agency and the data subject.

1431 b. The disclosures to data subjects required under this chapter shall be made (i) in person, if he
1432 appears in person and furnishes proper identification, or (ii) by mail, if he has made a written request,
1433 with proper identification. Copies of the documents containing the personal information sought by a data
1434 subject shall be furnished to him or his representative at reasonable charges for document search and
1435 duplication in accordance with subsection F of § 2.2-3704.

1436 c. The data subject shall be permitted to be accompanied by a person of his choosing, who shall
1437 furnish reasonable identification. An agency may require the data subject to furnish a written statement
1438 granting the agency permission to discuss the individual's file in such person's presence.

1439 5. If the data subject gives notice that he wishes to challenge, correct, or explain information
1440 about him in the information system, the following minimum procedures shall be followed:

1441 a. The agency maintaining the information system shall investigate, and record the current status
1442 of that personal information.

1443 b. If, after such investigation, the information is found to be incomplete, inaccurate, not
1444 pertinent, not timely, or not necessary to be retained, it shall be promptly corrected or purged.

1445 c. If the investigation does not resolve the dispute, the data subject may file a statement of not
1446 more than 200 words setting forth his position.

1447 d. Whenever a statement of dispute is filed, the agency maintaining the information system shall
1448 supply any previous recipient with a copy of the statement and, in any subsequent dissemination or use
1449 of the information in question, clearly note that it is disputed and supply the statement of the data subject
1450 along with the information.

1451 e. The agency maintaining the information system shall clearly and conspicuously disclose to the
1452 data subject his rights to make such a request.

1453 f. Following any correction or purging of personal information the agency shall furnish to past
1454 recipients notification that the item has been purged or corrected whose receipt shall be acknowledged.

1455 B. Nothing in this chapter shall be construed to require an agency to disseminate any
1456 recommendation or letter of reference from or to a third party that is a part of the personnel file of any
1457 data subject nor to disseminate any test or examination used, administered or prepared by any public
1458 body for purposes of evaluation of (i) any student or any student's performance, (ii) any seeker's
1459 qualifications or aptitude for employment, retention, or promotion, or (iii) qualifications for any license
1460 or certificate issued by any public body.

1461 As used in this subsection, "test or examination" includes (i) any scoring key for any such test or
1462 examination and (ii) any other document that would jeopardize the security of the test or examination.
1463 Nothing contained in this subsection shall prohibit the release of test scores or results as provided by
1464 law, or to limit access to individual records as provided by law; however, the subject of the employment

1465 tests shall be entitled to review and inspect all documents relative to his performance on those
1466 employment tests.

1467 When, in the reasonable opinion of the public body, any such test or examination no longer has
1468 any potential for future use, and the security of future tests or examinations will not be jeopardized, the
1469 test or examination shall be made available to the public. Minimum competency tests administered to
1470 public school children shall be made available to the public contemporaneously with statewide release of
1471 the scores of those taking such tests, but in no event shall such tests be made available to the public later
1472 than six months after the administration of such tests.

1473 C. Neither any provision of this chapter nor any provision of the Freedom of Information Act (§
1474 2.2-3700 et seq.) shall be construed to deny public access to records of the position, job classification,
1475 official salary or rate of pay of, and to records of the allowances or reimbursements for expenses paid to
1476 any public officer, official or employee at any level of state, local or regional government in the
1477 Commonwealth. The provisions of this subsection shall not apply to records of the official salaries or
1478 rates of pay of public employees whose annual rate of pay is \$10,000 or less.

1479 D. Nothing in this section or in this chapter shall be construed to require an agency to
1480 disseminate information derived from tax returns ~~in violation of §§ 2.2-3705.7 and prohibited from~~
1481 [release pursuant to § 58.1-3](#).

1482 **§ 22.1-253.13:3. Standard 3. Accreditation, other standards, assessments, and releases from**
1483 **state regulations.**

1484 A. The Board of Education shall promulgate regulations establishing standards for accreditation
1485 pursuant to the Administrative Process Act (§ 2.2-4000 et seq.), which shall include, but not be limited
1486 to, student outcome measures, requirements and guidelines for instructional programs and for the
1487 integration of educational technology into such instructional programs, administrative and instructional
1488 staffing levels and positions, including staff positions for supporting educational technology, student
1489 services, auxiliary education programs such as library and media services, requirements for graduation
1490 from high school, community relations, and the philosophy, goals, and objectives of public education in
1491 Virginia.

1492 The Board of Education shall promulgate regulations establishing standards for accreditation of
1493 public virtual schools under the authority of the local school board that enroll students full time.

1494 The Board shall review annually the accreditation status of all schools in the Commonwealth.
1495 The Board shall review the accreditation status of a school once every three years if the school has been
1496 fully accredited for three consecutive years. Upon such triennial review, the Board shall review the
1497 accreditation status of the school for each individual year within that triennial review period. If the
1498 Board finds that the school would have been accredited every year of that triennial review period the
1499 Board shall accredit the school for another three years. The Board may review the accreditation status of
1500 any other school once every two years or once every three years, provided that any school that receives a
1501 multiyear accreditation status other than full accreditation shall be covered by a Board-approved
1502 multiyear corrective action plan for the duration of the period of accreditation. Such multiyear corrective
1503 action plan shall include annual written progress updates to the Board. A multiyear accreditation status
1504 shall not relieve any school or division of annual reporting requirements.

1505 Each local school board shall maintain schools that are fully accredited pursuant to the standards
1506 for accreditation as prescribed by the Board of Education. Each local school board shall report the
1507 accreditation status of all schools in the local school division annually in public session. Within the time
1508 specified by the Board of Education, each school board shall submit corrective action plans for any
1509 schools within its school division that have been designated as not meeting the standards as approved by
1510 the Board.

1511 When the Board of Education determines through the school academic review process that the
1512 failure of schools within a division to achieve full accreditation status is related to division-level failure
1513 to implement the Standards of Quality or other division-level action or inaction, the Board may require a
1514 division-level academic review. After the conduct of such review and within the time specified by the
1515 Board of Education, each school board shall submit to the Board for approval a corrective action plan,
1516 consistent with criteria established by the Board setting forth specific actions and a schedule designed to
1517 ensure that schools within its school division achieve full accreditation status. If the Board determines
1518 that the proposed corrective action plan is not sufficient to enable all schools within the division to

1519 achieve full accreditation, the Board may return the plan to the local school board with directions to
1520 submit an amended plan pursuant to Board guidance. Such corrective action plans shall be part of the
1521 relevant school division's comprehensive plan pursuant to § 22.1-253.13:6.

1522 With such funds as are appropriated or otherwise received for this purpose, the Board shall adopt
1523 and implement an academic review process, to be conducted by the Department of Education, to assist
1524 schools that are accredited with warning. The Department shall forward a report of each academic
1525 review to the relevant local school board, and such school board shall report the results of such academic
1526 review and the required annual progress reports in public session. The local school board shall
1527 implement any actions identified through the academic review and utilize them for improvement
1528 planning.

1529 B. The Superintendent of Public Instruction shall develop and the Board of Education shall
1530 approve criteria for determining and recognizing educational performance in the Commonwealth's
1531 public school divisions and schools. Such criteria, when approved, shall become an integral part of the
1532 accreditation process and shall include student outcome measurements. The Superintendent of Public
1533 Instruction shall annually report to the Board on the accreditation status of all school divisions and
1534 schools. Such report shall include an analysis of the strengths and weaknesses of public education
1535 programs in the various school divisions in Virginia and recommendations to the General Assembly for
1536 further enhancing student learning uniformly across the Commonwealth. In recognizing educational
1537 performance in the school divisions, the Board shall include consideration of special school division
1538 accomplishments, such as numbers of dual enrollments and students in Advanced Placement and
1539 International Baccalaureate courses, and participation in academic year Governor's Schools.

1540 The Superintendent of Public Instruction shall assist local school boards in the implementation of
1541 action plans for increasing educational performance in those school divisions and schools that are
1542 identified as not meeting the approved criteria. The Superintendent of Public Instruction shall monitor
1543 the implementation of and report to the Board of Education on the effectiveness of the corrective actions
1544 taken to improve the educational performance in such school divisions and schools.

1545 C. With such funds as are available for this purpose, the Board of Education shall prescribe
1546 assessment methods to determine the level of achievement of the Standards of Learning objectives by all
1547 students. Such assessments shall evaluate knowledge, application of knowledge, critical thinking, and
1548 skills related to the Standards of Learning being assessed. The Board shall, with the assistance of
1549 independent testing experts, conduct a regular analysis and validation process for these assessments. The
1550 Department of Education shall make available to school divisions Standards of Learning assessments
1551 typically administered by the middle and high schools by December 1 of the school year in which such
1552 assessments are to be administered or when newly developed assessments are available, whichever is
1553 later.

1554 The Board shall also provide the option of industry certification and state licensure examinations
1555 as a student-selected credit.

1556 The Board of Education shall make publicly available such assessments in a timely manner and
1557 as soon as practicable following the administration of such tests, so long as the release of such
1558 assessments does not compromise test security or deplete the bank of assessment questions necessary to
1559 construct subsequent tests, or limit the ability to test students on demand and provide immediate results
1560 in the web-based assessment system.

1561 The Board shall include in the student outcome measures that are required by the Standards for
1562 Accreditation end-of-course or end-of-grade assessments for various grade levels and classes, including
1563 the completion of the alternative assessments implemented by each local school board, in accordance
1564 with the Standards of Learning. These assessments shall include end-of-course or end-of-grade tests for
1565 English, mathematics, science, and history and social science and may be integrated to include multiple
1566 subject areas.

1567 The Board shall prescribe alternative methods of Standards of Learning assessment
1568 administration for children with disabilities, as that term is defined in § 22.1-213, who meet criteria
1569 established by the Board to demonstrate achievement of the Standards of Learning. An eligible student's
1570 Individual Education Program team shall make the final determination as to whether an alternative
1571 method of administration is appropriate for the student.

1572 The Standards of Learning assessments administered to students in grades three through eight
1573 shall not exceed (a) reading and mathematics in grades three and four; (b) reading, mathematics, and
1574 science in grade five; (c) reading and mathematics in grades six and seven; (d) reading, writing, and
1575 mathematics in grade eight; (e) science after the student receives instruction in the grade six science, life
1576 science, and physical science Standards of Learning and before the student completes grade eight; and
1577 (f) Virginia Studies and Civics and Economics once each at the grade levels deemed appropriate by each
1578 local school board.

1579 Each school board shall annually certify that it has provided instruction and administered an
1580 alternative assessment, consistent with Board guidelines, to students in grades three through eight in
1581 each Standards of Learning subject area in which a Standards of Learning assessment was not
1582 administered during the school year. Such guidelines shall (1) incorporate options for age-appropriate,
1583 authentic performance assessments and portfolios with rubrics and other methodologies designed to
1584 ensure that students are making adequate academic progress in the subject area and that the Standards of
1585 Learning content is being taught; (2) permit and encourage integrated assessments that include multiple
1586 subject areas; and (3) emphasize collaboration between teachers to administer and substantiate the
1587 assessments and the professional development of teachers to enable them to make the best use of
1588 alternative assessments.

1589 Local school divisions shall provide targeted mathematics remediation and intervention to
1590 students in grades six through eight who show computational deficiencies as demonstrated by their
1591 individual performance on any diagnostic test or grade-level Standards of Learning mathematics test that
1592 measures non-calculator computational skills.

1593 The Department of Education shall award recovery credit to any student in grades three through
1594 eight who fails a Standards of Learning assessment in English reading or mathematics, receives
1595 remediation, and subsequently retakes and passes such an assessment, including any such student who
1596 subsequently retakes such an assessment on an expedited basis.

1597 In addition, to assess the educational progress of students, the Board of Education shall (A)
1598 develop appropriate assessments, which may include criterion-referenced tests and other assessment

1599 instruments that may be used by classroom teachers; (B) select appropriate industry certification and
1600 state licensure examinations; and (C) prescribe and provide measures, which may include nationally
1601 normed tests to be used to identify students who score in the bottom quartile at selected grade levels. An
1602 annual justification that includes evidence that the student meets the participation criteria defined by the
1603 Virginia Department of Education shall be provided for each student considered for the Virginia Grade
1604 Level Alternative. Each Individual Education Program team shall review such justification and make the
1605 final determination as to whether or not the Virginia Grade Level Alternative is appropriate for the
1606 student. The superintendent and the school board chairman shall certify to the Board of Education, as a
1607 part of certifying compliance with the Standards of Quality, that there is a justification in the Individual
1608 Education Program for every student who takes the Virginia Grade Level Alternative. Compliance with
1609 this requirement shall be monitored as a part of the special education monitoring process conducted by
1610 the Department of Education. The Board shall report to the Governor and General Assembly in its
1611 annual reports pursuant to § 22.1-18 any school division that is not in compliance with this requirement.

1612 The Standards of Learning requirements, including all related assessments, shall be waived for
1613 any student awarded a scholarship under the Brown v. Board of Education Scholarship Program,
1614 pursuant to § 30-231.2, who is enrolled in a preparation program for a high school equivalency
1615 examination approved by the Board of Education or in an adult basic education program or an adult
1616 secondary education program to obtain the high school diploma or a high school equivalency certificate.

1617 The Department of Education shall develop processes for informing school divisions of changes
1618 in the Standards of Learning.

1619 The Board of Education may adopt special provisions related to the administration and use of
1620 any Standards of Learning test or tests in a content area as applied to accreditation ratings for any period
1621 during which the Standards of Learning content or assessments in that area are being revised and phased
1622 in. Prior to statewide administration of such tests, the Board of Education shall provide notice to local
1623 school boards regarding such special provisions.

1624 The Board of Education shall not include in its calculation of the passage rate of a Standards of
1625 Learning assessment for the purposes of state accountability any student whose parent has decided to not

1626 have his child take such Standards of Learning assessment, unless such exclusions would result in the
1627 school's not meeting any required state or federal participation rate.

1628 D. The Board of Education may pursue all available civil remedies pursuant to § 22.1-19.1 or
1629 administrative action pursuant to § 22.1-292.1 for breaches in test security and unauthorized alteration of
1630 test materials or test results.

1631 The Board may initiate or cause to be initiated a review or investigation of any alleged breach in
1632 security, unauthorized alteration, or improper administration of tests, including the exclusion of students
1633 from testing who are required to be assessed, by local school board employees responsible for the
1634 distribution or administration of the tests.

1635 Records and other information furnished to or prepared by the Board during the conduct of a
1636 review or investigation may be withheld pursuant to subdivision ~~4~~ 10 of § 2.2-3705.3. However, this
1637 section shall not prohibit the disclosure of records to (i) a local school board or division superintendent
1638 for the purpose of permitting such board or superintendent to consider or to take personnel action with
1639 regard to an employee or (ii) any requester, after the conclusion of a review or investigation, in a form
1640 that (a) does not reveal the identity of any person making a complaint or supplying information to the
1641 Board on a confidential basis and (b) does not compromise the security of any test mandated by the
1642 Board. Any local school board or division superintendent receiving such records or other information
1643 shall, upon taking personnel action against a relevant employee, place copies of such records or
1644 information relating to the specific employee in such person's personnel file.

1645 Notwithstanding any other provision of state law, no test or examination authorized by this
1646 section, including the Standards of Learning assessments, shall be released or required to be released as
1647 minimum competency tests, if, in the judgment of the Board, such release would breach the security of
1648 such test or examination or deplete the bank of questions necessary to construct future secure tests.

1649 E. With such funds as may be appropriated, the Board of Education may provide, through an
1650 agreement with vendors having the technical capacity and expertise to provide computerized tests and
1651 assessments, and test construction, analysis, and security, for (i) web-based computerized tests and
1652 assessments, including computer-adaptive Standards of Learning assessments, for the evaluation of

1653 student progress during and after remediation and (ii) the development of a remediation item bank
1654 directly related to the Standards of Learning.

1655 F. To assess the educational progress of students as individuals and as groups, each local school
1656 board shall require the use of Standards of Learning assessments, alternative assessments, and other
1657 relevant data, such as industry certification and state licensure examinations, to evaluate student
1658 progress and to determine educational performance. Each local school shall require the administration of
1659 appropriate assessments to students, which may include criterion-referenced tests and teacher-made tests
1660 and shall include the Standards of Learning assessments, the local school board's alternative
1661 assessments, and the National Assessment of Educational Progress state-by-state assessment. Each
1662 school board shall analyze and report annually, in compliance with any criteria that may be established
1663 by the Board of Education, the results from the Stanford Achievement Test Series, Ninth Edition
1664 (Stanford Nine) assessment, if administered, industry certification examinations, and the Standards of
1665 Learning Assessments to the public.

1666 The Board of Education shall not require administration of the Stanford Achievement Test
1667 Series, Ninth Edition (Stanford Nine) assessment, except as may be selected to facilitate compliance
1668 with the requirements for home instruction pursuant to § 22.1-254.1.

1669 The Board shall include requirements for the reporting of the Standards of Learning assessment
1670 scores and averages for each year, regardless of accreditation frequency, as part of the Board's
1671 requirements relating to the School Performance Report Card. Such scores shall be disaggregated for
1672 each school by student subgroups on the Virginia assessment program as appropriate and shall be
1673 reported to the public within three months of their receipt. These reports (i) shall be posted on the
1674 portion of the Department of Education's website relating to the School Performance Report Card, in a
1675 format and in a manner that allows year-to-year comparisons, and (ii) may include the National
1676 Assessment of Educational Progress state-by-state assessment.

1677 G. Each local school division superintendent shall regularly review the division's submission of
1678 data and reports required by state and federal law and regulations to ensure that all information is
1679 accurate and submitted in a timely fashion. The Superintendent of Public Instruction shall provide a list

1680 of the required reports and data to division superintendents annually. The status of compliance with this
1681 requirement shall be included in the Board of Education's annual report to the Governor and the General
1682 Assembly as required by § 22.1-18.

1683 H. Any school board may request the Board of Education for release from state regulations or, on
1684 behalf of one or more of its schools, for approval of an Individual School Accreditation Plan for the
1685 evaluation of the performance of one or more of its schools as authorized for certain other schools by the
1686 Standards of Accreditation pursuant to 8VAC20-131-280 C of the Virginia Administrative Code.
1687 Waivers of regulatory requirements may be granted by the Board of Education based on submission of a
1688 request from the division superintendent and chairman of the local school board. The Board of
1689 Education may grant, for a period up to five years, a waiver of regulatory requirements that are not (i)
1690 mandated by state or federal law or (ii) designed to promote health or safety. The school board shall
1691 provide in its waiver request a description of how the releases from state regulations are designed to
1692 increase the quality of instruction and improve the achievement of students in the affected school or
1693 schools. The Department of Education shall provide (a) guidance to any local school division that
1694 requests releases from state regulations and (b) information about opportunities to form partnerships
1695 with other agencies or entities to any local school division in which the school or schools granted
1696 releases from state regulations have demonstrated improvement in the quality of instruction and the
1697 achievement of students.

1698 The Board of Education may also grant local school boards waivers of specific requirements in §
1699 22.1-253.13:2, based on submission of a request from the division superintendent and chairman of the
1700 local school board, permitting the local school board to assign instructional personnel to the schools with
1701 the greatest needs, so long as the school division employs a sufficient number of personnel divisionwide
1702 to meet the total number required by § 22.1-253.13:2 and all pupil/teacher ratios and class size
1703 maximums set forth in subsection C of § 22.1-253.13:2 are met. The school board shall provide in its
1704 request a description of how the waivers from specific Standards of Quality staffing standards are
1705 designed to increase the quality of instruction and improve the achievement of students in the affected

1706 school or schools. The waivers may be renewed in up to five-year increments, or revoked, based on
1707 student achievement results in the affected school or schools.

1708 **§ 22.1-279.8. School safety audits and school crisis, emergency management, and medical**
1709 **emergency response plans required.**

1710 A. For the purposes of this section, unless the context requires otherwise:

1711 "School crisis, emergency management, and medical emergency response plan" means the
1712 essential procedures, operations, and assignments required to prevent, manage, and respond to a critical
1713 event or emergency, including natural disasters involving fire, flood, tornadoes, or other severe weather;
1714 loss or disruption of power, water, communications or shelter; bus or other accidents; medical
1715 emergencies, including cardiac arrest and other life-threatening medical emergencies; student or staff
1716 member deaths; explosions; bomb threats; gun, knife or other weapons threats; spills or exposures to
1717 hazardous substances; the presence of unauthorized persons or trespassers; the loss, disappearance or
1718 kidnapping of a student; hostage situations; violence on school property or at school activities; incidents
1719 involving acts of terrorism; and other incidents posing a serious threat of harm to students, personnel, or
1720 facilities. The plan shall include a provision that the Department of Criminal Justice Services and the
1721 Virginia Criminal Injuries Compensation Fund shall be contacted immediately to deploy assistance in
1722 the event of an emergency as defined in the emergency response plan when there are victims as defined
1723 in § 19.2-11.01. The Department of Criminal Justice Services and the Virginia Criminal Injuries
1724 Compensation Fund shall be the lead coordinating agencies for those individuals determined to be
1725 victims, and the plan shall also contain current contact information for both agencies.

1726 "School safety audit" means a written assessment of the safety conditions in each public school
1727 to (i) identify and, if necessary, develop solutions for physical safety concerns, including building
1728 security issues and (ii) identify and evaluate any patterns of student safety concerns occurring on school
1729 property or at school-sponsored events. Solutions and responses shall include recommendations for
1730 structural adjustments, changes in school safety procedures, and revisions to the school board's standards
1731 for student conduct.

1732 B. The Virginia Center for School and Campus Safety, in consultation with the Department of
1733 Education, shall develop a list of items to be reviewed and evaluated in the school safety audits required
1734 by this section. Such items shall include those incidents reported to school authorities pursuant to § 22.1-
1735 279.3:1 and shall include a school inspection walk-through using a standardized checklist provided by
1736 the Virginia Center for School and Campus Safety, which shall incorporate crime prevention through
1737 environmental design principles.

1738 The Virginia Center for School and Campus Safety shall prescribe a standardized report format
1739 for school safety audits, additional reporting criteria, and procedures for report submission, which may
1740 include instructions for electronic submission.

1741 Each local school board shall require all schools under its supervisory control to annually
1742 conduct school safety audits as defined in this section and consistent with such list.

1743 The results of such school safety audits shall be made public within 90 days of completion. The
1744 local school board shall retain authority to withhold or limit the release of any security plans, walk-
1745 through checklists, and specific vulnerability assessment components as provided in subdivision [7.4](#) of §
1746 2.2-3705.2. The completed walk-through checklist shall be made available upon request to the chief
1747 law-enforcement officer of the locality or his designee. Each school shall maintain a copy of the school
1748 safety audit, which may exclude such security plans, walk-through checklists, and vulnerability
1749 assessment components, within the office of the school principal and shall make a copy of such report
1750 available for review upon written request.

1751 Each school shall submit a copy of its school safety audit to the relevant school division
1752 superintendent. The division superintendent shall collate and submit all such school safety audits, in the
1753 prescribed format and manner of submission, to the Virginia Center for School and Campus Safety and
1754 shall make available upon request to the chief law-enforcement officer of the locality the results of such
1755 audits.

1756 C. The division superintendent shall establish a school safety audit committee to include, if
1757 available, representatives of parents, teachers, local law-enforcement, emergency services agencies,
1758 local community services boards, and judicial and public safety personnel. The school safety audit

1759 committee shall review the completed school safety audits and submit any plans, as needed, for
1760 improving school safety to the division superintendent for submission to the local school board.

1761 D. Each school board shall ensure that every school that it supervises shall develop a written
1762 school crisis, emergency management, and medical emergency response plan, consistent with the
1763 definition provided in this section, and shall provide copies of such plans to the chief law-enforcement
1764 officer, the fire chief, the chief of the emergency medical services agency, and the emergency
1765 management official of the locality. Each school division shall designate an emergency manager. The
1766 Department of Education and the Virginia Center for School and Campus Safety shall provide technical
1767 assistance to the school divisions of the Commonwealth in the development of the school crisis,
1768 emergency management, and medical emergency response plans that describe the components of a
1769 medical emergency response plan developed in coordination with local emergency medical services
1770 providers, the training of school personnel and students to respond to a life-threatening emergency, and
1771 the equipment required for this emergency response. The local school board shall annually review the
1772 written school crisis, emergency management, and medical emergency response plans. The local school
1773 board shall have the authority to withhold or limit the review of any security plans and specific
1774 vulnerability assessment components as provided in subdivision ~~7.4~~ of § 2.2-3705.2. The local school
1775 division superintendent shall certify this review in writing to the Virginia Center for School and Campus
1776 Safety no later than August 31 of each year.

1777 Upon consultation with local school boards, division superintendents, the Virginia Center for
1778 School and Campus Safety, and the Coordinator of Emergency Management, the Board of Education
1779 shall develop, and may revise as it deems necessary, a model school crisis, emergency management, and
1780 medical emergency response plan for the purpose of assisting the public schools in Virginia in
1781 developing viable, effective crisis, emergency management, and medical emergency response plans.
1782 Such model shall set forth recommended effective procedures and means by which parents can contact
1783 the relevant school or school division regarding the location and safety of their school children and by
1784 which school officials may contact parents, with parental approval, during a critical event or emergency.

1785 **§ 23.1-2425. Confidential and public information.**

1786 A. The Authority is subject to the provisions of the Freedom of Information Act (§ 2.2-3700 et
1787 seq.), including the exclusions set forth in subdivision ~~15~~ 14 of § 2.2-3705.7 and subdivision A 23 of §
1788 2.2-3711.

1789 B. For purposes of the Freedom of Information Act (§ 2.2-3700 et seq.), meetings of the board
1790 are not considered meetings of the board of visitors of the University. Meetings of the board may be
1791 conducted through telephonic or video means as provided in § 2.2-3708.

1792 **§ 32.1-48.08. Declaration of quarantine.**

1793 A. The State Health Commissioner may declare a quarantine of any person or persons or any
1794 affected area after he finds that the quarantine is the necessary means to contain a communicable disease
1795 of public health threat as defined in § 32.1-48.06 to which such person or persons or the people of an
1796 affected area have been or may have been exposed and thus may become infected.

1797 B. The State Health Commissioner shall record his findings and any information on which he has
1798 relied in making the finding required for quarantine pursuant to subsection A. The State Health
1799 Commissioner's record of findings concerning any communicable disease of public health threat shall be
1800 confidential and shall not be disclosed in accordance with subdivision ~~17~~ 12 of § 2.2-3705.5.

1801 C. The State Health Commissioner may order the quarantined person or persons to remain in
1802 their residences, to remain in another place where they are present, or to report to a place or places
1803 designated by the State Health Commissioner for the duration of their quarantine. An electronic device
1804 may be used to enforce any such quarantine. The Commissioner's order of quarantine shall be for a
1805 duration consistent with the known incubation period for such disease or, if the incubation period is
1806 unknown, for a period anticipated as being consistent with the incubation period for other similar
1807 infectious agents.

1808 **§ 32.1-48.011. Isolation may be ordered under certain exceptional circumstances;**
1809 **Commissioner authorized to require hospitalization or other health care.**

1810 A. Whenever the State Health Commissioner makes a determination of exceptional
1811 circumstances pursuant to § 32.1-48.05 and that the isolation procedures set forth in Article 3.01 (§ 32.1-

1812 48.01 et seq.) of this chapter are insufficient control measures to contain a communicable disease of
1813 public health threat, the isolation procedures herein may be invoked.

1814 B. The State Health Commissioner may order the isolation of a person or persons upon a finding
1815 that (i) such person or persons are infected with or may reasonably be suspected to be infected with a
1816 communicable disease of public health threat and (ii) isolation is necessary to protect the public health,
1817 to ensure such isolated person or persons receive appropriate medical treatment, and to protect health
1818 care providers and others who may come into contact with such infected person or persons.

1819 C. The State Health Commissioner shall record his findings and any information on which he has
1820 relied in making the finding required for isolation pursuant to this section. The State Health
1821 Commissioner's record of findings concerning any communicable disease of public health threat that is
1822 involved in an order of isolation shall be confidential and shall not be disclosed in accordance with
1823 subdivision ~~17~~ 12 of § 2.2-3705.5.

1824 D. The Commissioner may order the isolated person or persons to remain in their places of
1825 residence, to remain in another place where they are present, or to report to a place or facility designated
1826 by the Commissioner for the duration of their isolation. An electronic device may be used to enforce any
1827 such isolation. The Commissioner's order of isolation shall be for a duration consistent with the known
1828 course of such communicable disease of public health threat or, if the course of the disease is unknown
1829 or uncertain, for a period consistent with the probable course of the communicable disease of public
1830 health threat.

1831 E. To the extent that persons subject to an order of isolation pursuant to this article require
1832 hospitalization or other health care services, the State Health Commissioner shall be authorized to
1833 require that such services be provided.

1834 F. The State Health Commissioner shall also have the authority to monitor the medical condition
1835 of any person or persons subject to an order of isolation pursuant to this article through regular visits by
1836 public health nurses or such other means as the Commissioner shall determine to be necessary.

1837 **§ 32.1-48.015. Authorization to disclose health records.**

1838 A. The provisions of this article are hereby declared to be necessary to prevent serious harm and
1839 serious threats to the health and safety of individuals and the public in Virginia for purposes of
1840 authorizing the State Health Commissioner or his designee to examine and review any health records of
1841 any person or persons subject to any order of quarantine or order of isolation pursuant to this article and
1842 the regulations of the Department of Health and Human Services promulgated in compliance with the
1843 Health Insurance Portability and Accountability Act of 1996, as amended. The State Health
1844 Commissioner shall authorize any designee in writing to so examine and review any health records of
1845 any person or persons subject to any order of quarantine or order of isolation pursuant to this article.

1846 B. Pursuant to the regulations concerning patient privacy promulgated by the federal Department
1847 of Health and Human Services, covered entities may disclose protected health information to the State
1848 Health Commissioner or his designee without obtaining consent or authorization for such disclosure
1849 from the person who is the subject of the records. Such protected health information shall be used to
1850 facilitate the health care of any person or persons who are subject to an order of quarantine or an order
1851 of isolation. The State Health Commissioner or his designee shall only redisclose such protected health
1852 information in compliance with the aforementioned federal regulations. Further, the protected health
1853 information disclosed to the State Health Commissioner or his designee shall be held confidential and
1854 shall not be disclosed pursuant to the provisions of subdivision ~~47.12~~ of § 2.2-3705.5.

1855 C. Pursuant to subsection G of § 32.1-116.3, any person requesting or requiring any employee of
1856 a public safety agency as defined in subsection J of § 32.1-45.2 to arrest, transfer, or otherwise exercise
1857 custodial supervision over an individual known to the requesting person (i) to be infected with any
1858 communicable disease or (ii) to be subject to an order of quarantine or an order of isolation pursuant to
1859 Article 3.02 (§ 32.1-48.05 et seq.) of Chapter 2 shall inform such employee of a public safety agency of
1860 the potential risk of exposure to a communicable disease.

1861 **§ 32.1-283.1. State Child Fatality Review Team; membership; access to and maintenance of**
1862 **records; confidentiality; etc.**

1863 A. There is hereby created the State Child Fatality Review Team, referred to in this section as
1864 "the Team," which shall develop and implement procedures to ensure that child deaths occurring in

1865 Virginia are analyzed in a systematic way. The Team shall review (i) violent and unnatural child deaths,
1866 (ii) sudden child deaths occurring within the first 18 months of life, and (iii) those fatalities for which
1867 the cause or manner of death was not determined with reasonable medical certainty. No child death
1868 review shall be initiated by the Team until conclusion of any law-enforcement investigation or criminal
1869 prosecution. The Team shall (i) develop and revise as necessary operating procedures for the review of
1870 child deaths, including identification of cases to be reviewed and procedures for coordination among the
1871 agencies and professionals involved, (ii) improve the identification, data collection, and record keeping
1872 of the causes of child death, (iii) recommend components for prevention and education programs, (iv)
1873 recommend training to improve the investigation of child deaths, and (v) provide technical assistance,
1874 upon request, to any local child fatality teams that may be established. The operating procedures for the
1875 review of child deaths shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq.)
1876 pursuant to subdivision B 17 of § 2.2-4002.

1877 B. The 16-member Team shall be chaired by the Chief Medical Examiner and shall be composed
1878 of the following persons or their designees: the Commissioner of Behavioral Health and Developmental
1879 Services; the Director of Child Protective Services within the Department of Social Services; the
1880 Superintendent of Public Instruction; the State Registrar of Vital Records; and the Director of the
1881 Department of Criminal Justice Services. In addition, one representative from each of the following
1882 entities shall be appointed by the Governor to serve for a term of three years: local law-enforcement
1883 agencies, local fire departments, local departments of social services, the Medical Society of Virginia,
1884 the Virginia College of Emergency Physicians, the Virginia Pediatric Society, local emergency medical
1885 services personnel, attorneys for the Commonwealth, and community services boards.

1886 C. Upon the request of the Chief Medical Examiner in his capacity as chair of the Team, made
1887 after the conclusion of any law-enforcement investigation or prosecution, information and records
1888 regarding a child whose death is being reviewed by the Team may be inspected and copied by the Chief
1889 Medical Examiner or his designee, including, but not limited to, any report of the circumstances of the
1890 event maintained by any state or local law-enforcement agency or medical examiner, and information or
1891 records maintained on such child by any school, social services agency or court. Information, records, or

1892 reports maintained by any attorney for the Commonwealth shall be made available for inspection and
1893 copying by the Chief Medical Examiner pursuant to procedures which shall be developed by the Chief
1894 Medical Examiner and the Commonwealth's Attorneys' Services Council established by § 2.2-2617. Any
1895 presentence report prepared pursuant to § 19.2-299 for any person convicted of a crime that led to the
1896 death of the child shall be made available for inspection and copying by the Office of the Chief Medical
1897 Examiner pursuant to procedures which shall be developed by the Chief Medical Examiner. In addition,
1898 the Office of the Chief Medical Examiner may inspect and copy from any Virginia health care provider,
1899 on behalf of the Team, (i) without obtaining consent, the health and mental health records of the child
1900 and those perinatal medical records of the child's mother that related to such child and (ii) upon
1901 obtaining consent from each adult regarding his personal records, or from a parent regarding the records
1902 of a minor child, the health and mental health records of the child's family. All such information and
1903 records shall be confidential and shall be excluded from the Virginia Freedom of Information Act (§ 2.2-
1904 3700 et seq.) pursuant to subdivision [9.7](#) of § 2.2-3705.5. Upon the conclusion of the child death review,
1905 all information and records concerning the child and the child's family shall be shredded or otherwise
1906 destroyed by the Office of the Chief Medical Examiner in order to ensure confidentiality. Such
1907 information or records shall not be subject to subpoena or discovery or be admissible in any criminal or
1908 civil proceeding. If available from other sources, however, such information and records shall not be
1909 immune from subpoena, discovery, or introduction into evidence when obtained through such other
1910 sources solely because the information and records were presented to the Team during a child death
1911 review. Further, the findings of the Team may be disclosed or published in statistical or other form
1912 which shall not identify individuals. The portions of meetings in which individual child death cases are
1913 discussed by the Team shall be closed pursuant to subdivision A 21 of § 2.2-3711. In addition to the
1914 requirements of § 2.2-3712, all team members, persons attending closed team meetings, and persons
1915 presenting information and records on specific child deaths to the Team during closed meetings shall
1916 execute a sworn statement to honor the confidentiality of the information, records, discussions, and
1917 opinions disclosed during any closed meeting to review a specific child death. Violations of this
1918 subsection are punishable as a Class 3 misdemeanor.

1919 D. Upon notification of a child death, any state or local government agency maintaining records
1920 on such child or such child's family which are periodically purged shall retain such records for the
1921 longer of 12 months or until such time as the State Child Fatality Review Team has completed its child
1922 death review of the specific case.

1923 E. The Team shall compile annual data which shall be made available to the Governor and the
1924 General Assembly as requested. These statistical data compilations shall not contain any personally
1925 identifying information and shall be public records.

1926 **§ 32.1-283.2. Local and regional child fatality review teams established; membership;**
1927 **authority; confidentiality; immunity.**

1928 A. Upon the initiative of any local or regional law-enforcement agency, fire department,
1929 department of social services, emergency medical services agency, attorney for the Commonwealth's
1930 office, or community services board, local or regional child fatality teams may be established for the
1931 purpose of conducting contemporaneous reviews of local child deaths in order to develop interventions
1932 and strategies for prevention specific to the locality or region. Each team shall establish rules and
1933 procedures to govern the review process. Agencies may share information but shall be bound by
1934 confidentiality and execute a sworn statement to honor the confidentiality of the information they share.
1935 Violations are punishable as a Class 3 misdemeanor. The State Child Fatality Review Team shall
1936 provide technical assistance and direction as provided for in subsection A of § 32.1-283.1.

1937 B. Local and regional teams may be composed of the following persons from the localities
1938 represented on a particular board or their designees: a medical examiner appointed pursuant to § 32.1-
1939 282, a local social services official in charge of child protective services, a director of the relevant local
1940 or district health department, a chief law-enforcement officer, a local fire marshal, a local emergency
1941 medical services agency chief, the attorney for the Commonwealth, an executive director of the local
1942 community services board or other local mental health agency, and such additional persons, not to
1943 exceed four, as may be appointed to serve by the chairperson of the local or regional team. The
1944 chairperson shall be elected from among the designated membership. The additional members appointed
1945 by the chairperson may include, but are not restricted to, representatives of local human services

1946 agencies; local public education agencies; local pediatricians, psychiatrists and psychologists; and local
1947 child advocacy organizations.

1948 C. Each team shall establish local rules and procedures to govern the review process prior to
1949 conducting the first child fatality review. The review of a death shall be delayed until any criminal
1950 investigations connected with the death are completed or the Commonwealth consents to the
1951 commencement of such review prior to the completion of the criminal investigation.

1952 D. All information and records obtained or created regarding the review of a fatality shall be
1953 confidential and shall be excluded from the Virginia Freedom of Information Act (§ 2.2-3700 et seq.)
1954 pursuant to subdivision 9.7 of § 2.2-3705.5. All such information and records shall be used by the team
1955 only in the exercise of its proper purpose and function and shall not be disclosed. Such information or
1956 records shall not be subject to subpoena, subpoena duces tecum, or discovery or be admissible in any
1957 criminal or civil proceeding. If available from other sources, however, such information and records
1958 shall not be immune from subpoena, subpoena duces tecum, discovery or introduction into evidence
1959 when obtained through such other sources solely because the information and records were presented to
1960 the team during a fatality review. No person who participated in the reviews nor any member of the
1961 team shall be required to make any statement as to what transpired during the review or what
1962 information was collected during the review. Upon the conclusion of the fatality review, all information
1963 and records concerning the victim and the family shall be returned to the originating agency or
1964 destroyed. However, the findings of the team may be disclosed or published in statistical or other form
1965 which shall not identify individuals. The portions of meetings in which individual cases are discussed by
1966 the team shall be closed pursuant to subdivision A 21 of § 2.2-3711. All team members, persons
1967 attending closed team meetings, and persons presenting information and records on specific fatalities to
1968 the team during closed meetings shall execute a sworn statement to honor the confidentiality of the
1969 information, records, discussions, and opinions disclosed during any closed meeting to review a specific
1970 death. Violations of this subsection are punishable as a Class 3 misdemeanor.

1971 E. Members of teams, as well as their agents and employees, shall be immune from civil liability
1972 for any act or omission made in connection with participation in a child fatality review team review,

1973 unless such act or omission was the result of gross negligence or willful misconduct. Any organization,
1974 institution, or person furnishing information, data, testimony, reports or records to review teams as part
1975 of such review, shall be immune from civil liability for any act or omission in furnishing such
1976 information, unless such act or omission was the result of gross negligence or willful misconduct.

1977 **§ 32.1-283.3. Family violence fatality review teams established; model protocol and data**
1978 **management; membership; authority; confidentiality, etc.**

1979 A. The Office of the Chief Medical Examiner shall develop a model protocol for the
1980 development and implementation of local family violence fatality review teams (teams) and such model
1981 protocol shall include relevant procedures for conducting reviews of fatal family violence incidents. A
1982 "fatal family violence incident" means any fatality that occurred or that is suspected of having occurred
1983 in the context of abuse between family members or intimate partners. The Office of the Chief Medical
1984 Examiner shall provide technical assistance to the local teams and serve as a clearinghouse for
1985 information.

1986 B. Subject to available funding, the Office of the Chief Medical Examiner shall provide ongoing
1987 surveillance of fatal family violence occurrences and promulgate an annual report based on accumulated
1988 data.

1989 C. Any county or city, or combination of counties, cities, or counties and cities, may establish a
1990 family violence fatality review team to examine fatal family violence incidents and to create a body of
1991 information to help prevent future family violence fatalities. The team shall have the authority to review
1992 the facts and circumstances of all fatal family violence incidents that occur within its designated
1993 geographic area.

1994 D. Membership in the team may include, but shall not be limited to, health care professionals,
1995 representatives from the local bar, attorneys for the Commonwealth, judges, law-enforcement officials,
1996 criminologists, medical examiners appointed pursuant to § 32.1-282, other experts in forensic medicine
1997 and pathology, family violence victim advocates, health department professionals, probation and parole
1998 professionals, adult and child protective services professionals, and representatives of family violence
1999 local coordinating councils.

2000 E. Each team shall establish local rules and procedures to govern the review process prior to the
2001 first fatal family violence incident review conducted. The review of a death shall be delayed until any
2002 criminal investigations or prosecutions connected with the death are completed.

2003 F. All information and records obtained or created regarding the review of a fatality shall be
2004 confidential and shall be excluded from the Virginia Freedom of Information Act (§ 2.2-3700 et seq.)
2005 pursuant to subdivision [9.7](#) of § 2.2-3705.5. All such information and records shall be used by the team
2006 only in the exercise of its proper purpose and function and shall not be disclosed. Such information or
2007 records shall not be subject to subpoena, subpoena duces tecum or discovery or be admissible in any
2008 criminal or civil proceeding. If available from other sources, however, such information and records
2009 shall not be immune from subpoena, subpoena duces tecum, discovery or introduction into evidence
2010 when obtained through such other sources solely because the information and records were presented to
2011 the team during a fatality review. No person who participated in the review nor any member of the team
2012 shall be required to make any statement as to what transpired during the review or what information was
2013 collected during the review. Upon the conclusion of the fatality review, all information and records
2014 concerning the victim and the family shall be returned to the originating agency or destroyed. However,
2015 the findings of the team may be disclosed or published in statistical or other form which shall not
2016 identify individuals. The portions of meetings in which individual cases are discussed by the team shall
2017 be closed pursuant to subdivision A 21 of § 2.2-3711. All team members, persons attending closed team
2018 meetings, and persons presenting information and records on specific fatalities to the team during closed
2019 meetings shall execute a sworn statement to honor the confidentiality of the information, records,
2020 discussions, and opinions disclosed during any closed meeting to review a specific death. Violations of
2021 this subsection are punishable as a Class 3 misdemeanor.

2022 G. Members of teams, as well as their agents and employees, shall be immune from civil liability
2023 for any act or omission made in connection with participation in a family violence fatality review, unless
2024 such act or omission was the result of gross negligence or willful misconduct. Any organization,
2025 institution, or person furnishing information, data, testimony, reports or records to review teams as part

2026 of such review, shall be immune from civil liability for any act or omission in furnishing such
2027 information, unless such act or omission was the result of gross negligence or willful misconduct.

2028 **§ 32.1-283.5. Adult Fatality Review Team; duties; membership; confidentiality; penalties;**
2029 **report; etc.**

2030 A. There is hereby created the Adult Fatality Review Team, referred to in this section as "the
2031 Team," which shall develop and implement procedures to ensure that adult deaths occurring in the
2032 Commonwealth are analyzed in a systematic way. The Team shall review the death of any person age 60
2033 years or older, or any adult age 18 years or older who is incapacitated, who resides in the
2034 Commonwealth, or who does not reside in the Commonwealth but who is temporarily in the
2035 Commonwealth and who is in need of temporary or emergency protective services (i) who was the
2036 subject of an adult protective services or law-enforcement investigation; (ii) whose death was due to
2037 abuse, neglect, or exploitation or acts suggesting abuse, neglect, or exploitation; or (iii) whose death
2038 came under the jurisdiction of or was investigated by the Office of the Chief Medical Examiner pursuant
2039 to § 32.1-283. The Team shall not initiate an adult death review until the conclusion of any law-
2040 enforcement investigation or criminal prosecution. The operating procedures for the review of adult
2041 deaths shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq.) pursuant to subdivision
2042 B 17 of § 2.2-4002.

2043 B. The 16-member team shall consist of the following persons or their designees: the Chief
2044 Medical Examiner, the Commissioner of Behavioral Health and Developmental Services, the
2045 Commissioner for Aging and Rehabilitative Services, the Director of the Office of Licensure and
2046 Certification of the Department of Health, and the State Long-Term Care Ombudsman. In addition, the
2047 Governor shall appoint one representative from each of the following entities: a licensed funeral services
2048 provider, the Medical Society of Virginia, and local departments of social services, emergency medical
2049 services, attorneys for the Commonwealth, law-enforcement agencies, nurses specializing in geriatric
2050 care, psychiatrists specializing in geriatric care, and long-term care providers. The Team further shall
2051 include two members appointed by the Governor who are advocates for elderly or disabled populations
2052 in Virginia. The Chief Medical Examiner shall serve as chair of the Team.

2053 After the initial staggering of terms, members appointed by the Governor shall be appointed for a
2054 term of four years. Appointments to fill vacancies, other than by expiration of a term, shall be for the
2055 unexpired terms. Vacancies shall be filled in the same manner as the original appointments. All
2056 members may be reappointed. The Chief Medical Examiner and other ex officio members of the Team
2057 shall serve terms coincident with their terms of office.

2058 C. Upon the request of the chair of the Team, made after the conclusion of any law-enforcement
2059 investigation or prosecution, information and records regarding an adult whose death is being reviewed
2060 by the Team shall be inspected and copied by the chair or his designee, including but not limited to any
2061 report of the circumstances of the event maintained by any state or local law-enforcement agency or the
2062 Office of the Chief Medical Examiner and information or records on the adult maintained by any facility
2063 that provided services to the adult, by any social services agency, or by any court. Information, records,
2064 or reports maintained by any attorney for the Commonwealth shall be made available for inspection and
2065 copying by the chair or his designee pursuant to procedures that shall be developed by the Chief Medical
2066 Examiner and the Commonwealth Attorneys Services Council established by § 2.2-2617. In addition, a
2067 health care provider shall provide the Team, upon request, with access to the health and mental health
2068 records of (i) the adult whose death is subject to review, without authorization; (ii) any adult relative of
2069 the deceased, with authorization; and (iii) any minor child of the deceased, with the authorization of the
2070 minor's parent or guardian. The chair of the Team also may copy and inspect the presentence report,
2071 prepared pursuant to § 19.2-299, of any person convicted of a crime that led to the death of the adult
2072 who is the subject of review by the Team.

2073 D. All information obtained or generated by the Team regarding a review shall be confidential
2074 and excluded from the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) pursuant to subdivision
2075 [9.7](#) of § 2.2-3705.5. Such information shall not be subject to subpoena or discovery or be admissible in
2076 any civil or criminal proceeding. If available from other sources, however, such information and records
2077 shall not be immune from subpoena, discovery, or introduction into evidence when obtained through
2078 such other sources solely because the information and records were presented to the Team during an
2079 adult death review. The Team shall compile all information collected during a review. The findings of

2080 the Team may be disclosed or published in statistical or other form, but shall not identify any
2081 individuals. The portions of meetings in which individual adult death cases are discussed by the Team
2082 shall be closed pursuant to subdivision A 21 of § 2.2-3711.

2083 E. All Team members and other persons attending closed Team meetings, including any persons
2084 presenting information or records on specific fatalities, shall execute a sworn statement to honor the
2085 confidentiality of the information, records, discussions, and opinions disclosed during meetings at which
2086 the Team reviews a specific death. No Team member or other person who participates in a review shall
2087 be required to make any statement regarding the review or any information collected during the review.
2088 Upon conclusion of a review, all information and records concerning the victim and the family shall be
2089 shredded or otherwise destroyed in order to ensure confidentiality. Violations of this subsection are
2090 punishable as a Class 3 misdemeanor.

2091 F. Upon notification of an adult death, any state or local government agency or facility that
2092 provided services to the adult or maintained records on the adult or the adult's family shall retain the
2093 records for the longer of 12 months or until such time as the Team has completed its review of the case.

2094 G. The Team shall compile an annual report by October 1 of each year that shall be made
2095 available to the Governor and the General Assembly. The annual report shall include any policy,
2096 regulatory, or budgetary recommendations developed by the Team. Any statistical compilations
2097 prepared by the Team shall be public record and shall not contain any personally identifying
2098 information.

2099 **§ 32.1-283.6. Local and regional adult fatality review teams established; membership;**
2100 **authority; confidentiality; immunity.**

2101 A. Upon the initiative of any local or regional law-enforcement agency, department of social
2102 services, emergency medical services agency, attorney for the Commonwealth's office, community
2103 services board, or official with the Adult Protective Services Unit established pursuant to § 51.5-148,
2104 local or regional adult fatality review teams may be established for the purpose of conducting
2105 contemporaneous reviews of local adult deaths in order to develop interventions and strategies for
2106 prevention specific to the locality or region. For the purposes of this section, the team may review the

2107 death of any person age 60 years or older, or any adult age 18 years or older who is incapacitated, who
2108 resides in the Commonwealth and who is in need of temporary or emergency protective services (i) who
2109 was the subject of an adult protective services or law-enforcement investigation; (ii) whose death was
2110 due to abuse, neglect, or exploitation or acts suggesting abuse, neglect, or exploitation; or (iii) whose
2111 death came under the jurisdiction of or was investigated by the Office of the Chief Medical Examiner as
2112 occurring in any suspicious, unusual, or unnatural manner, pursuant to § 32.1-283. Each team shall
2113 establish rules and procedures to govern the review process. Agencies may share information but shall
2114 be bound by confidentiality and execute a sworn statement to honor the confidentiality of the
2115 information they share. A violation of this subsection is punishable as a Class 3 misdemeanor. The
2116 Office of the Chief Medical Examiner shall develop a model protocol for the development and
2117 implementation of local or regional adult fatality review teams and such model protocol shall include
2118 relevant procedures for conducting reviews of adult fatalities.

2119 B. Local and regional teams may be composed of the following persons from the localities
2120 represented on a particular board or their designees: a medical examiner appointed pursuant to § 32.1-
2121 282, a local adult protective services official, a local social services official, a director of the relevant
2122 local or district health department, an executive director of the local area agency on aging or other
2123 department representing the interests of the elderly or disabled, a chief law-enforcement officer, the
2124 attorney for the Commonwealth, an executive director of the local community services board or other
2125 local mental health agency, a local judge, and such additional persons as may be appointed to serve by
2126 the chair of the local or regional team. The chair shall be elected from among the designated
2127 membership. The additional members appointed by the chair may include, but are not restricted to,
2128 representatives of local human services agencies, local health care professionals specializing in geriatric
2129 care or care of incapacitated adults, local emergency medical services personnel, local long-term care
2130 providers, representatives of local advocacy or service organizations for elderly or disabled populations,
2131 experts in forensic medicine and pathology, local funeral services providers, local centers for
2132 independent living, local long-term care ombudsmen, and representatives of the local bar.

2133 C. Each local or regional team shall establish operating procedures to govern the review process
2134 prior to conducting the first adult fatality review. The review of a death shall be delayed until any
2135 criminal investigations connected with the death are completed or the Commonwealth consents to the
2136 commencement of such review prior to the completion of the criminal investigation.

2137 D. All information and records obtained or created regarding a review of a fatality shall be
2138 confidential and shall be excluded from the Virginia Freedom of Information Act (§ 2.2-3700 et seq.)
2139 pursuant to subdivision 9.7 of § 2.2-3705.5. All such information and records shall be used by the team
2140 only in the exercise of its proper purpose and function and shall not be disclosed. Such information and
2141 records shall not be subject to subpoena, subpoena duces tecum, discovery, or introduction into evidence
2142 when obtained through such other sources solely because the information and records were presented to
2143 the team during the fatality review. No person who participated in the review and no member of the
2144 team shall be required to make any statement as to what transpired during the review or what
2145 information was collected during the review. Upon the conclusion of the fatality review, all information
2146 and records concerning the victim and family shall be returned to the originating agency or destroyed.
2147 However, the findings of the team may be disclosed or published in statistical or other form that does
2148 not identify any individuals. The portions of meetings in which individual cases are discussed by the
2149 team shall be closed pursuant to subdivision A 21 of § 2.2-3711. All team members, persons attending
2150 closed team meetings, and persons presenting information and records on specific fatalities to the team
2151 during closed meetings shall execute a sworn statement to honor the confidentiality of the information,
2152 records, discussions, and opinions disclosed during any closed meeting to review a specific death. A
2153 violation of this subsection is punishable as a Class 3 misdemeanor.

2154 E. Members of teams, as well as their agents and employees, shall be immune from civil liability
2155 for any act or omission made in connection with participation in an adult fatality review team review,
2156 unless such act or omission was the result of gross negligence or willful misconduct. Any organization,
2157 institution, or person furnishing information, data, testimony, reports, or records to review teams as part
2158 of such review shall be immune from civil liability for any act or omission in furnishing such
2159 information, unless such act or omission was the result of gross negligence or willful misconduct.

2160 **§ 44-146.18. Department of Emergency Services continued as Department of Emergency**
2161 **Management; administration and operational control; coordinator and other personnel; powers**
2162 **and duties.**

2163 A. The State Office of Emergency Services is continued and shall hereafter be known as the
2164 Department of Emergency Management. Wherever the words "State Department of Emergency
2165 Services" are used in any law of the Commonwealth, they shall mean the Department of Emergency
2166 Management. During a declared emergency this Department shall revert to the operational control of the
2167 Governor. The Department shall have a coordinator who shall be appointed by and serve at the pleasure
2168 of the Governor and also serve as State Emergency Planning Director. The Department shall employ the
2169 professional, technical, secretarial, and clerical employees necessary for the performance of its
2170 functions.

2171 B. The Department of Emergency Management shall in the administration of emergency services
2172 and disaster preparedness programs:

2173 1. In coordination with political subdivisions and state agencies, ensure that the Commonwealth
2174 has up-to-date assessments and preparedness plans to prevent, respond to and recover from all disasters
2175 including acts of terrorism;

2176 2. Conduct a statewide emergency management assessment in cooperation with political
2177 subdivisions, private industry and other public and private entities deemed vital to preparedness, public
2178 safety and security. The assessment shall include a review of emergency response plans, which include
2179 the variety of hazards, natural and man-made. The assessment shall be updated annually;

2180 3. Submit to the Governor and to the General Assembly, no later than the first day of each
2181 regular session of the General Assembly, an annual executive summary and report on the status of
2182 emergency management response plans throughout the Commonwealth and other measures taken or
2183 recommended to prevent, respond to and recover from disasters, including acts of terrorism. This report
2184 shall be made available to the Division of Legislative Automated Systems for the processing of
2185 legislative documents and reports. Information submitted in accordance with the procedures set forth in
2186 subdivision-4.14 of § 2.2-3705.2 shall not be disclosed unless:

- 2187 a. It is requested by law-enforcement authorities in furtherance of an official investigation or the
2188 prosecution of a criminal act;
- 2189 b. The agency holding the record is served with a proper judicial order; or
- 2190 c. The agency holding the record has obtained written consent to release the information from the
2191 Department of Emergency Management;
- 2192 4. Promulgate plans and programs that are conducive to adequate disaster mitigation
2193 preparedness, response and recovery programs;
- 2194 5. Prepare and maintain a State Emergency Operations Plan for disaster response and recovery
2195 operations that assigns primary and support responsibilities for basic emergency services functions to
2196 state agencies, organizations and personnel as appropriate;
- 2197 6. Coordinate and administer disaster mitigation, preparedness, response and recovery plans and
2198 programs with the proponent federal, state and local government agencies and related groups;
- 2199 7. Provide guidance and assistance to state agencies and units of local government in developing
2200 and maintaining emergency management and continuity of operations (COOP) programs, plans and
2201 systems;
- 2202 8. Make necessary recommendations to agencies of the federal, state, or local governments on
2203 preventive and preparedness measures designed to eliminate or reduce disasters and their impact;
- 2204 9. Determine requirements of the Commonwealth and its political subdivisions for those
2205 necessities needed in the event of a declared emergency which are not otherwise readily available;
- 2206 10. Assist state agencies and political subdivisions in establishing and operating training
2207 programs and programs of public information and education regarding emergency services and disaster
2208 preparedness activities;
- 2209 11. Consult with the Board of Education regarding the development and revision of a model
2210 school crisis and emergency management plan for the purpose of assisting public schools in
2211 establishing, operating, and maintaining emergency services and disaster preparedness activities;
- 2212 12. Consult with the State Council of Higher Education in the development and revision of a
2213 model institutional crisis and emergency management plan for the purpose of assisting public and

2214 private two-year and four-year institutions of higher education in establishing, operating, and
2215 maintaining emergency services and disaster preparedness activities and, as needed, in developing an
2216 institutional crisis and emergency management plan pursuant to § 23.1-804;

2217 13. Develop standards, provide guidance and encourage the maintenance of local and state
2218 agency emergency operations plans, which shall include the requirement for a provision that the
2219 Department of Criminal Justice Services and the Virginia Criminal Injuries Compensation Fund be
2220 contacted immediately to deploy assistance in the event of an emergency as defined in the emergency
2221 response plan when there are victims as defined in § 19.2-11.01. The Department of Criminal Justice
2222 Services and the Virginia Criminal Injuries Compensation Fund shall be the lead coordinating agencies
2223 for those individuals determined to be victims, and the plan shall also contain current contact
2224 information for both agencies;

2225 14. Prepare, maintain, coordinate or implement emergency resource management plans and
2226 programs with federal, state and local government agencies and related groups, and make such surveys
2227 of industries, resources, and facilities within the Commonwealth, both public and private, as are
2228 necessary to carry out the purposes of this chapter;

2229 15. Coordinate with the federal government and any public or private agency or entity in
2230 achieving any purpose of this chapter and in implementing programs for disaster prevention, mitigation,
2231 preparation, response, and recovery;

2232 16. Establish guidelines pursuant to § 44-146.28, and administer payments to eligible applicants
2233 as authorized by the Governor;

2234 17. Coordinate and be responsible for the receipt, evaluation, and dissemination of emergency
2235 services intelligence pertaining to all probable hazards affecting the Commonwealth;

2236 18. Coordinate intelligence activities relating to terrorism with the Department of State Police;
2237 and

2238 19. Develop an emergency response plan to address the needs of individuals with household pets
2239 and service animals in the event of a disaster and assist and coordinate with local agencies in developing
2240 an emergency response plan for household pets and service animals.

2241 The Department of Emergency Management shall ensure that all such plans, assessments, and
2242 programs required by this subsection include specific preparedness for, and response to, disasters
2243 resulting from electromagnetic pulses and geomagnetic disturbances.

2244 C. The Department of Emergency Management shall during a period of impending emergency or
2245 declared emergency be responsible for:

2246 1. The receipt, evaluation, and dissemination of intelligence pertaining to an impending or actual
2247 disaster;

2248 2. Providing facilities from which state agencies and supporting organizations may conduct
2249 emergency operations;

2250 3. Providing an adequate communications and warning system capable of notifying all political
2251 subdivisions in the Commonwealth of an impending disaster within a reasonable time;

2252 4. Establishing and maintaining liaison with affected political subdivisions;

2253 5. Determining requirements for disaster relief and recovery assistance;

2254 6. Coordinating disaster response actions of federal, state and volunteer relief agencies;

2255 7. Coordinating and providing guidance and assistance to affected political subdivisions to
2256 ensure orderly and timely response to and recovery from disaster effects.

2257 D. The Department of Emergency Management shall be provided the necessary facilities and
2258 equipment needed to perform its normal day-to-day activities and coordinate disaster-related activities of
2259 the various federal, state, and other agencies during a state of emergency declaration by the Governor or
2260 following a major disaster declaration by the President.

2261 E. The Department of Emergency Management is authorized to enter into all contracts and
2262 agreements necessary or incidental to performance of any of its duties stated in this section or otherwise
2263 assigned to it by law, including contracts with the United States, other states, agencies and government
2264 subdivisions of the Commonwealth, and other appropriate public and private entities.

2265 F. The Department of Emergency Management shall encourage private industries whose goods
2266 and services are deemed vital to the public good to provide annually updated preparedness assessments
2267 to the local coordinator of emergency management on or before April 1 of each year, to facilitate overall

2268 Commonwealth preparedness. For the purposes of this section, "private industry" means companies,
2269 private hospitals, and other businesses or organizations deemed by the State Coordinator of Emergency
2270 Management to be essential to the public safety and well-being of the citizens of the Commonwealth.

2271 G. The Department of Emergency Management shall establish a Coordinator of Search and
2272 Rescue. Powers and duties of the Coordinator shall include:

- 2273 1. Coordinating the search and rescue function of the Department of Emergency Management;
- 2274 2. Coordinating with local, state, and federal agencies involved in search and rescue;
- 2275 3. Coordinating the activities of search and rescue organizations involved in search and rescue;
- 2276 4. Maintaining a register of search and rescue certifications, training, and responses;
- 2277 5. Establishing a memorandum of understanding with the Virginia Search and Rescue Council
2278 and its respective member agencies regarding search and rescue efforts;
- 2279 6. Providing on-scene search and rescue coordination when requested by an authorized person;
- 2280 7. Providing specialized search and rescue training to police, fire-rescue, EMS, emergency
2281 managers, volunteer search and rescue responders, and others who might have a duty to respond to a
2282 search and rescue emergency;
- 2283 8. Gathering and maintaining statistics on search and rescue in the Commonwealth;
- 2284 9. Compiling, maintaining, and making available an inventory of search and rescue resources
2285 available in the Commonwealth;
- 2286 10. Periodically reviewing search and rescue cases and developing best professional practices;
2287 and
- 2288 11. Providing an annual report to the Secretary of Public Safety and Homeland Security on the
2289 current readiness of Virginia's search and rescue efforts.

2290 Nothing in this chapter shall be construed as authorizing the Department of Emergency
2291 Management to take direct operational responsibilities from local, state, or federal law enforcement in
2292 the course of search and rescue or missing person cases.

2293 **§ 44-146.22. Development of measures to prevent or reduce harmful consequences of**
2294 **disasters; disclosure of information.**

2295 A. In addition to disaster prevention measures included in state, local and interjurisdictional
2296 emergency operations plans, the Governor shall consider, on a continuing basis, hazard mitigation or
2297 other measures that could be taken to prevent or reduce the harmful consequences of disasters. At his
2298 direction, and pursuant to any other authority, state agencies, including, but not limited to, those charged
2299 with responsibilities in connection with floodplain management, stream encroachment and flow
2300 regulation, weather modification, fire prevention and control, air quality, public works, critical
2301 infrastructure protection, land use and land-use planning, and construction standards, shall make studies
2302 of disaster prevention. The Governor, from time to time, shall make recommendations to the General
2303 Assembly, local governments, and other appropriate public and private entities as may facilitate
2304 measures for prevention or reduction of the harmful consequences of disasters.

2305 B. The Governor or agencies acting on his behalf may receive information, voluntarily submitted
2306 from both public and nonpublic entities, related to the protection of the nation's critical infrastructure
2307 sectors and components that are located in Virginia or affect the health, safety, and welfare of the
2308 citizens of Virginia. Information submitted by any public or nonpublic entity in accordance with the
2309 procedures set forth in subdivision [4.14](#) of § 2.2-3705.2 shall not be disclosed unless:

- 2310 1. It is requested by law-enforcement authorities in furtherance of an official investigation or the
2311 prosecution of a criminal act;
- 2312 2. The agency holding the record is served with a proper judicial order; or
- 2313 3. The agency holding the record has obtained the written consent to release the information
2314 from the entity voluntarily submitting it.

2315 **§ 54.1-2517. Health Practitioners' Monitoring Program Committee; certain meetings,**
2316 **decisions to be excepted from the Freedom of Information Act; confidentiality of records;**
2317 **immunity from liability.**

2318 A. The Health Practitioners' Monitoring Program Committee shall consist of nine persons
2319 appointed by the Director to advise and assist in the operation of the Program, of whom eight shall be
2320 licensed, certified, or registered practitioners and one shall be a citizen member. Of the members who
2321 are licensed, certified, or registered practitioners, at least one shall be licensed to practice medicine or

2322 osteopathy in Virginia and engaged in active clinical practice, at least one shall be a registered nurse
2323 engaged in active practice, and all shall be knowledgeable about impairment and rehabilitation,
2324 particularly as related to the monitoring of health care practitioners. The Committee shall have the
2325 following powers and duties:

- 2326 1. To determine, in accordance with the regulations, eligibility to enter into the Program;
- 2327 2. To determine, in accordance with the regulations, those Program participants who are eligible
2328 for stayed disciplinary action;
- 2329 3. To enter into written contracts with practitioners which may include, among other terms and
2330 conditions, withdrawal from practice or limitations on the scope of the practice for a period of time;
- 2331 4. To report to the Director and the health regulatory boards as necessary on the status of
2332 applicants for and participants in the Program;
- 2333 5. To report to the Director, at least annually, on the performance of the Program; and
- 2334 6. To assist the Director in carrying out the provisions of this chapter.

2335 B. Records of the Program, to the extent such records identify individual practitioners in the
2336 Program, shall be privileged and confidential, and shall not be disclosed consistent with the Virginia
2337 Freedom of Information Act (§ 2.2-3700 et seq.). Such records shall be used only in the exercise of the
2338 proper functions as set forth in this chapter and shall not be public records nor shall such records be
2339 subject to court order, except as provided in subdivision C 4, or be subject to discovery or introduction
2340 as evidence in any civil, criminal, or administrative proceedings except those conducted by a health
2341 regulatory board.

2342 C. Notwithstanding the provisions of subsection B and of subdivision ~~H~~2 of § 2.2-3705.5, the
2343 Committee may disclose such records relative to an impaired practitioner only:

- 2344 1. When disclosure of the information is essential to the monitoring needs of the impaired
2345 practitioner;
- 2346 2. When release of the information has been authorized in writing by the impaired practitioner;
- 2347 3. To a health regulatory board within the Department of Health Professions; or

2348 4. When an order by a court of competent jurisdiction has been granted, upon a showing of good
2349 cause therefor, including the need to avert a substantial risk of death or serious bodily harm. In assessing
2350 good cause, the court shall weigh the public interest and the need for disclosure against the injury to the
2351 patient, to the physician-patient relationship, and to the treatment services. Upon the granting of such
2352 order, the court, in determining the extent to which any disclosure of all or any part of any record is
2353 necessary, shall impose appropriate protections against unauthorized disclosures.

2354 D. Pursuant to subdivision A 24 of § 2.2-3711, the proceedings of the Committee which in any
2355 way pertain or refer to a specific practitioner who may be, or who is actually, impaired and who may be
2356 or is, by reason of such impairment, subject to disciplinary action by the relevant board shall be
2357 excluded from the requirements of the Freedom of Information Act (§ 2.2-3700 et seq.) and may be
2358 closed. Such proceedings shall be privileged and confidential.

2359 E. The members of the Committee shall be immune from liability resulting from the exercise of
2360 the powers and duties of the Committee as provided in § 8.01-581.13.

2361 **§ 54.1-2523. Confidentiality of data; disclosure of information; discretionary authority of**
2362 **Director.**

2363 A. All data, records, and reports relating to the prescribing and dispensing of covered substances
2364 to recipients and any abstracts from such data, records, and reports that are in the possession of the
2365 Prescription Monitoring Program pursuant to this chapter and any material relating to the operation or
2366 security of the program shall be confidential and shall be exempt from the Virginia Freedom of
2367 Information Act (§ 2.2-3700 et seq.) pursuant to subdivision ~~15.2~~ of § 2.2-3705.5. Records in possession
2368 of the Prescription Monitoring Program shall not be available for civil subpoena, nor shall such records
2369 be disclosed, discoverable, or compelled to be produced in any civil proceeding, nor shall such records
2370 be deemed admissible as evidence in any civil proceeding for any reason. Further, the Director shall
2371 only have discretion to disclose any such information as provided in subsections B and C.

2372 B. Upon receiving a request for information in accordance with the Department's regulations and
2373 in compliance with applicable federal law and regulations, the Director shall disclose the following:

2374 1. Information relevant to a specific investigation of a specific recipient or of a specific dispenser
2375 or prescriber to an agent who has completed the Virginia State Police Drug Diversion School designated
2376 by the superintendent of the Department of State Police or designated by the chief law-enforcement
2377 officer of any county, city, or town or campus police department to conduct drug diversion
2378 investigations pursuant to § 54.1-3405.

2379 2. Information relevant to an investigation or inspection of or allegation of misconduct by a
2380 specific person licensed, certified, or registered by or an applicant for licensure, certification, or
2381 registration by a health regulatory board; information relevant to a disciplinary proceeding before a
2382 health regulatory board or in any subsequent trial or appeal of an action or board order to designated
2383 employees of the Department of Health Professions; or to designated persons operating the Health
2384 Practitioners' Monitoring Program pursuant to Chapter 25.1 (§ 54.1-2515 et seq.).

2385 3. Information relevant to the proceedings of any investigatory grand jury or special grand jury
2386 that has been properly impaneled in accordance with the provisions of Chapter 13 (§ 19.2-191 et seq.) of
2387 Title 19.2.

2388 4. Information relevant to a specific investigation of a specific recipient, dispenser, or prescriber
2389 to an agent of a federal law-enforcement agency with authority to conduct drug diversion investigations.

2390 5. Information relevant to a specific investigation, supervision, or monitoring of a specific
2391 recipient for purposes of the administration of criminal justice pursuant to Chapter 1 (§ 9.1-100 et seq.)
2392 of Title 9.1 to a probation or parole officer as described in Article 2 (§ 53.1-141 et seq.) of Chapter 4 of
2393 Title 53.1 or a local community-based probation officer as described in § 9.1-176.1 who has completed
2394 the Virginia State Police Drug Diversion School designated by the Director of the Department of
2395 Corrections or his designee.

2396 C. In accordance with the Department's regulations and applicable federal law and regulations,
2397 the Director may, in his discretion, disclose:

2398 1. Information in the possession of the program concerning a recipient who is over the age of 18
2399 to that recipient. The information shall be mailed to the street or mailing address indicated on the
2400 recipient request form.

2401 2. Information on a specific recipient to a prescriber, as defined in this chapter, for the purpose of
2402 establishing the treatment history of the specific recipient when such recipient is either under care and
2403 treatment by the prescriber or the prescriber is consulting on or initiating treatment of such recipient. In
2404 a manner specified by the Director in regulation, notice shall be given to patients that information may
2405 be requested by the prescriber from the Prescription Monitoring Program.

2406 3. Information on a specific recipient to a dispenser for the purpose of establishing a prescription
2407 history to assist the dispenser in (i) determining the validity of a prescription in accordance with § 54.1-
2408 3303 or (ii) providing clinical consultation on the care and treatment of the recipient. In a manner
2409 specified by the Director in regulation, notice shall be given to patients that information may be
2410 requested by the dispenser from the Prescription Monitoring Program.

2411 4. Information relevant to an investigation or regulatory proceeding of a specific dispenser or
2412 prescriber to other regulatory authorities concerned with granting, limiting or denying licenses,
2413 certificates or registrations to practice a health profession when such regulatory authority licenses such
2414 dispenser or prescriber or such dispenser or prescriber is seeking licensure by such other regulatory
2415 authority.

2416 5. Information relevant to an investigation relating to a specific dispenser or prescriber who is a
2417 participating provider in the Virginia Medicaid program or information relevant to an investigation
2418 relating to a specific recipient who is currently eligible for and receiving or who has been eligible for
2419 and has received medical assistance services to the Medicaid Fraud Control Unit of the Office of the
2420 Attorney General or to designated employees of the Department of Medical Assistance Services, as
2421 appropriate.

2422 6. Information relevant to determination of the cause of death of a specific recipient to the
2423 designated employees of the Office of the Chief Medical Examiner.

2424 7. Information for the purpose of bona fide research or education to qualified personnel;
2425 however, data elements that would reasonably identify a specific recipient, prescriber, or dispenser shall
2426 be deleted or redacted from such information prior to disclosure. Further, release of the information shall

2427 only be made pursuant to a written agreement between such qualified personnel and the Director in
2428 order to ensure compliance with this subdivision.

2429 8. Information relating to prescriptions for covered substances issued by a specific prescriber,
2430 which have been dispensed and reported to the Program, to that prescriber.

2431 9. Information about a specific recipient who is a member of a Virginia Medicaid managed care
2432 program to a physician or pharmacist licensed in the Commonwealth and employed by the Virginia
2433 Medicaid managed care program. Such information shall only be used to determine eligibility for and to
2434 manage the care of the specific recipient in a Patient Utilization Management Safety or similar program.
2435 Notice shall be given to recipients that information may be requested by a licensed physician or
2436 pharmacist employed by the Virginia Medicaid managed care program from the Prescription Monitoring
2437 Program.

2438 10. (Expires July 1, 2022) Information to the Board of Medicine about prescribers who meet a
2439 certain threshold for prescribing covered substances for the purpose of requiring relevant continuing
2440 education. The threshold shall be determined by the Board of Medicine in consultation with the
2441 Program.

2442 D. The Director may enter into agreements for mutual exchange of information among
2443 prescription monitoring programs in other jurisdictions, which shall only use the information for
2444 purposes allowed by this chapter.

2445 E. This section shall not be construed to supersede the provisions of § 54.1-3406 concerning the
2446 divulging of confidential records relating to investigative information.

2447 F. Confidential information that has been received, maintained or developed by any board or
2448 disclosed by the board pursuant to subsection A shall not, under any circumstances, be available for
2449 discovery or court subpoena or introduced into evidence in any medical malpractice suit or other action
2450 for damages arising out of the provision of or failure to provide services. However, this subsection shall
2451 not be construed to inhibit any investigation or prosecution conducted pursuant to Article 1 (§ 18.2-247
2452 et seq.) of Chapter 7 of Title 18.2.

2453 **2. That the provisions of §§ 2.2-3701, 2.2-3705.2, 2.2-3705.3, 2.2-3705.5, and 2.2-3705.6 of this act**
2454 **are declaratory of existing law.**

2455 #