

SENATE BILL NO. _____ HOUSE BILL NO. _____

1 A BILL to amend and reenact §§ of the Code of Virginia, to amend the Code of Virginia by adding in
 2 Title 2.2- a chapter numbered 37.1 containing articles numbered 1 through 3, consisting of
 3 sections numbered 2.2-3715 through 2.2-3745X , and to repeal Chapter 37 (§ 2.2-3700 through
 4 2.2-3714) of Title 2.2 of the Code of Virginia, relating to the Virginia Freedom of Information
 5 Act; public access to public records.

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

7 **1. That § of the Code of Virginia is amended and reenacted and that the Code of Virginia is**
 8 **amended by adding in Title 2.2- a chapter numbered 37.1 containing articles numbered 1 through**
 9 **3, consisting of sections numbered 2.2-3715 through 2.2-3745X as follows:**

10 CHAPTER 37.1.

11 VIRGINIA FREEDOM OF INFORMATION ACT.

12 Article 1.

13 General Provisions.

14 § 2.2-3715. § 2.2-3700. Short title; policy.

15 A. This chapter may be cited as "The Virginia Freedom of Information Act."

16 B. By enacting this chapter, the General Assembly ensures the people of the Commonwealth
 17 ready access to public records in the custody of a public body or its officers and employees, and free
 18 entry to meetings of public bodies wherein the business of the people is being conducted. The affairs of
 19 government are not intended to be conducted in an atmosphere of secrecy since at all times the public is
 20 to be the beneficiary of any action taken at any level of government. Unless a public body or its officers
 21 or employees specifically elect to exercise an exemption provided by this chapter or any other statute,
 22 every meeting shall be open to the public and all public records shall be available for inspection and
 23 copying upon request. All public records and meetings shall be presumed open, unless an exemption is
 24 properly invoked.

25 The provisions of this chapter shall be liberally construed to promote an increased awareness by
26 all persons of governmental activities and afford every opportunity to citizens to witness the operations
27 of government. Any exemption from public access to records or meetings shall be narrowly construed
28 and no record shall be withheld or meeting closed to the public unless specifically made exempt
29 pursuant to this chapter or other specific provision of law. This chapter shall not be construed to
30 discourage the free discussion by government officials or employees of public matters with the citizens
31 of the Commonwealth.

32 All public bodies and their officers and employees shall make reasonable efforts to reach an
33 agreement with a requester concerning the production of the records requested.

34 Any ordinance adopted by a local governing body that conflicts with the provisions of this
35 chapter shall be void.

36 **§2.2-3716. § 2.2-3701. Definitions.**

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

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

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

43 **§2.2-3717. § 2.2-3702. Notice of chapter.**

44 Any person elected, reelected, appointed or reappointed to any body not excepted from this
45 chapter shall (i) be furnished by the public body's administrator or legal counsel with a copy of this
46 chapter within two weeks following election, reelection, appointment or reappointment and (ii) read and
47 become familiar with the provisions of this chapter.

48 **§ 2.2-3718. § 2.2-3703. Public bodies and records to which chapter inapplicable; voter**
49 **registration and election records; access by persons incarcerated in a state, local, or federal**
50 **correctional facility.**

51 A. The provisions of this chapter shall not apply to:

52 1. The Virginia Parole Board, except that (i) information from the Virginia Parole Board
53 providing the number of inmates considered by such Board for discretionary parole, the number of
54 inmates granted or denied parole, and the number of parolees returned to the custody of the Department
55 of Corrections solely as a result of a determination by such Board of a violation of parole shall be open
56 to inspection and available for release, on a monthly basis, as provided by § 2.2-3704 and (ii) all records
57 concerning the finances of the Virginia Parole Board shall be public records and subject to the
58 provisions of this chapter. The information required by clause (i) shall be furnished by offense, sex, race,
59 age of the inmate, and the locality in which the conviction was obtained, upon the request of the party
60 seeking the information;

61 2. Petit juries and grand juries;

62 3. Family assessment and planning teams established pursuant to § 2.2-5207;

63 4. The Virginia State Crime Commission; and

64 5. The records required by law to be maintained by the clerks of the courts of record, as defined
65 in § 1-212, and courts not of record, as defined in § 16.1-69.5. However, other records maintained by the
66 clerks of such courts shall be public records and subject to the provisions of this chapter.

67 B. Public access to voter registration and election records shall be governed by the provisions of
68 Title 24.2 and this chapter. The provisions of Title 24.2 shall be controlling in the event of any conflict.

69 C. No provision of this chapter or Chapter 21 (§ 30-178 et seq.) of Title 30 shall be construed to
70 afford any rights to any person (i) incarcerated in a state, local or federal correctional facility, whether or
71 not such facility is (a) located in the Commonwealth or (b) operated pursuant to the Corrections Private
72 Management Act (§ 53.1-261 et seq.) or (ii) civilly committed pursuant to the Sexually Violent
73 Predators Act (§ 37.2-900 et seq.). However, this subsection shall not be construed to prevent such
74 persons from exercising their constitutionally protected rights, including, but not limited to, their right to
75 call for evidence in their favor in a criminal prosecution.

76 § 2.2-3719. § 2.2-3704.1. Posting of notice of rights and responsibilities by state public
77 bodies; assistance by the Freedom of Information Advisory Council.

78 A. All state public bodies created in the executive branch of state government and subject to the
79 provisions of this chapter shall make available the following information to the public upon request and
80 shall post such information on the Internet:

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

87 2. Contact information for the person designated by the public body to (i) assist a requester in
88 making a request for records or (ii) respond to requests for public records;

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

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

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

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

97 **§ 2.2-3720. § 2.2-3713. Proceedings for enforcement of chapter.**

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

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

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

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

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

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

122 D. The petition shall allege with reasonable specificity the circumstances of the denial of the
123 rights and privileges conferred by this chapter. A single instance of denial of the rights and privileges
124 conferred by this chapter shall be sufficient to invoke the remedies granted herein. If the court finds the
125 denial to be in violation of the provisions of this chapter, the petitioner shall be entitled to recover
126 reasonable costs, including costs and reasonable fees for expert witnesses, and attorneys' fees from the
127 public body if the petitioner substantially prevails on the merits of the case, unless special circumstances
128 would make an award unjust. In making this determination, a court may consider, among other things,
129 the reliance of a public body on an opinion of the Attorney General or a decision of a court that
130 substantially supports the public body's position.

131 E. In any action to enforce the provisions of this chapter, the public body shall bear the burden of
132 proof to establish an exemption by a preponderance of the evidence. Any failure by a public body to
133 follow the procedures established by this chapter shall be presumed to be a violation of this chapter.

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

137 **§ 2.2-3721. § 2.2-3714. Violations and penalties.**

138 In a proceeding commenced against any officer, employee, or member of a public body under §
139 2.2-3713 for a violation of § 2.2-3704, 2.2-3705.1 through 2.2-3705.8, 2.2-3706, 2.2-3707, 2.2-3708,
140 2.2-3708.1, 2.2-3710, 2.2-3711 or 2.2-3712, the court, if it finds that a violation was willfully and
141 knowingly made, shall impose upon such officer, employee, or member in his individual capacity,
142 whether a writ of mandamus or injunctive relief is awarded or not, a civil penalty of not less than \$500
143 nor more than \$2,000, which amount shall be paid into the State Literary Fund. For a second or
144 subsequent violation, such civil penalty shall be not less than \$2,000 nor more than \$5,000.

145 Article 2.

146 Access to Public Records.

147 **§ 2.2-3722. (from 3701). Definitions.**

148 As used in this article, unless the context requires a different meaning:

149 "Custodian" means the public official in charge of an office having public records. (NEEDED?
150 from 42.1-77VPRA)

151 "Public official" means all persons holding any office created by the Constitution of Virginia or
152 by any act of the General Assembly, the Governor and all other officers of the executive branch of the
153 state government, and all other officers, heads, presidents or chairmen of boards, commissions,
154 departments, and agencies of the state government or its political subdivisions.

155 DRAFTERS NOTE: From § 42.1-77 VPRA) NEEDED?

156 "Public records" means all writings and recordings that consist of letters, words or numbers, or
157 their equivalent, set down by handwriting, typewriting, printing, photostating, photography, magnetic

158 impulse, optical or magneto-optical form, mechanical or electronic recording or other form of data
159 compilation, however stored, and regardless of physical form or characteristics, prepared or owned by,
160 or in the possession of a public body or its officers, employees or agents in the transaction of public
161 business. Records that are not prepared for, used, or in the possession in the transaction of public
162 business are not public records.

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

166 **§ 2.2-3723. § 2.2-3703. Public bodies and records to which chapter inapplicable; voter**
167 **registration and election records; access by persons incarcerated in a state, local, or federal**
168 **correctional facility.**

169 A. The provisions of this chapter shall not apply to:

170 1. The Virginia Parole Board, except that (i) information from the Virginia Parole Board
171 providing the number of inmates considered by such Board for discretionary parole, the number of
172 inmates granted or denied parole, and the number of parolees returned to the custody of the Department
173 of Corrections solely as a result of a determination by such Board of a violation of parole shall be open
174 to inspection and available for release, on a monthly basis, as provided by § 2.2-3704 and (ii) all records
175 concerning the finances of the Virginia Parole Board shall be public records and subject to the
176 provisions of this chapter. The information required by clause (i) shall be furnished by offense, sex, race,
177 age of the inmate, and the locality in which the conviction was obtained, upon the request of the party
178 seeking the information;

179 2. Petit juries and grand juries;

180 3. Family assessment and planning teams established pursuant to § 2.2-5207;

181 4. The Virginia State Crime Commission; and

182 5. The records required by law to be maintained by the clerks of the courts of record, as defined
183 in § 1-212, and courts not of record, as defined in § 16.1-69.5. However, other records maintained by the
184 clerks of such courts shall be public records and subject to the provisions of this chapter.

185 B. Public access to voter registration and election records shall be governed by the provisions of
186 Title 24.2 and this chapter. The provisions of Title 24.2 shall be controlling in the event of any conflict.

187 C. No provision of this chapter or Chapter 21 (§ 30-178 et seq.) of Title 30 shall be construed to
188 afford any rights to any person (i) incarcerated in a state, local or federal correctional facility, whether or
189 not such facility is (a) located in the Commonwealth or (b) operated pursuant to the Corrections Private
190 Management Act (§ 53.1-261 et seq.) or (ii) civilly committed pursuant to the Sexually Violent
191 Predators Act (§ 37.2-900 et seq.). However, this subsection shall not be construed to prevent such
192 persons from exercising their constitutionally protected rights, including, but not limited to, their right to
193 call for evidence in their favor in a criminal prosecution.

194 **2.2-3724. (3704)§ 2.2-3704. Public records to be open to inspection; procedure for**
195 **requesting records and responding to request.**

196 A. Except as otherwise specifically provided by law, all public records shall be open to
197 inspection and copying by any citizens of the Commonwealth during the regular office hours of the
198 custodian of such records. Access to such records shall not be denied to citizens of the Commonwealth,
199 representatives of newspapers and magazines with circulation in the Commonwealth, and
200 representatives of radio and television stations broadcasting in or into the Commonwealth. The
201 custodian may require the requester to provide his name and legal address. The custodian of such
202 records shall take all necessary precautions for their preservation and safekeeping.

203 B. A request for public records shall identify the requested records with reasonable specificity.
204 The request need not make reference to this chapter in order to invoke the provisions of this chapter or
205 to impose the time limits for response by a public body. Any public body that is subject to this chapter
206 and that is the custodian of the requested records shall promptly, but in all cases within five working
207 days of receiving a request, provide the requested records to the requester or make one of the following
208 responses in writing:

209 1. The requested records are being entirely withheld because their release is prohibited by law or
210 the custodian has exercised his discretion to withhold the records in accordance with this chapter. Such
211 response shall identify with reasonable particularity the volume and subject matter of withheld records,

212 and cite, as to each category of withheld records, the specific Code section that authorizes the
213 withholding of the records.

214 2. The requested records are being provided in part and are being withheld in part because the
215 release of part of the records is prohibited by law or the custodian has exercised his discretion to
216 withhold a portion of the records in accordance with this chapter. Such response shall identify with
217 reasonable particularity the subject matter of withheld portions, and cite, as to each category of withheld
218 records, the specific Code section that authorizes the withholding of the records. When a portion of a
219 requested record is withheld, the public body may delete or excise only that portion of the record to
220 which an exemption applies and shall release the remainder of the record.

221 3. The requested records could not be found or do not exist. However, if the public body that
222 received the request knows that another public body has the requested records, the response shall include
223 contact information for the other public body.

224 4. It is not practically possible to provide the requested records or to determine whether they are
225 available within the five-work-day period. Such response shall specify the conditions that make a
226 response impossible. If the response is made within five working days, the public body shall have an
227 additional seven work days in which to provide one of the four preceding responses.

228 C. Any public body may petition the appropriate court for additional time to respond to a request
229 for records when the request is for an extraordinary volume of records or requires an extraordinarily
230 lengthy search, and a response by the public body within the time required by this chapter will prevent
231 the public body from meeting its operational responsibilities. Before proceeding with the petition,
232 however, the public body shall make reasonable efforts to reach an agreement with the requester
233 concerning the production of the records requested.

234 D. Subject to the provisions of this subsection, no public body shall be required to create a new
235 record if the record does not already exist. However, a public body may abstract or summarize
236 information under such terms and conditions as agreed between the requester and the public body. When
237 electronic or other databases are combined or contain exempt and nonexempt records, the public body

238 may provide access to the exempt records if not otherwise prohibited by law, but shall provide access to
239 the nonexempt records as provided by this chapter.

240 Public bodies shall produce nonexempt records maintained in an electronic database in any
241 tangible medium identified by the requester, including, where the public body has the capability, the
242 option of posting the records on a website or delivering the records through an electronic mail address
243 provided by the requester, if that medium is used by the public body in the regular course of business.
244 No public body shall be required to produce records from an electronic database in a format not
245 regularly used by the public body. However, the public body shall make reasonable efforts to provide
246 records in any format under such terms and conditions as agreed between the requester and public body,
247 including the payment of reasonable costs. The excision of exempt fields of information from a database
248 or the conversion of data from one available format to another shall not be deemed the creation,
249 preparation or compilation of a new public record. (SOURCE: last sentence of 1st paragraph and second
250 paragraph of subsection G)

251 E. Failure to respond to a request for records shall be deemed a denial of the request and shall
252 constitute a violation of this chapter.

253 § 2.2-3725. (subsections F, H, I, and J, and parts of subsection G of 2.2-3704) Allowable
254 charges for production of records; transfer of records for storage, etc.

255 A. A public body may make reasonable charges not to exceed its actual cost incurred in
256 accessing, duplicating, supplying, or searching for the requested records. No public body shall impose
257 any extraneous, intermediary or surplus fees or expenses to recoup the general costs associated with
258 creating or maintaining records or transacting the general business of the public body. Any duplicating
259 fee charged by a public body shall not exceed the actual cost of duplication.

260 B. Public records maintained by a public body in an electronic data processing system, computer
261 database, or any other structured collection of data shall be made available to a requester at a reasonable
262 cost, not to exceed the actual cost in accordance with this section (SOURCE: from 1 sentence of 1st
263 paragraph of subsection G of 3704).

264 C. The public body may also make a reasonable charge for the cost incurred in supplying records
265 produced from a geographic information system at the request of anyone other than the owner of the
266 land that is the subject of the request. However, such charges shall not exceed the actual cost to the
267 public body in supplying such records, except that the public body may charge, on a pro rata per acre
268 basis, for the cost of creating topographical maps developed by the public body, for such maps or
269 portions thereof, which encompass a contiguous area greater than 50 acres.

270 D. All charges for the supplying of requested records shall be estimated in advance at the
271 request of the citizen.

272 E. In any case where a public body determines in advance that charges for producing the
273 requested records are likely to exceed \$200, the public body may, before continuing to process the
274 request, require the requester to agree to payment of a deposit not to exceed the amount of the advance
275 determination. The deposit shall be credited toward the final cost of supplying the requested records.
276 The period within which the public body shall respond under this section shall be tolled for the amount
277 of time that elapses between notice of the advance determination and the response of the requester.
278 (SOURCE: Subsection H of 2.2-3704).

279 F. Before processing a request for records, a public body may require the requester to pay any
280 amounts owed to the public body for previous requests for records that remain unpaid 30 days or more
281 after billing (SOURCE: Subsection I of 2.203704).

282 G. In the event a public body has transferred possession of public records to any entity, including
283 but not limited to any other public body, for storage, maintenance, or archiving, the public body
284 initiating the transfer of such records shall remain the custodian of such records for purposes of
285 responding to requests for public records made pursuant to this chapter and shall be responsible for
286 retrieving and supplying such public records to the requester. In the event a public body has transferred
287 public records for storage, maintenance, or archiving and such transferring public body is no longer in
288 existence, any public body that is a successor to the transferring public body shall be deemed the
289 custodian of such records. In the event no successor entity exists, the entity in possession of the public
290 records shall be deemed the custodian of the records for purposes of compliance with this chapter, and

291 shall retrieve and supply such records to the requester. Nothing in this subsection shall be construed to
292 apply to records transferred to the Library of Virginia for permanent archiving pursuant to the duties
293 imposed by the Virginia Public Records Act (§ 42.1-76 et seq.). In accordance with § 42.1-79, the
294 Library of Virginia shall be the custodian of such permanently archived records and shall be responsible
295 for responding to requests for such records made pursuant to this chapter. SOURCE: subsection J of 2.2-
296 3704).

297 **§ 2.2-3726. § 2.2-3705.1. Exclusions to application of chapter; exclusions of general**
298 **application to public bodies.**

299 The following records are excluded from the provisions of this chapter but may be disclosed by
300 the custodian in his discretion, except where such disclosure is prohibited by law:

301 1. Personnel records containing information concerning identifiable individuals, except that
302 access shall not be denied to the person who is the subject thereof. Any person who is the subject of any
303 personnel record and who is 18 years of age or older may waive, in writing, the protections afforded by
304 this subdivision. If the protections are so waived, the public body shall open such records for inspection
305 and copying.

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

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

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

315 As used in this subdivision, "test or examination" shall include (a) any scoring key for any such
316 test or examination and (b) any other document that would jeopardize the security of the test or
317 examination. Nothing contained in this subdivision shall prohibit the release of test scores or results as

318 provided by law, or limit access to individual records as provided by law. However, the subject of such
319 employment tests shall be entitled to review and inspect all records relative to his performance on such
320 employment tests.

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

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

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

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

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

338 9. Records concerning reserves established in specific claims administered by the Department of
339 the Treasury through its Division of Risk Management as provided in Article 5 (§ 2.2-1832 et seq.) of
340 Chapter 18 of this title, or by any county, city, or town; and investigative notes, correspondence and
341 information furnished in confidence with respect to an investigation of a claim or a potential claim
342 against a public body's insurance policy or self-insurance plan. However, nothing in this subdivision
343 shall prohibit the disclosure of information taken from inactive reports upon expiration of the period of
344 limitations for the filing of a civil suit.

345 10. Personal information, as defined in § 2.2-3801, including electronic mail addresses, furnished
346 to a public body for the purpose of receiving electronic mail from the public body, provided that the
347 electronic mail recipient has requested that the public body not disclose such information. However,
348 access shall not be denied to the person who is the subject of the record.

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

351 12. Records relating to the negotiation and award of a specific contract where competition or
352 bargaining is involved and where the release of such records would adversely affect the bargaining
353 position or negotiating strategy of the public body. Such records shall not be withheld after the public
354 body has made a decision to award or not to award the contract. In the case of procurement transactions
355 conducted pursuant to the Virginia Public Procurement Act (§ 2.2-4300 et seq.), the provisions of this
356 subdivision shall not apply, and any release of records relating to such transactions shall be governed by
357 the Virginia Public Procurement Act.

358 13. Those portions of records that contain account numbers or routing information for any credit
359 card, debit card, or other account with a financial institution of any person or public body. However,
360 access shall not be denied to the person who is the subject of the record. For the purposes of this
361 subdivision, "financial institution" means any organization authorized to do business under state or
362 federal laws relating to financial institutions, including, without limitation, banks and trust companies,
363 savings banks, savings and loan companies or associations, and credit unions.

364 **§ 2.2-2327. § 2.2-3705.3. (Effective January 1, 2014) Exclusions to application of chapter;**
365 **records relating to administrative investigations.**

366 The following records are excluded from the provisions of this chapter but may be disclosed by
367 the custodian in his discretion, except where such disclosure is prohibited by law:

368 1. Confidential records of all investigations of applications for licenses and permits, and of all
369 licensees and permittees, made by or submitted to the Alcoholic Beverage Control Board, the State
370 Lottery Department, the Virginia Racing Commission, the Department of Agriculture and Consumer
371 Services relating to investigations and applications pursuant to Article 1.1:1 (§ 18.2-340.15 et seq.) of

372 Chapter 8 of Title 18.2, or the Private Security Services Unit of the Department of Criminal Justice
373 Services.

374 2. Records of active investigations being conducted by the Department of Health Professions or
375 by any health regulatory board in the Commonwealth.

376 3. Investigator notes, and other correspondence and information, furnished in confidence with
377 respect to an active investigation of individual employment discrimination complaints made to the
378 Department of Human Resource Management or to such personnel of any local public body, including
379 local school boards as are responsible for conducting such investigations in confidence. However,
380 nothing in this section shall prohibit the disclosure of information taken from inactive reports in a form
381 that does not reveal the identity of charging parties, persons supplying the information or other
382 individuals involved in the investigation.

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

385 5. Investigative notes and other correspondence and information furnished in confidence with
386 respect to an investigation or conciliation process involving an alleged unlawful discriminatory practice
387 under the Virginia Human Rights Act (§ 2.2-3900 et seq.) or under any local ordinance adopted in
388 accordance with the authority specified in § 2.2-524, or adopted pursuant to § 15.2-965, or adopted prior
389 to July 1, 1987, in accordance with applicable law, relating to local human rights or human relations
390 commissions. However, nothing in this section shall prohibit the distribution of information taken from
391 inactive reports in a form that does not reveal the identity of the parties involved or other persons
392 supplying information.

393 6. Records of studies and investigations by the State Lottery Department of (i) lottery agents, (ii)
394 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 official records have not been publicly released, published or copyrighted. All studies and

398 investigations referred to under clauses (iii), (iv), and (v) shall be open to inspection and copying upon
399 completion of 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) the committee or the auditor with
407 respect to an investigation or audit conducted pursuant to § 15.2-825; or (vi) the auditors, appointed by
408 the local governing body of any county, city or town or a school board, who by charter, ordinance, or
409 statute have responsibility for conducting an investigation of any officer, department or program of such
410 body. Records of completed investigations shall be disclosed in a form that does not reveal the identity
411 of the complainants or persons supplying information to investigators. Unless disclosure is prohibited by
412 this section, the records disclosed shall include, but not be limited to, the agency involved, the identity
413 of the person who is the subject of the complaint, the nature of the complaint, and the actions taken to
414 resolve the complaint. If an investigation does not lead to corrective action, the identity of the person
415 who is the subject of the complaint may be released only with the consent of the subject person. Local
416 governing bodies shall adopt guidelines to govern the disclosure required by this subdivision.

417 8. Information furnished in confidence to the Department of Human Resource Management with
418 respect to an investigation, consultation, or mediation under § 2.2-1202.1, and memoranda,
419 correspondence and other records resulting from any such investigation, consultation or mediation.
420 However, nothing in this section shall prohibit the distribution of information taken from inactive
421 reports in a form that does not reveal the identity of the parties involved or other persons supplying
422 information.

423 9. The names, addresses and telephone numbers of complainants furnished in confidence with
424 respect to an investigation of individual zoning enforcement complaints or complaints relating to the

425 Uniform Statewide Building Code (§ 36-97 et seq.) or the Statewide Fire Prevention Code (§ 27-94 et
426 seq.) made to a local governing body.

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

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

439 12. Investigator notes, and other correspondence and information, furnished in confidence with
440 respect to an active investigation conducted by or for the Board of Education related to the denial,
441 suspension, or revocation of teacher licenses. However, this subdivision shall not prohibit the disclosure
442 of records to a local school board or division superintendent for the purpose of permitting such board or
443 superintendent to consider or to take personnel action with regard to an employee. Records of completed
444 investigations shall be disclosed in a form that does not reveal the identity of any complainant or person
445 supplying information to investigators. The records disclosed shall include information regarding the
446 school or facility involved, the identity of the person who was the subject of the complaint, the nature of
447 the complaint, and the actions taken to resolve the complaint. If an investigation fails to support a
448 complaint or does not lead to corrective action, the identity of the person who was the subject of the
449 complaint may be released only with the consent of the subject person. No personally identifiable
450 information in the records regarding a current or former student shall be released except as permitted by
451 state or federal law.

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

459 **§ 2.2-3728. § 2.2-3705.4. Exclusions to application of chapter; educational records and**
460 **certain records of educational institutions.**

461 The following records are excluded from the provisions of this chapter but may be disclosed by
462 the custodian in his discretion, except where such disclosure is prohibited by law:

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

469 The parent or legal guardian of a student may prohibit, by written request, the release of any
470 individual information regarding that student until the student reaches the age of 18 years. For scholastic
471 records of students under the age of 18 years, the right of access may be asserted only by his legal
472 guardian or parent, including a noncustodial parent, unless such parent's parental rights have been
473 terminated or a court of competent jurisdiction has restricted or denied such access. For scholastic
474 records of students who are emancipated or attending a state-supported institution of higher education,
475 the right of access may be asserted by the student.

476 Any person who is the subject of any scholastic record and who is 18 years of age or older may
477 waive, in writing, the protections afforded by this subdivision. If the protections are so waived, the
478 public body shall open such records for inspection and copying.

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

482 3. Records of the Brown v. Board of Education Scholarship Awards Committee relating to
483 personally identifiable information, including scholarship applications, personal financial information,
484 and confidential correspondence and letters of recommendation.

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

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

499 6. Personal information, as defined in § 2.2-3801, provided to the Board of the Virginia College
500 Savings Plan or its employees by or on behalf of individuals who have requested information about,
501 applied for, or entered into prepaid tuition contracts or savings trust account agreements pursuant to
502 Chapter 4.9 (§ 23-38.75 et seq.) of Title 23. Nothing in this subdivision shall be construed to prohibit
503 disclosure or publication of information in a statistical or other form that does not identify individuals or
504 provide personal information. Individuals shall be provided access to their own personal information.

505 7. Records maintained in connection with fundraising activities by or for a public institution of
506 higher education to the extent that such records reveal (i) personal fundraising strategies relating to
507 identifiable donors or prospective donors or (ii) wealth assessments; estate, financial, or tax planning
508 information; health-related information; employment, familial, or marital status information; electronic
509 mail addresses, facsimile or telephone numbers; birth dates or social security numbers of identifiable
510 donors or prospective donors. Nothing in this subdivision, however, shall be construed to authorize the
511 withholding of records relating to the amount, date, purpose, and terms of the pledge or donation, or the
512 identity of the donor unless the donor has requested anonymity in connection with or as a condition of
513 making a pledge or donation. The exclusion provided by this subdivision shall not apply to protect from
514 disclosure (i) the identities of sponsors providing grants to or contracting with the institution for the
515 performance of research services or other work or (ii) the terms and conditions of such grants or
516 contracts.

517 8. Records of a threat assessment team established by a public institution of higher education
518 pursuant to § 23-9.2:10 relating to the assessment or intervention with a specific individual. However, in
519 the event an individual who has been under assessment commits an act, or is prosecuted for the
520 commission of an act that has caused the death of, or caused serious bodily injury, including any felony
521 sexual assault, to another person, the records of such threat assessment team concerning the individual
522 under assessment shall be made available as provided by this chapter, with the exception of any criminal
523 history records obtained pursuant to § 19.2-389 or 19.2-389.1, health records obtained pursuant to §
524 32.1-127.1:03, or scholastic records as defined in § 22.1-289. The public body providing such records
525 shall remove information identifying any person who provided information to the threat assessment
526 team under a promise of confidentiality.

527 § 2.2-3729. § 2.2-3705.5. Exclusions to application of chapter; health and social services
528 records.

529 The following records are excluded from the provisions of this chapter but may be disclosed by
530 the custodian in his discretion, except where such disclosure is prohibited by law:

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

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

541 Where the person who is the subject of health records is under the age of 18, his right of access
542 may be asserted only by his guardian or his parent, including a noncustodial parent, unless such parent's
543 parental rights have been terminated, a court of competent jurisdiction has restricted or denied such
544 access, or a parent has been denied access to the health record in accordance with § 20-124.6. In
545 instances where the person who is the subject thereof is an emancipated minor, a student in a public
546 institution of higher education, or is a minor who has consented to his own treatment as authorized by §
547 16.1-338 or 54.1-2969, the right of access may be asserted by the subject person.

548 For the purposes of this chapter, statistical summaries of incidents and statistical data concerning
549 abuse of individuals receiving services compiled by the Commissioner of Behavioral Health and
550 Developmental Services shall be open to inspection and copying as provided in § 2.2-3704. No such
551 summaries or data shall include any information that identifies specific individuals receiving services.

552 2. Applications for admission to examinations or for licensure and scoring records maintained by
553 the Department of Health Professions or any board in that department on individual licensees or
554 applicants. However, such material may be made available during normal working hours for copying, at
555 the requester's expense, by the individual who is the subject thereof, in the offices of the Department of
556 Health Professions or in the offices of any health regulatory board, whichever may possess the material.

557 3. Reports, documentary evidence and other information as specified in §§ 51.5-122, 51.5-141,
558 and 63.2-104.

559 4. Investigative notes; proprietary information not published, copyrighted or patented;
560 information obtained from employee personnel records; personally identifiable information regarding
561 residents, clients or other recipients of services; other correspondence and information furnished in
562 confidence to the Department of Social Services in connection with an active investigation of an
563 applicant or licensee pursuant to Chapters 17 (§ 63.2-1700 et seq.) and 18 (§ 63.2-1800 et seq.) of Title
564 63.2; and records and information furnished to the Office of the Attorney General in connection with an
565 investigation or litigation pursuant to Article 19.1 (§ 8.01-216.1 et seq.) of Chapter 3 of Title 8.01 and
566 Chapter 9 (§ 32.1-310 et seq.) of Title 32.1. However, nothing in this section shall prohibit disclosure of
567 information from the records of completed investigations in a form that does not reveal the identity of
568 complainants, persons supplying information, or other individuals involved in the investigation.

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

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

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

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

579 9. Information and records acquired (i) during a review of any child death conducted by the State
580 Child Fatality Review team established pursuant to § 32.1-283.1 or by a local or regional child fatality
581 review team to the extent made confidential by § 32.1-283.2; (ii) during a review of any death conducted
582 by a family violence fatality review team to the extent made confidential by § 32.1-283.3; or (iii) during

583 a review of any adult death conducted by the Adult Fatality Review Team to the extent made
584 confidential by § 32.1-283.5.

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

588 11. Records of the Health Practitioners' Monitoring Program Committee within the Department
589 of Health Professions, to the extent such records may identify any practitioner who may be, or who is
590 actually, impaired to the extent disclosure is prohibited by § 54.1-2517.

591 12. Records submitted as a grant application, or accompanying a grant application, to the
592 Commonwealth Neurotrauma Initiative Advisory Board pursuant to Article 12 (§ 51.5-178 et seq.) of
593 Chapter 14 of Title 51.5, to the extent such records contain (i) medical or mental health records, or other
594 data identifying individual patients or (ii) proprietary business or research-related information produced
595 or collected by the applicant in the conduct of or as a result of study or research on medical,
596 rehabilitative, scientific, technical or scholarly issues, when such information has not been publicly
597 released, published, copyrighted or patented, if the disclosure of such information would be harmful to
598 the competitive position of the applicant.

599 13. Any record copied, recorded or received by the Commissioner of Health in the course of an
600 examination, investigation or review of a managed care health insurance plan licensee pursuant to §§
601 32.1-137.4 and 32.1-137.5, including books, records, files, accounts, papers, documents, and any or all
602 computer or other recordings.

603 14. Records, information and statistical registries required to be kept confidential pursuant to §§
604 63.2-102 and 63.2-104.

605 15. All data, records, and reports relating to the prescribing and dispensing of covered substances
606 to recipients and any abstracts from such data, records, and reports that are in the possession of the
607 Prescription Monitoring Program pursuant to Chapter 25.2 (§ 54.1-2519 et seq.) of Title 54.1 and any
608 material relating to the operation or security of the Program.

609 16. Records of the Virginia Birth-Related Neurological Injury Compensation Program required
610 to be kept confidential pursuant to § 38.2-5002.2.

611 17. Records of the State Health Commissioner relating to the health of any person or persons
612 subject to an order of quarantine or an order of isolation pursuant to Article 3.02 (§ 32.1-48.05 et seq.)
613 of Chapter 2 of Title 32.1; this provision shall not, however, be construed to prohibit the disclosure of
614 statistical summaries, abstracts or other information in aggregate form.

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

619 § 2.2-3730. § 2.2-3705.6. Exclusions to application of chapter; proprietary records and
620 trade secrets.

621 The following records are excluded from the provisions of this chapter but may be disclosed by
622 the custodian in his discretion, except where such disclosure is prohibited by law:

623 1. Proprietary information gathered by or for the Virginia Port Authority as provided in § 62.1-
624 132.4 or 62.1-134.1.

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

627 3. Confidential proprietary records, voluntarily provided by private business pursuant to a
628 promise of confidentiality from a public body, used by the public body for business, trade and tourism
629 development or retention; and memoranda, working papers or other records related to businesses that are
630 considering locating or expanding in Virginia, prepared by a public body, where competition or
631 bargaining is involved and where, if such records are made public, the financial interest of the public
632 body would be adversely affected.

633 4. Information that was filed as confidential under the Toxic Substances Information Act (§ 32.1-
634 239 et seq.), as such Act existed prior to July 1, 1992.

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

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

643 7. Confidential proprietary records related to inventory and sales, voluntarily provided by private
644 energy suppliers to the Department of Mines, Minerals and Energy, used by that Department for energy
645 contingency planning purposes or for developing consolidated statistical information on energy supplies.

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

649 9. Proprietary, commercial or financial information, balance sheets, trade secrets, and revenue
650 and cost projections provided by a private transportation business to the Virginia Department of
651 Transportation and the Department of Rail and Public Transportation for the purpose of conducting
652 transportation studies needed to obtain grants or other financial assistance under the Transportation
653 Equity Act for the 21st Century (P.L. 105-178) for transportation projects, provided such information is
654 exempt under the federal Freedom of Information Act or the federal Interstate Commerce Act or other
655 laws administered by the Surface Transportation Board or the Federal Railroad Administration with
656 respect to data provided in confidence to the Surface Transportation Board and the Federal Railroad
657 Administration. However, the exemption provided by this subdivision shall not apply to any wholly
658 owned subsidiary of a public body.

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

662 11. a. Memoranda, staff evaluations, or other records prepared by the responsible public entity,
663 its staff, outside advisors, or consultants exclusively for the evaluation and negotiation of proposals filed
664 under the Public-Private Transportation Act of 1995 (§ 56-556 et seq.) or the Public Private Education
665 Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.), where (i) if such records were made public
666 prior to or after the execution of an interim or a comprehensive agreement, § 56-573.1:1 or 56-575.17
667 notwithstanding, the financial interest or bargaining position of the public entity would be adversely
668 affected, and (ii) the basis for the determination required in clause (i) is documented in writing by the
669 responsible public entity; and

670 b. Records provided by a private entity to a responsible public entity, affected jurisdiction, or
671 affected local jurisdiction pursuant to the provisions of the Public-Private Transportation Act of 1995 or
672 the Public-Private Education Facilities and Infrastructure Act of 2002, to the extent that such records
673 contain (i) trade secrets of the private entity as defined in the Uniform Trade Secrets Act (§ 59.1-336 et
674 seq.); (ii) financial records of the private entity, including balance sheets and financial statements, that
675 are not generally available to the public through regulatory disclosure or otherwise; or (iii) other
676 information submitted by the private entity, where, if the records were made public prior to the
677 execution of an interim agreement or a comprehensive agreement, the financial interest or bargaining
678 position of the public or private entity would be adversely affected. In order for the records specified in
679 clauses (i), (ii), and (iii) to be excluded from the provisions of this chapter, the private entity shall make
680 a written request to the responsible public entity:

681 1. Invoking such exclusion upon submission of the data or other materials for which protection
682 from disclosure is sought;

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

684 3. Stating the reasons why protection is necessary.

685 The responsible public entity shall determine whether the requested exclusion from disclosure is
686 necessary to protect the trade secrets or financial records of the private entity. To protect other records
687 submitted by the private entity from disclosure, the responsible public entity shall determine whether
688 public disclosure prior to the execution of an interim agreement or a comprehensive agreement would

689 adversely affect the financial interest or bargaining position of the public or private entity. The
690 responsible public entity shall make a written determination of the nature and scope of the protection to
691 be afforded by the responsible public entity under this subdivision. Once a written determination is made
692 by the responsible public entity, the records afforded protection under this subdivision shall continue to
693 be protected from disclosure when in the possession of any affected jurisdiction or affected local
694 jurisdiction.

695 Except as specifically provided in subdivision 11 a, nothing in this subdivision shall be construed
696 to authorize the withholding of (a) procurement records as required by § 56-573.1:1 or 56-575.17; (b)
697 information concerning the terms and conditions of any interim or comprehensive agreement, service
698 contract, lease, partnership, or any agreement of any kind entered into by the responsible public entity
699 and the private entity; (c) information concerning the terms and conditions of any financing arrangement
700 that involves the use of any public funds; or (d) information concerning the performance of any private
701 entity developing or operating a qualifying transportation facility or a qualifying project.

702 For the purposes of this subdivision, the terms "affected jurisdiction," "affected local
703 jurisdiction," "comprehensive agreement," "interim agreement," "qualifying project," "qualifying
704 transportation facility," "responsible public entity," and "private entity" shall mean the same as those
705 terms are defined in the Public-Private Transportation Act of 1995 or in the Public-Private Education
706 Facilities and Infrastructure Act of 2002.

707 12. Confidential proprietary information or trade secrets, not publicly available, provided by a
708 private person or entity to the Virginia Resources Authority or to a fund administered in connection with
709 financial assistance rendered or to be rendered by the Virginia Resources Authority where, if such
710 information were made public, the financial interest of the private person or entity would be adversely
711 affected, and, after June 30, 1997, where such information was provided pursuant to a promise of
712 confidentiality.

713 13. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), or
714 confidential proprietary records that are not generally available to the public through regulatory
715 disclosure or otherwise, provided by a (a) bidder or applicant for a franchise or (b) franchisee under

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

723 In order for trade secrets or confidential proprietary information to be excluded from the
724 provisions of this chapter, the bidder, applicant, or franchisee shall (i) invoke such exclusion upon
725 submission of the data or other materials for which protection from disclosure is sought, (ii) identify the
726 data or other materials for which protection is sought, and (iii) state the reason why protection is
727 necessary.

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

732 14. Documents and other information of a proprietary nature furnished by a supplier of charitable
733 gaming supplies to the Department of Agriculture and Consumer Services pursuant to subsection E of §
734 18.2-340.34.

735 15. Records and reports related to Virginia apple producer sales provided to the Virginia State
736 Apple Board pursuant to § 3.2-1215.

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

740 17. Records submitted as a grant or loan application, or accompanying a grant or loan
741 application, to the Innovation and Entrepreneurship Investment Authority pursuant to Article 3 (§ 2.2-
742 2233.1 et seq.) of Chapter 22 of Title 2.2 or to the Commonwealth Health Research Board pursuant to

743 Chapter 22 (§ 23-277 et seq.) of Title 23 to the extent such records contain proprietary business or
744 research-related information produced or collected by the applicant in the conduct of or as a result of
745 study or research on medical, rehabilitative, scientific, technical, technological, or scholarly issues, when
746 such information has not been publicly released, published, copyrighted, or patented, if the disclosure of
747 such information would be harmful to the competitive position of the applicant.

748 18. Confidential proprietary records and trade secrets developed and held by a local public body
749 (i) providing telecommunication services pursuant to § 56-265.4:4 and (ii) providing cable television
750 services pursuant to Article 1.1 (§ 15.2-2108.2 et seq.) of Chapter 21 of Title 15.2, to the extent that
751 disclosure of such records would be harmful to the competitive position of the locality. In order for
752 confidential proprietary information or trade secrets to be excluded from the provisions of this chapter,
753 the locality in writing shall (a) invoke the protections of this subdivision, (b) identify with specificity the
754 records or portions thereof for which protection is sought, and (c) state the reasons why protection is
755 necessary.

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

762 20. (Effective January 1, 2014) Trade secrets as defined in the Uniform Trade Secrets Act (§
763 59.1-336 et seq.) or financial records of a business, including balance sheets and financial statements,
764 that are not generally available to the public through regulatory disclosure or otherwise, provided to the
765 Department of Small Business and Supplier Diversity as part of an application for (i) certification as a
766 small, women-owned, or minority-owned business in accordance with Chapter 16.1 (§ 2.2-1603 et seq.)
767 or (ii) a claim made by a disadvantaged business or an economically disadvantaged individual against
768 the Capital Access Fund for Disadvantaged Businesses created pursuant to § 2.2-2311. In order for such
769 trade secrets or financial records to be excluded from the provisions of this chapter, the business shall (a)

770 invoke such exclusion upon submission of the data or other materials for which protection from
771 disclosure is sought, (b) identify the data or other materials for which protection is sought, and (c) state
772 the reasons why protection is necessary.

773 21. Documents and other information of a proprietary or confidential nature disclosed by a
774 carrier to the State Health Commissioner pursuant to §§ 32.1-276.5:1 and 32.1-276.7:1.

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

781 In order for the records specified in this subdivision to be excluded from the provisions of this
782 chapter, the private or nongovernmental entity shall make a written request to the State Inspector
783 General:

784 1. Invoking such exclusion upon submission of the data or other materials for which protection
785 from disclosure is sought;

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

787 3. Stating the reasons why protection is necessary.

788 The State Inspector General shall determine whether the requested exclusion from disclosure is
789 necessary to protect the trade secrets or financial records of the private entity. The State Inspector
790 General shall make a written determination of the nature and scope of the protection to be afforded by it
791 under this subdivision.

792 23. Records submitted as a grant application, or accompanying a grant application, to the
793 Virginia Tobacco Indemnification and Community Revitalization Commission to the extent such
794 records contain (i) trade secrets as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), (ii)
795 financial records of a grant applicant that is not a public body, including balance sheets and financial
796 statements, that are not generally available to the public through regulatory disclosure or otherwise, or

797 (iii) research-related information produced or collected by the applicant in the conduct of or as a result
798 of study or research on medical, rehabilitative, scientific, technical, technological, or scholarly issues,
799 when such information has not been publicly released, published, copyrighted, or patented, if the
800 disclosure of such information would be harmful to the competitive position of the applicant; and
801 memoranda, staff evaluations, or other records prepared by the Commission or its staff exclusively for
802 the evaluation of grant applications. The exclusion provided by this subdivision shall apply to grants that
803 are consistent with the powers of and in furtherance of the performance of the duties of the Commission
804 pursuant to § 3.2-3103.

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

807 1. Invoking such exclusion upon submission of the data or other materials for which protection
808 from disclosure is sought;

809 2. Identifying with specificity the data, records or other materials for which protection is sought;
810 and

811 3. Stating the reasons why protection is necessary.

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

816 24. a. Records of the Commercial Space Flight Authority relating to rate structures or charges for
817 the use of projects of, the sale of products of, or services rendered by the Authority if public disclosure
818 would adversely affect the financial interest or bargaining position of the Authority or a private entity
819 providing records to the Authority; or

820 b. Records provided by a private entity to the Commercial Space Flight Authority, to the extent
821 that such records contain (i) trade secrets of the private entity as defined in the Uniform Trade Secrets
822 Act (§ 59.1-336 et seq.); (ii) financial records of the private entity, including balance sheets and
823 financial statements, that are not generally available to the public through regulatory disclosure or

824 otherwise; or (iii) other information submitted by the private entity, where, if the records were made
825 public, the financial interest or bargaining position of the Authority or private entity would be adversely
826 affected.

827 In order for the records specified in clauses (i), (ii), and (iii) of subdivision 24 b to be excluded
828 from the provisions of this chapter, the private entity shall make a written request to the Authority:

829 1. Invoking such exclusion upon submission of the data or other materials for which protection
830 from disclosure is sought;

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

832 3. Stating the reasons why protection is necessary.

833 The Authority shall determine whether the requested exclusion from disclosure is necessary to
834 protect the trade secrets or financial records of the private entity. To protect other records submitted by
835 the private entity from disclosure, the Authority shall determine whether public disclosure would
836 adversely affect the financial interest or bargaining position of the Authority or private entity. The
837 Authority shall make a written determination of the nature and scope of the protection to be afforded by
838 it under this subdivision.

839 25. Documents and other information of a proprietary nature furnished by an agricultural
840 landowner or operator to the Department of Conservation and Recreation, the Department of
841 Environmental Quality, the Department of Agriculture and Consumer Services or any political
842 subdivision, agency, or board of the Commonwealth pursuant to §§ 10.1-104.7, 10.1-104.8, and 10.1-
843 104.9, other than when required as part of a state or federal regulatory enforcement action.

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

850 27. Documents and other information of a proprietary nature furnished by a licensed public-use
851 airport to the Department of Aviation for funding from programs administered by the Department of
852 Aviation or the Virginia Aviation Board, where if the records were made public, the financial interest of
853 the public-use airport would be adversely affected.

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

856 1. Invoking such exclusion upon submission of the data or other materials for which protection
857 from disclosure is sought;

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

859 3. Stating the reasons why protection is necessary.

860 **§2.2-3731. § 2.2-3705.2. Exclusions to application of chapter; records relating to public**
861 **safety.**

862 The following records are excluded from the provisions of this chapter but may be disclosed by
863 the custodian in his discretion, except where such disclosure is prohibited by law:

864 1. Confidential records, including victim identity, provided to or obtained by staff in a rape crisis
865 center or a program for battered spouses.

866 2. Those portions of engineering and construction drawings and plans submitted for the sole
867 purpose of complying with the Building Code in obtaining a building permit that would identify specific
868 trade secrets or other information, the disclosure of which would be harmful to the competitive position
869 of the owner or lessee. However, such information shall be exempt only until the building is completed.
870 Information relating to the safety or environmental soundness of any building shall not be exempt from
871 disclosure.

872 Those portions of engineering and construction drawings and plans that reveal critical structural
873 components, security equipment and systems, ventilation systems, fire protection equipment, mandatory
874 building emergency equipment or systems, elevators, electrical systems, telecommunications equipment
875 and systems, and other utility equipment and systems submitted for the purpose of complying with the
876 Uniform Statewide Building Code (§ 36-97 et seq.) or the Statewide Fire Prevention Code (§ 27-94 et

877 seq.), the disclosure of which would jeopardize the safety or security of any public or private
878 commercial office, multifamily residential or retail building or its occupants in the event of terrorism or
879 other threat to public safety, to the extent that the owner or lessee of such property, equipment or system
880 in writing (i) invokes the protections of this paragraph; (ii) identifies the drawings, plans, or other
881 materials to be protected; and (iii) states the reasons why protection is necessary.

882 Nothing in this subdivision shall prevent the disclosure of information relating to any building in
883 connection with an inquiry into the performance of that building after it has been subjected to fire,
884 explosion, natural disaster or other catastrophic event.

885 3. Documentation or other information that describes the design, function, operation or access
886 control features of any security system, whether manual or automated, which is used to control access to
887 or use of any automated data processing or telecommunications system.

888 4. Plans and information to prevent or respond to terrorist activity, the disclosure of which would
889 jeopardize the safety of any person, including (i) critical infrastructure sector or structural components;
890 (ii) vulnerability assessments, operational, procedural, transportation, and tactical planning or training
891 manuals, and staff meeting minutes or other records; and (iii) engineering or architectural records, or
892 records containing information derived from such records, to the extent such records reveal the location
893 or operation of security equipment and systems, elevators, ventilation, fire protection, emergency,
894 electrical, telecommunications or utility equipment and systems of any public building, structure or
895 information storage facility, or telecommunications or utility equipment or systems. The same categories
896 of records of any governmental or nongovernmental person or entity submitted to a public body for the
897 purpose of antiterrorism response planning may be withheld from disclosure if such person or entity in
898 writing (a) invokes the protections of this subdivision, (b) identifies with specificity the records or
899 portions thereof for which protection is sought, and (c) states with reasonable particularity why the
900 protection of such records from public disclosure is necessary to meet the objective of antiterrorism
901 planning or protection. Such statement shall be a public record and shall be disclosed upon request.
902 Nothing in this subdivision shall be construed to prohibit the disclosure of records relating to the
903 structural or environmental soundness of any building, nor shall it prevent the disclosure of information

904 relating to any building in connection with an inquiry into the performance of that building after it has
905 been subjected to fire, explosion, natural disaster or other catastrophic event.

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

911 6. Engineering and architectural drawings, operational, procedural, tactical planning or training
912 manuals, or staff meeting minutes or other records, the disclosure of which would reveal surveillance
913 techniques, personnel deployments, alarm or security systems or technologies, or operational and
914 transportation plans or protocols, to the extent such disclosure would jeopardize the security of any
915 governmental facility, building or structure or the safety of persons using such facility, building or
916 structure.

917 7. Security plans and specific assessment components of school safety audits, as provided in §
918 22.1-279.8.

919 Nothing in this subdivision shall be construed to prohibit the disclosure of records relating to the
920 effectiveness of security plans after (i) any school building or property has been subjected to fire,
921 explosion, natural disaster or other catastrophic event, or (ii) any person on school property has suffered
922 or been threatened with any personal injury.

923 8. [Expired.]

924 8. Records of the Commitment Review Committee concerning the mental health assessment of
925 an individual subject to commitment as a sexually violent predator under Chapter 9 (§ 37.2-900 et seq.)
926 of Title 37.2; except that in no case shall records identifying the victims of a sexually violent predator be
927 disclosed.

928 9. Subscriber data, which for the purposes of this subdivision, means the name, address,
929 telephone number, and any other information identifying a subscriber of a telecommunications carrier,
930 provided directly or indirectly by a telecommunications carrier to a public body that operates a 911 or E-

931 911 emergency dispatch system or an emergency notification or reverse 911 system, if the data is in a
932 form not made available by the telecommunications carrier to the public generally. Nothing in this
933 subdivision shall prevent the release of subscriber data generated in connection with specific calls to a
934 911 emergency system, where the requester is seeking to obtain public records about the use of the
935 system in response to a specific crime, emergency or other event as to which a citizen has initiated a 911
936 call.

937 10. Subscriber data, which for the purposes of this subdivision, means the name, address,
938 telephone number, and any other information identifying a subscriber of a telecommunications carrier,
939 collected by a local governing body in accordance with the Enhanced Public Safety Telephone Services
940 Act (§ 56-484.12 et seq.), and other identifying information of a personal, medical, or financial nature
941 provided to a local governing body in connection with a 911 or E-911 emergency dispatch system or an
942 emergency notification or reverse 911 system, if such records are not otherwise publicly available.
943 Nothing in this subdivision shall prevent the release of subscriber data generated in connection with
944 specific calls to a 911 emergency system, where the requester is seeking to obtain public records about
945 the use of the system in response to a specific crime, emergency or other event as to which a citizen has
946 initiated a 911 call.

947 11. Records of the Virginia Military Advisory Council or any commission created by executive
948 order for the purpose of studying and making recommendations regarding preventing closure or
949 realignment of federal military and national security installations and facilities located in Virginia and
950 relocation of such facilities to Virginia, or a local or regional military affairs organization appointed by a
951 local governing body, to the extent such records (i) contain information relating to strategies under
952 consideration or development by the Council or such commission or organizations to prevent the closure
953 or realignment of federal military installations located in Virginia or the relocation of national security
954 facilities located in Virginia, to limit the adverse economic effect of such realignment, closure, or
955 relocation, or to seek additional tenant activity growth from the Department of Defense or federal
956 government or (ii) disclose trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et
957 seq.), provided to the Council or such commission or organizations in connection with their work. In

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

967 12. Documentation or other information as determined by the State Comptroller that describes
968 the design, function, operation, or implementation of internal controls over the Commonwealth's
969 financial processes and systems, and the assessment of risks and vulnerabilities of those controls,
970 including the annual assessment of internal controls mandated by the State Comptroller, the disclosure
971 of which would jeopardize the security of the Commonwealth's financial assets. However, records
972 relating to the investigation of and findings concerning the soundness of any fiscal process shall be
973 disclosed in a form that does not compromise internal controls. Nothing in this subdivision shall be
974 construed to prohibit the Auditor of Public Accounts or the Joint Legislative Audit and Review
975 Commission from reporting internal control deficiencies discovered during the course of an audit.

976 13. Documentation or other information relating to the Statewide Agencies Radio System
977 (STARS) or any other similar local or regional public safety communications system that (i) describes
978 the design, function, programming, operation, or access control features of the overall system,
979 components, structures, individual networks, and subsystems of the STARS or any other similar local or
980 regional communications system or (ii) relates to radio frequencies assigned to or utilized by STARS or
981 any other similar local or regional communications system, code plugs, circuit routing, addressing
982 schemes, talk groups, fleet maps, encryption, programming maintained by or utilized by STARS or any
983 other similar local or regional public safety communications system; those portions of engineering and
984 construction drawings and plans that reveal critical structural components, interconnectivity, security

985 equipment and systems, network monitoring, network operation center, master sites, ventilation systems,
986 fire protection equipment, mandatory building emergency equipment, electrical systems, and other
987 utility equipment and systems related to STARS or any other similar local or regional public safety
988 communications system; and special event plans, operational plans, storm plans, or other pre-arranged
989 programming, the disclosure of which would reveal surveillance techniques, personnel deployments,
990 alarm or security systems or technologies, or operational and transportation plans or protocols, to the
991 extent such disclosure would jeopardize the security of any governmental facility, building, or structure
992 or the safety of any person.

993 14. Records of a salaried or volunteer Fire/EMS company or Fire/EMS department, to the extent
994 that the records disclose the telephone numbers for cellular telephones, pagers, or comparable portable
995 communication devices provided to its personnel for use in the performance of their official duties.

996 15. Records of hospitals and nursing homes regulated by the Board of Health pursuant to Chapter
997 5 (§ 32.1-123 et seq.) of Title 32.1 provided to the Department of Health, to the extent such records
998 reveal the disaster recovery plans or the evacuation plans for such facilities in the event of fire,
999 explosion, natural disaster, or other catastrophic event. Nothing in this subdivision shall be construed to
1000 prohibit the disclosure of records relating to the effectiveness of executed evacuation plans after the
1001 occurrence of fire, explosion, natural disaster, or other catastrophic event.

1002 **2.2-3732. § 2.2-3705.7. Exclusions to application of chapter; records of specific public**
1003 **bodies and certain other limited exemptions.**

1004 The following records are excluded from the provisions of this chapter but may be disclosed by
1005 the custodian in his discretion, except where such disclosure is prohibited by law:

1006 1. State income, business, and estate tax returns, personal property tax returns, scholastic and
1007 confidential records held pursuant to § 58.1-3.

1008 2. Working papers and correspondence of the Office of the Governor; Lieutenant Governor; the
1009 Attorney General; the members of the General Assembly, the Division of Legislative Services, or the
1010 Clerks of the House of Delegates and the Senate of Virginia; the mayor or chief executive officer of any
1011 political subdivision of the Commonwealth; or the president or other chief executive officer of any

1012 public institution of higher education in Virginia. However, no record, which is otherwise open to
1013 inspection under this chapter, shall be deemed exempt by virtue of the fact that it has been attached to or
1014 incorporated within any working paper or correspondence.

1015 As used in this subdivision:

1016 "Members of the General Assembly" means each member of the Senate of Virginia and the
1017 House of Delegates and their legislative aides when working on behalf of such member.

1018 "Office of the Governor" means the Governor; his chief of staff, counsel, director of policy,
1019 Cabinet Secretaries, and the Assistant to the Governor for Intergovernmental Affairs; and those
1020 individuals to whom the Governor has delegated his authority pursuant to § 2.2-104.

1021 "Working papers" means those records prepared by or for an above-named public official for his
1022 personal or deliberative use.

1023 3. Library records that can be used to identify both (i) any library patron who has borrowed
1024 material from a library and (ii) the material such patron borrowed.

1025 4. Contract cost estimates prepared for the confidential use of the Department of Transportation
1026 in awarding contracts for construction or the purchase of goods or services, and records and automated
1027 systems prepared for the Department's Bid Analysis and Monitoring Program.

1028 5. Lists of registered owners of bonds issued by a political subdivision of the Commonwealth,
1029 whether the lists are maintained by the political subdivision itself or by a single fiduciary designated by
1030 the political subdivision.

1031 6. Records and writings furnished by a member of the General Assembly to a meeting of a
1032 standing committee, special committee or subcommittee of his house established solely for the purpose
1033 of reviewing members' annual disclosure statements and supporting materials filed under § 30-110 or of
1034 formulating advisory opinions to members on standards of conduct, or both.

1035 7. Customer account information of a public utility affiliated with a political subdivision of the
1036 Commonwealth, including the customer's name and service address, but excluding the amount of utility
1037 service provided and the amount of money paid for such utility service.

1038 8. Personal information, as defined in § 2.2-3801, (i) filed with the Virginia Housing
1039 Development Authority concerning individuals who have applied for or received loans or other housing
1040 assistance or who have applied for occupancy of or have occupied housing financed, owned or otherwise
1041 assisted by the Virginia Housing Development Authority; (ii) concerning persons participating in or
1042 persons on the waiting list for federally funded rent-assistance programs; (iii) filed with any local
1043 redevelopment and housing authority created pursuant to § 36-4 concerning persons participating in or
1044 persons on the waiting list for housing assistance programs funded by local governments or by any such
1045 authority; or (iv) filed with any local redevelopment and housing authority created pursuant to § 36-4 or
1046 any other local government agency concerning persons who have applied for occupancy or who have
1047 occupied affordable dwelling units established pursuant to § 15.2-2304 or 15.2-2305. However, access
1048 to one's own information shall not be denied.

1049 9. Records regarding the siting of hazardous waste facilities, except as provided in § 10.1-1441,
1050 if disclosure of them would have a detrimental effect upon the negotiating position of a governing body
1051 or on the establishment of the terms, conditions and provisions of the siting agreement.

1052 10. Records containing information on the site specific location of rare, threatened, endangered
1053 or otherwise imperiled plant and animal species, natural communities, caves, and significant historic and
1054 archaeological sites if, in the opinion of the public body that has the responsibility for such information,
1055 disclosure of the information would jeopardize the continued existence or the integrity of the resource.
1056 This exemption shall not apply to requests from the owner of the land upon which the resource is
1057 located.

1058 11. Records, memoranda, working papers, graphics, video or audio tapes, production models,
1059 data and information of a proprietary nature produced by or for or collected by or for the State Lottery
1060 Department relating to matters of a specific lottery game design, development, production, operation,
1061 ticket price, prize structure, manner of selecting the winning ticket, manner of payment of prizes to
1062 holders of winning tickets, frequency of drawings or selections of winning tickets, odds of winning,
1063 advertising, or marketing, where such official records have not been publicly released, published,
1064 copyrighted or patented. Whether released, published or copyrighted, all game-related information shall

1065 be subject to public disclosure under this chapter upon the first day of sales for the specific lottery game
1066 to which it pertains.

1067 12. Records of the Virginia Retirement System, acting pursuant to § 51.1-124.30, or of a local
1068 retirement system, acting pursuant to § 51.1-803, or of the Rector and Visitors of the University of
1069 Virginia, acting pursuant to § 23-76.1, or of the Virginia College Savings Plan, acting pursuant to § 23-
1070 38.77, relating to the acquisition, holding or disposition of a security or other ownership interest in an
1071 entity, where such security or ownership interest is not traded on a governmentally regulated securities
1072 exchange, to the extent that: (i) such records contain confidential analyses prepared for the Rector and
1073 Visitors of the University of Virginia, prepared by the retirement system or the Virginia College Savings
1074 Plan, or provided to the retirement system or the Virginia College Savings Plan under a promise of
1075 confidentiality, of the future value of such ownership interest or the future financial performance of the
1076 entity; and (ii) disclosure of such confidential analyses would have an adverse effect on the value of the
1077 investment to be acquired, held or disposed of by the retirement system, the Rector and Visitors of the
1078 University of Virginia, or the Virginia College Savings Plan. Nothing in this subdivision shall be
1079 construed to prevent the disclosure of records relating to the identity of any investment held, the amount
1080 invested, or the present value of such investment.

1081 13. Names and addresses of subscribers to Virginia Wildlife magazine, published by the
1082 Department of Game and Inland Fisheries, provided the individual subscriber has requested in writing
1083 that the Department not release such information.

1084 14. Financial, medical, rehabilitative and other personal information concerning applicants for or
1085 recipients of loan funds submitted to or maintained by the Assistive Technology Loan Fund Authority
1086 under Chapter 11 (§ 51.5-53 et seq.) of Title 51.5.

1087 15. Records of the Virginia Commonwealth University Health System Authority pertaining to
1088 any of the following: an individual's qualifications for or continued membership on its medical or
1089 teaching staffs; proprietary information gathered by or in the possession of the Authority from third
1090 parties pursuant to a promise of confidentiality; contract cost estimates prepared for confidential use in
1091 awarding contracts for construction or the purchase of goods or services; data, records or information of

1092 a proprietary nature produced or collected by or for the Authority or members of its medical or teaching
1093 staffs; financial statements not publicly available that may be filed with the Authority from third parties;
1094 the identity, accounts or account status of any customer of the Authority; consulting or other reports paid
1095 for by the Authority to assist the Authority in connection with its strategic planning and goals; the
1096 determination of marketing and operational strategies where disclosure of such strategies would be
1097 harmful to the competitive position of the Authority; and data, records or information of a proprietary
1098 nature produced or collected by or for employees of the Authority, other than the Authority's financial or
1099 administrative records, in the conduct of or as a result of study or research on medical, scientific,
1100 technical or scholarly issues, whether sponsored by the Authority alone or in conjunction with a
1101 governmental body or a private concern, when such data, records or information have not been publicly
1102 released, published, copyrighted or patented.

1103 16. Records of the Department of Environmental Quality, the State Water Control Board, State
1104 Air Pollution Control Board or the Virginia Waste Management Board relating to (i) active federal
1105 environmental enforcement actions that are considered confidential under federal law and (ii)
1106 enforcement strategies, including proposed sanctions for enforcement actions. Upon request, such
1107 records shall be disclosed after a proposed sanction resulting from the investigation has been proposed
1108 to the director of the agency. This subdivision shall not be construed to prohibit the disclosure of records
1109 related to inspection reports, notices of violation, and documents detailing the nature of any
1110 environmental contamination that may have occurred or similar documents.

1111 17. As it pertains to any person, records related to the operation of toll facilities that identify an
1112 individual, vehicle, or travel itinerary including, but not limited to, vehicle identification data, vehicle
1113 enforcement system information; video or photographic images; Social Security or other identification
1114 numbers appearing on driver's licenses; credit card or bank account data; home addresses; phone
1115 numbers; or records of the date or time of toll facility use.

1116 18. Records of the State Lottery Department pertaining to (i) the social security number, tax
1117 identification number, state sales tax number, home address and telephone number, personal and lottery
1118 banking account and transit numbers of a retailer, and financial information regarding the nonlottery

1119 operations of specific retail locations; and (ii) individual lottery winners, except that a winner's name,
1120 hometown, and amount won shall be disclosed.

1121 19. Records of the Board for Branch Pilots relating to the chemical or drug testing of a person
1122 regulated by the Board, where such person has tested negative or has not been the subject of a
1123 disciplinary action by the Board for a positive test result.

1124 20. Records, investigative notes, correspondence, and information pertaining to the planning,
1125 scheduling and performance of examinations of holder records pursuant to the Uniform Disposition of
1126 Unclaimed Property Act (§ 55-210.1 et seq.) prepared by or for the State Treasurer, his agents,
1127 employees or persons employed to perform an audit or examination of holder records.

1128 21. Records of the Virginia Department of Emergency Management or a local governing body
1129 relating to citizen emergency response teams established pursuant to an ordinance of a local governing
1130 body, to the extent that such records reveal the name, address, including e-mail address, telephone or
1131 pager numbers, or operating schedule of an individual participant in the program.

1132 22. Records of state or local park and recreation departments and local and regional park
1133 authorities to the extent such records contain information identifying a person under the age of 18 years.
1134 However, nothing in this subdivision shall operate to prohibit the disclosure of information defined as
1135 directory information under regulations implementing the Family Educational Rights and Privacy Act,
1136 20 U.S.C. § 1232g, unless the public body has undertaken the parental notification and opt-out
1137 requirements provided by such regulations. Access shall not be denied to the parent, including a
1138 noncustodial parent, or guardian of such person, unless the parent's parental rights have been terminated
1139 or a court of competent jurisdiction has restricted or denied such access. For records of such persons
1140 who are emancipated, the right of access may be asserted by the subject thereof. Any parent or
1141 emancipated person who is the subject of the record may waive, in writing, the protections afforded by
1142 this subdivision. If the protections are so waived, the public body shall open such records for inspection
1143 and copying.

1144 23. Records submitted for inclusion in the Statewide Alert Network administered by the
1145 Department of Emergency Management, to the extent that they reveal names, physical addresses, email

1146 addresses, computer or internet protocol information, telephone numbers, pager numbers, other wireless
1147 or portable communications device information, or operating schedules of individuals or agencies,
1148 where the release of such information would compromise the security of the Statewide Alert Network or
1149 individuals participating in the Statewide Alert Network.

1150 24. Records of the Judicial Inquiry and Review Commission made confidential by § 17.1-913.

1151 25. Records of the Virginia Retirement System acting pursuant to § 51.1-124.30, of a local
1152 retirement system acting pursuant to § 51.1-803 (hereinafter collectively referred to as the retirement
1153 system), or of the Virginia College Savings Plan, acting pursuant to § 23-38.77 relating to:

1154 a. Internal deliberations of or decisions by the retirement system or the Virginia College Savings
1155 Plan on the pursuit of particular investment strategies, or the selection or termination of investment
1156 managers, prior to the execution of such investment strategies or the selection or termination of such
1157 managers, to the extent that disclosure of such records would have an adverse impact on the financial
1158 interest of the retirement system or the Virginia College Savings Plan; and

1159 b. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), provided by a
1160 private entity to the retirement system or the Virginia College Savings Plan, to the extent disclosure of
1161 such records would have an adverse impact on the financial interest of the retirement system or the
1162 Virginia College Savings Plan.

1163 For the records specified in subdivision b to be excluded from the provisions of this chapter, the
1164 entity shall make a written request to the retirement system or the Virginia College Savings Plan:

1165 (1) Invoking such exclusion prior to or upon submission of the data or other materials for which
1166 protection from disclosure is sought;

1167 (2) Identifying with specificity the data or other materials for which protection is sought; and

1168 (3) Stating the reasons why protection is necessary.

1169 The retirement system or the Virginia College Savings Plan shall determine whether the
1170 requested exclusion from disclosure meets the requirements set forth in subdivision b.

1171 Nothing in this subdivision shall be construed to authorize the withholding of the identity or
1172 amount of any investment held or the present value and performance of all asset classes and subclasses.

1173 26. Records of the Department of Corrections made confidential by § 53.1-233.

1174 27. Records maintained by the Department of the Treasury or participants in the Local
1175 Government Investment Pool (§ 2.2-4600 et seq.), to the extent such records relate to information
1176 required to be provided by such participants to the Department to establish accounts in accordance with
1177 § 2.2-4602.

1178 28. Personal information, as defined in § 2.2-3801, contained in the Veterans Care Center
1179 Resident Trust Funds concerning residents or patients of the Department of Veterans Services Care
1180 Centers, except that access shall not be denied to the person who is the subject of the record.

1181 29. Records maintained in connection with fundraising activities by the Veterans Services
1182 Foundation pursuant to § 2.2-2716 to the extent that such records reveal the address, electronic mail
1183 address, facsimile or telephone number, social security number or other identification number appearing
1184 on a driver's license, or credit card or bank account data of identifiable donors, except that access shall
1185 not be denied to the person who is the subject of the record. Nothing in this subdivision, however, shall
1186 be construed to authorize the withholding of records relating to the amount, date, purpose, and terms of
1187 the pledge or donation or the identity of the donor. The exclusion provided by this subdivision shall not
1188 apply to protect from disclosure (i) the identities of sponsors providing grants to or contracting with the
1189 foundation for the performance of services or other work or (ii) the terms and conditions of such grants
1190 or contracts.

1191 30. Names, physical addresses, telephone numbers, and email addresses contained in
1192 correspondence between an individual and a member of the governing body, school board, or other
1193 public body of the locality in which the individual is a resident, unless the correspondence relates to the
1194 transaction of public business. However, no record that is otherwise open to inspection under this
1195 chapter shall be deemed exempt by virtue of the fact that it has been attached to or incorporated within
1196 any such correspondence.

1197 31. Records of the Commonwealth's Attorneys' Services Council, to the extent such records are
1198 prepared for and utilized by the Commonwealth's Attorneys' Services Council in the training of state
1199 prosecutors or law-enforcement personnel, where such records are not otherwise available to the public

1200 and the release of such records would reveal confidential strategies, methods or procedures to be
1201 employed in law-enforcement activities, or materials created for the investigation and prosecution of a
1202 criminal case.

1203 32. Records provided to the Department of Aviation by other entities of the Commonwealth in
1204 connection with the operation of aircraft, where the records would not be subject to disclosure by the
1205 entity providing the records. The entity providing the records to the Department of Aviation shall
1206 identify the specific portion of the records to be protected and the applicable provision of this chapter
1207 that exempts the record or portions thereof from mandatory disclosure.

1208 **§ 2.2-3733. § 2.2-3705.8. Limitation on record exclusions.**

1209 A. Neither any provision of this chapter nor any provision of Chapter 38 (§ 2.2-3800 et seq.) of
1210 this title shall be construed as denying public access to (i) contracts between a public body and its
1211 officers or employees, other than contracts settling public employee employment disputes held
1212 confidential as personnel records under § 2.2-3705.1; (ii) records of the position, job classification,
1213 official salary or rate of pay of, and records of the allowances or reimbursements for expenses paid to
1214 any officer, official or employee of a public body; or (iii) the compensation or benefits paid by any
1215 corporation organized by the Virginia Retirement System or its officers or employees.

1216 The provisions of this subsection, however, shall not require public access to records of the
1217 official salaries or rates of pay of public employees whose annual rate of pay is \$10,000 or less.

1218 B. Nothing in this chapter shall be construed as denying public access to the nonexempt portions
1219 of a report of a consultant hired by or at the request of a local public body or the mayor or chief
1220 executive or administrative officer of such public body if (i) the contents of such report have been
1221 distributed or disclosed to members of the local public body or (ii) the local public body has scheduled
1222 any action on a matter that is the subject of the consultant's report.

1223 **§ 2.2-3734. § 2.2-3706. Disclosure of criminal records; limitations.**

1224 A. All public bodies engaged in criminal law-enforcement activities shall provide requested
1225 records in accordance with this chapter as follows:

1226 1. Records required to be released:

1227 a. Criminal incident information relating to felony offenses, which shall include:

1228 (1) A general description of the criminal activity reported;

1229 (2) The date the alleged crime was committed;

1230 (3) The general location where the alleged crime was committed;

1231 (4) The identity of the investigating officer or other point of contact; and

1232 (5) A general description of any injuries suffered or property damaged or stolen.

1233 A verbal response as agreed to by the requester and the public body is sufficient to satisfy the
1234 requirements of subdivision a.

1235 Where the release of criminal incident information, however, is likely to jeopardize an ongoing
1236 investigation or prosecution or the safety of an individual, cause a suspect to flee or evade detection, or
1237 result in the destruction of evidence, such information may be withheld until the above-referenced
1238 damage is no longer likely to occur from release of the information. Nothing in subdivision a shall be
1239 construed to authorize the withholding of those portions of such information that are not likely to cause
1240 the above-referenced damage;

1241 b. Adult arrestee photographs taken during the initial intake following the arrest and as part of
1242 the routine booking procedure, except when necessary to avoid jeopardizing an investigation in felony
1243 cases until such time as the release of the photograph will no longer jeopardize the investigation; and

1244 c. Information relative to the identity of any individual, other than a juvenile, who is arrested and
1245 charged, and the status of the charge or arrest;

1246 2. Discretionary releases. The following records are excluded from the provisions of this chapter,
1247 but may be disclosed by the custodian, in his discretion, except where such disclosure is prohibited by
1248 law:

1249 a. Criminal investigative files, defined as any documents and information, including complaints,
1250 court orders, memoranda, notes, diagrams, maps, photographs, correspondence, reports, witness
1251 statements, and evidence relating to a criminal investigation or prosecution, other than criminal incident
1252 information subject to release in accordance with subdivision 1 a;

1253 b. Reports submitted in confidence to (i) state and local law-enforcement agencies, (ii)
1254 investigators authorized pursuant to Chapter 3.2 (§ 2.2-307 et seq.), and (iii) campus police departments
1255 of public institutions of higher education established pursuant to Chapter 17 (§ 23-232 et seq.) of Title
1256 23;

1257 c. Records of local law-enforcement agencies relating to neighborhood watch programs that
1258 include the names, addresses, and operating schedules of individual participants in the program that are
1259 provided to such agencies under a promise of anonymity;

1260 d. All records of persons imprisoned in penal institutions in the Commonwealth provided such
1261 records relate to the imprisonment;

1262 e. Records of law-enforcement agencies, to the extent that such records contain specific tactical
1263 plans, the disclosure of which would jeopardize the safety or security of law-enforcement personnel or
1264 the general public;

1265 f. All records of adult persons under (i) investigation or supervision by a local pretrial services
1266 agency in accordance with Article 5 (§ 19.2-152.2 et seq.) of Chapter 9 of Title 19.2; (ii) investigation,
1267 probation supervision, or monitoring by a local community-based probation services agency in
1268 accordance with Article 9 (§ 9.1-173 et seq.) of Chapter 1 of Title 9.1; or (iii) investigation or
1269 supervision by state probation and parole services in accordance with Article 2 (§ 53.1-141 et seq.) of
1270 Chapter 4 of Title 53.1;

1271 g. Records of a law-enforcement agency to the extent that they disclose the telephone numbers
1272 for cellular telephones, pagers, or comparable portable communication devices provided to its personnel
1273 for use in the performance of their official duties;

1274 h. Those portions of any records containing information related to undercover operations or
1275 protective details that would reveal the staffing, logistics, or tactical plans of such undercover operations
1276 or protective details. Nothing in this subdivision shall operate to allow the withholding of information
1277 concerning the overall costs or expenses associated with undercover operations or protective details;

1278 i. Records of (i) background investigations of applicants for law-enforcement agency
1279 employment, (ii) administrative investigations relating to allegations of wrongdoing by employees of a

1280 law-enforcement agency, and (iii) other administrative investigations conducted by law-enforcement
1281 agencies that are made confidential by law;

1282 j. The identity of any victim, witness, or undercover officer, or investigative techniques or
1283 procedures. However, the identity of any victim or witness shall be withheld if disclosure is prohibited
1284 or restricted under § 19.2-11.2; and

1285 k. Records of the Sex Offender and Crimes Against Minors Registry maintained by the
1286 Department of State Police pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1, including information
1287 obtained from state, local, and regional officials, except to the extent that information is required to be
1288 posted on the Internet pursuant to § 9.1-913; and

1289 3. Prohibited releases. The identity of any individual providing information about a crime or
1290 criminal activity under a promise of anonymity shall not be disclosed.

1291 B. Noncriminal records. Records (i) required to be maintained by law-enforcement agencies
1292 pursuant to § 15.2-1722 or (ii) maintained by other public bodies engaged in criminal law-enforcement
1293 activities shall be subject to the provisions of this chapter except that those portions of noncriminal
1294 incident or other noncriminal investigative reports or materials that contain identifying information of a
1295 personal, medical, or financial nature may be withheld where the release of such information would
1296 jeopardize the safety or privacy of any person. Access to personnel records of persons employed by a
1297 law-enforcement agency shall be governed by the provisions of subdivision A 2 i of this section and
1298 subdivision 1 of § 2.2-3705.1, as applicable.

1299 C. Records of any call for service or other communication to an emergency 911 system or
1300 communicated with any other equivalent reporting system shall be subject to the provisions of this
1301 chapter.

1302 D. Conflict resolution. In the event of conflict between this section as it relates to requests made
1303 under this section and other provisions of law, this section shall control.

1304 Article 3.

1305 Access to Public Meetings.

1306 § 2.2-3735. §2.2-3716. § 2.2-3701. Definitions.

1307 As used in this chapter, unless the context requires a different meaning:

1308 "Closed meeting" means a meeting from which the public is excluded.

1309 "Electronic communication" means any audio or combined audio and visual communication
1310 method.

1311 "Meeting" or "meetings" means the meetings including work sessions, when sitting physically,
1312 or through telephonic or video equipment pursuant to § 2.2-3708 or 2.2-3708.1, as a body or entity, or as
1313 an informal assemblage of (i) as many as three members or (ii) a quorum, if less than three, of the
1314 constituent membership, wherever held, with or without minutes being taken, whether or not votes are
1315 cast, of any public body. The gathering of employees of a public body shall not be deemed a "meeting"
1316 subject to the provisions of this chapter.

1317 "Open meeting" or "public meeting" means a meeting at which the public may be present.

1318 "Public body" means any legislative body, authority, board, bureau, commission, district or
1319 agency of the Commonwealth or of any political subdivision of the Commonwealth, including cities,
1320 towns and counties, municipal councils, governing bodies of counties, school boards and planning
1321 commissions; boards of visitors of public institutions of higher education; and other organizations,
1322 corporations or agencies in the Commonwealth supported wholly or principally by public funds. It shall
1323 include (i) the Virginia Birth-Related Neurological Injury Compensation Program and its board of
1324 directors established pursuant to Chapter 50 (§ 38.2-5000 et seq.) of Title 38.2 and (ii) any committee,
1325 subcommittee, or other entity however designated, of the public body created to perform delegated
1326 functions of the public body or to advise the public body. It shall not exclude any such committee,
1327 subcommittee or entity because it has private sector or citizen members. Corporations organized by the
1328 Virginia Retirement System are "public bodies" for purposes of this chapter.

1329 For the purposes of the provisions of this chapter applicable to access to public records,
1330 constitutional officers shall be considered public bodies and, except as otherwise expressly provided by
1331 law, shall have the same obligations to disclose public records as other custodians of public records.

1332 § 2.2-3736. § 2.2-3707. Meetings to be public; notice of meetings; recordings; minutes.

1333 A. All meetings of public bodies shall be open, except as provided in §§ 2.2-3707.01 and 2.2-
1334 3711.

1335 B. No meeting shall be conducted through telephonic, video, electronic or other communication
1336 means where the members are not physically assembled to discuss or transact public business, except as
1337 provided in § 2.2-3708, 2.2-3708.1 or as may be specifically provided in Title 54.1 for the summary
1338 suspension of professional licenses.

1339 C. Every public body shall give notice of the date, time, and location of its meetings by placing
1340 the notice in a prominent public location at which notices are regularly posted and in the office of the
1341 clerk of the public body, or in the case of a public body that has no clerk, in the office of the chief
1342 administrator. All state public bodies subject to the provisions of this chapter shall also post notice of
1343 their meetings on their websites and on the electronic calendar maintained by the Virginia Information
1344 Technologies Agency commonly known as the Commonwealth Calendar. Publication of meeting notices
1345 by electronic means by other public bodies shall be encouraged. The notice shall be posted at least three
1346 working days prior to the meeting. Notices for meetings of state public bodies on which there is at least
1347 one member appointed by the Governor shall state whether or not public comment will be received at
1348 the meeting and, if so, the approximate point during the meeting when public comment will be received.

1349 D. Notice, reasonable under the circumstance, of special or emergency meetings shall be given
1350 contemporaneously with the notice provided members of the public body conducting the meeting.

1351 E. Any person may annually file a written request for notification with a public body. The
1352 request shall include the requester's name, address, zip code, daytime telephone number, electronic mail
1353 address, if available, and organization, if any. The public body receiving such request shall provide
1354 notice of all meetings directly to each such person. Without objection by the person, the public body
1355 may provide electronic notice of all meetings in response to such requests.

1356 F. At least one copy of all agenda packets and, unless exempt, all materials furnished to members
1357 of a public body for a meeting shall be made available for public inspection at the same time such
1358 documents are furnished to the members of the public body.

1359 G. Nothing in this chapter shall be construed to prohibit the gathering or attendance of two or
1360 more members of a public body (i) at any place or function where no part of the purpose of such
1361 gathering or attendance is the discussion or transaction of any public business, and such gathering or
1362 attendance was not called or prearranged with any purpose of discussing or transacting any business of
1363 the public body or (ii) at a public forum, candidate appearance, or debate, the purpose of which is to
1364 inform the electorate and not to transact public business or to hold discussions relating to the transaction
1365 of public business, even though the performance of the members individually or collectively in the
1366 conduct of public business may be a topic of discussion or debate at such public meeting. The notice
1367 provisions of this chapter shall not apply to informal meetings or gatherings of the members of the
1368 General Assembly.

1369 H. Any person may photograph, film, record or otherwise reproduce any portion of a meeting
1370 required to be open. The public body conducting the meeting may adopt rules governing the placement
1371 and use of equipment necessary for broadcasting, photographing, filming or recording a meeting to
1372 prevent interference with the proceedings, but shall not prohibit or otherwise prevent any person from
1373 photographing, filming, recording, or otherwise reproducing any portion of a meeting required to be
1374 open. No public body shall conduct a meeting required to be open in any building or facility where such
1375 recording devices are prohibited.

1376 I. Minutes shall be recorded at all open meetings. However, minutes shall not be required to be
1377 taken at deliberations of (i) standing and other committees of the General Assembly; (ii) legislative
1378 interim study commissions and committees, including the Virginia Code Commission; (iii) study
1379 committees or commissions appointed by the Governor; or (iv) study commissions or study committees,
1380 or any other committees or subcommittees appointed by the governing bodies or school boards of
1381 counties, cities and towns, except where the membership of any such commission, committee or
1382 subcommittee includes a majority of the governing body of the county, city or town or school board.

1383 Minutes, including draft minutes, and all other records of open meetings, including audio or
1384 audio/visual records shall be deemed public records and subject to the provisions of this chapter.

1385 Minutes shall be in writing and shall include (i) the date, time, and location of the meeting; (ii)
1386 the members of the public body recorded as present and absent; and (iii) a summary of the discussion on
1387 matters proposed, deliberated or decided, and a record of any votes taken. In addition, for electronic
1388 communication meetings conducted in accordance with § 2.2-3708, minutes of state public bodies shall
1389 include (a) the identity of the members of the public body at each remote location identified in the notice
1390 who participated in the meeting through electronic communications means, (b) the identity of the
1391 members of the public body who were physically assembled at the primary or central meeting location,
1392 and (c) the identity of the members of the public body who were not present at the locations identified in
1393 clauses (a) and (b), but who monitored such meeting through electronic communications means.

1394 **§ 2.2-3737. § 2.2-3707.01. Meetings of the General Assembly.**

1395 A. Except as provided in subsection B, public access to any meeting of the General Assembly or
1396 a portion thereof shall be governed by rules established by the Joint Rules Committee and approved by a
1397 majority vote of each house at the next regular session of the General Assembly. At least 60 days before
1398 the adoption of such rules, the Joint Rules Committee shall (i) hold regional public hearings on such
1399 proposed rules and (ii) provide a copy of such proposed rules to the Virginia Freedom of Information
1400 Advisory Council.

1401 B. Floor sessions of either house of the General Assembly; meetings, including work sessions, of
1402 any standing or interim study committee of the General Assembly; meetings, including work sessions, of
1403 any subcommittee of such standing or interim study committee; and joint committees of conference of
1404 the General Assembly; or a quorum of any such committees or subcommittees, shall be open and
1405 governed by this chapter.

1406 C. Meetings of the respective political party caucuses of either house of the General Assembly,
1407 including meetings conducted by telephonic or other electronic communication means, without regard to
1408 (i) whether the General Assembly is in or out of regular or special session or (ii) whether such caucuses
1409 invite staff or guests to participate in their deliberations, shall not be deemed meetings for the purposes
1410 of this chapter.

1411 D. No regular, special, or reconvened session of the General Assembly held pursuant to Article
1412 IV, Section 6 of the Constitution of Virginia shall be conducted using electronic communication means
1413 pursuant § 2.2-3708.

1414 **§ 2.2-3738. § 2.2-3708. Electronic communication meetings; applicability; physical quorum**
1415 **required; exceptions; notice; report.**

1416 A. Except as expressly provided in subsection G of this section or § 2.2-3708.1, no local
1417 governing body, school board, or any authority, board, bureau, commission, district or agency of local
1418 government, any committee thereof, or any entity created by a local governing body, school board, or
1419 any local authority, board, or commission shall conduct a meeting wherein the public business is
1420 discussed or transacted through telephonic, video, electronic or other communication means where the
1421 members are not physically assembled. Nothing in this section shall be construed to prohibit the use of
1422 interactive audio or video means to expand public participation.

1423 B. Except as provided in subsection G or H of this section or subsection D of § 2.2-3707.01, state
1424 public bodies may conduct any meeting wherein the public business is discussed or transacted through
1425 electronic communication means, provided (i) a quorum of the public body is physically assembled at
1426 one primary or central meeting location, (ii) notice of the meeting has been given in accordance with
1427 subsection C, and (iii) the remote locations, from which additional members of the public body
1428 participate through electronic communication means, are open to the public. All persons attending the
1429 meeting at any of the meeting locations shall be afforded the same opportunity to address the public
1430 body as persons attending the primary or central location.

1431 If an authorized public body holds an electronic meeting pursuant to this section, it shall also
1432 hold at least one meeting annually where members in attendance at the meeting are physically
1433 assembled at one location and where no members participate by electronic communication means.

1434 C. Notice of any meetings held pursuant to this section shall be provided at least three working
1435 days in advance of the date scheduled for the meeting. The notice shall include the date, time, place, and
1436 purpose for the meeting; shall identify the locations for the meeting; and shall include a telephone
1437 number that may be used at remote locations to notify the primary or central meeting location of any

1438 interruption in the telephonic or video broadcast of the meeting to the remote locations. Any interruption
1439 in the telephonic or video broadcast of the meeting shall result in the suspension of action at the meeting
1440 until repairs are made and public access restored.

1441 D. Agenda packets and, unless exempt, all materials that will be distributed to members of the
1442 public body and that have been made available to the staff of the public body in sufficient time for
1443 duplication and forwarding to all locations where public access will be provided shall be made available
1444 to the public at the time of the meeting. Minutes of all meetings held by electronic communication
1445 means shall be recorded as required by § 2.2-3707. Votes taken during any meeting conducted through
1446 electronic communication means shall be recorded by name in roll-call fashion and included in the
1447 minutes.

1448 E. Three working days' notice shall not be required for meetings authorized under this section
1449 held in accordance with subsection G or that are continued to address an emergency or to conclude the
1450 agenda of the meeting for which proper notice has been given, when the date, time, place, and purpose
1451 of the continued meeting are set during the meeting prior to adjournment. Public bodies conducting
1452 emergency meetings through electronic communication means shall comply with the provisions of
1453 subsection D requiring minutes of the meeting. The nature of the emergency shall be stated in the
1454 minutes.

1455 F. Any authorized public body that meets by electronic communication means shall make a
1456 written report of the following to the Virginia Freedom of Information Advisory Council and the Joint
1457 Commission on Technology and Science by December 15 of each year:

- 1458 1. The total number of electronic communication meetings held that year;
- 1459 2. The dates and purposes of the meetings;
- 1460 3. A copy of the agenda for the meeting;
- 1461 4. The number of sites for each meeting;
- 1462 5. The types of electronic communication means by which the meetings were held;
- 1463 6. The number of participants, including members of the public, at each meeting location;

1464 7. The identity of the members of the public body recorded as absent and those recorded as
1465 present at each meeting location;

1466 8. A summary of any public comment received about the electronic communication meetings;
1467 and

1468 9. A written summary of the public body's experience using electronic communication meetings,
1469 including its logistical and technical experience.

1470 In addition, any authorized public body shall make available to the public at any meeting
1471 conducted in accordance with this section a public comment form prepared by the Virginia Freedom of
1472 Information Advisory Council in accordance with § 30-179.

1473 G. Any public body may meet by electronic communication means without a quorum of the
1474 public body physically assembled at one location when the Governor has declared a state of emergency
1475 in accordance with § 44-146.17, provided (i) the catastrophic nature of the declared emergency makes it
1476 impracticable or unsafe to assemble a quorum in a single location and (ii) the purpose of the meeting is
1477 to address the emergency. The public body convening a meeting in accordance with this subsection shall
1478 (a) give public notice using the best available method given the nature of the emergency, which notice
1479 shall be given contemporaneously with the notice provided members of the public body conducting the
1480 meeting; (b) make arrangements for public access to such meeting; and (c) otherwise comply with the
1481 provisions of this section. The nature of the emergency, the fact that the meeting was held by electronic
1482 communication means, and the type of electronic communication means by which the meeting was held
1483 shall be stated in the minutes.

1484 H. (Expires July 1, 2014) An advisory public body, defined as any state public body classified as
1485 advisory pursuant to § 2.2-2100 or any committee, subcommittee, or other entity, however designated,
1486 of a state public body created to advise the state public body, may meet by electronic communication
1487 means without a quorum of the advisory public body being physically assembled at one location,
1488 provided (i) the meeting is conducted utilizing a combined audio and visual communication method; (ii)
1489 a primary or central meeting location is established and identified in the notice in accordance with
1490 subsection C; (iii) the remote locations, from which additional members of the advisory public body

1491 participate through the combined audio and visual communication method, are open to the public and
1492 are identified in the notice in accordance with subsection C; (iv) all persons attending the meeting at any
1493 of the meeting locations shall be afforded the same opportunity to address the advisory public body as
1494 persons attending the primary or central location; and (v) all other provisions of this section are met.
1495 Any advisory public body holding electronic communication meetings in accordance with this
1496 subsection shall make an audiovisual recording of any such meeting, which recording shall be preserved
1497 by the advisory public body for a period of three years from the date of the meeting. The recording shall
1498 be available to the public for inspection and copying pursuant to § 2.2-3704. Any portion of the meeting
1499 that is closed to the public in accordance with this chapter may be recorded, but such recording is not
1500 required. Any audiovisual recording of any closed portion of the meeting shall not be subject to
1501 mandatory public disclosure.

1502 **§2.2-3739. § 2.2-3708.1. Participation in meetings in event of emergency or personal**
1503 **matter; certain disabilities; distance from meeting location for certain public bodies.**

1504 A. A member of a public body may participate in a meeting governed by this chapter through
1505 electronic communication means from a remote location that is not open to the public only as follows
1506 and subject to the requirements of subsection B:

1507 1. If, on or before the day of a meeting, a member of the public body holding the meeting notifies
1508 the chair of the public body that such member is unable to attend the meeting due to an emergency or
1509 personal matter and identifies with specificity the nature of the emergency or personal matter, and the
1510 public body holding the meeting (a) approves such member's participation by a majority vote of the
1511 members present at a meeting and (b) records in its minutes the specific nature of the emergency or
1512 personal matter and the remote location from which the member participated.

1513 Such participation by the member shall be limited each calendar year to two meetings or 25
1514 percent of the meetings of the public body, whichever is fewer;

1515 2. If a member of a public body notifies the chair of the public body that such member is unable
1516 to attend a meeting due to a temporary or permanent disability or other medical condition that prevents

1517 the member's physical attendance and the public body records this fact and the remote location from
1518 which the member participated in its minutes; or

1519 3. If, on the day of a meeting, a member of a regional public body notifies the chair of the public
1520 body that such member's principal residence is more than 60 miles from the meeting location identified
1521 in the required notice for such meeting and the public body holding the meeting (a) approves such
1522 member's participation by a majority vote of the members present and (b) records in its minutes the
1523 remote location from which the member participated.

1524 B. Participation by a member of a public body as authorized under subsection A shall be only
1525 under the following conditions:

1526 1. A quorum of the public body is physically assembled at the primary or central meeting
1527 location; and

1528 2. The public body makes arrangements for the voice of the remote participant to be heard by all
1529 persons at the primary or central meeting location.

1530 **§ 2.2-3740. § 2.2-3710. Transaction of public business other than by votes at meetings**
1531 **prohibited.**

1532 A. Unless otherwise specifically provided by law, no vote of any kind of the membership, or any
1533 part thereof, of any public body shall be taken to authorize the transaction of any public business, other
1534 than a vote taken at a meeting conducted in accordance with the provisions of this chapter. No public
1535 body shall vote by secret or written ballot, and unless expressly provided by this chapter, no public body
1536 shall vote by telephone or other electronic communication means.

1537 B. Notwithstanding the foregoing, nothing contained herein shall be construed to prohibit (i)
1538 separately contacting the membership, or any part thereof, of any public body for the purpose of
1539 ascertaining a member's position with respect to the transaction of public business, whether such contact
1540 is done in person, by telephone or by electronic communication, provided the contact is done on a basis
1541 that does not constitute a meeting as defined in this chapter or (ii) the House of Delegates or the Senate
1542 of Virginia from adopting rules relating to the casting of votes by members of standing committees.
1543 Nothing in this subsection shall operate to exclude any public record from the provisions of this chapter.

1544 § 2.2-3741. § 2.2-3711. Closed meetings authorized for certain limited purposes.

1545 A. Public bodies may hold closed meetings only for the following purposes:

1546 1. Discussion, consideration, or interviews of prospective candidates for employment;
1547 assignment, appointment, promotion, performance, demotion, salaries, disciplining, or resignation of
1548 specific public officers, appointees, or employees of any public body; and evaluation of performance of
1549 departments or schools of public institutions of higher education where such evaluation will necessarily
1550 involve discussion of the performance of specific individuals. Any teacher shall be permitted to be
1551 present during a closed meeting in which there is a discussion or consideration of a disciplinary matter
1552 that involves the teacher and some student and the student involved in the matter is present, provided the
1553 teacher makes a written request to be present to the presiding officer of the appropriate board.

1554 2. Discussion or consideration of admission or disciplinary matters or any other matters that
1555 would involve the disclosure of information contained in a scholastic record concerning any student of
1556 any Virginia public institution of higher education or any state school system. However, any such
1557 student, legal counsel and, if the student is a minor, the student's parents or legal guardians shall be
1558 permitted to be present during the taking of testimony or presentation of evidence at a closed meeting, if
1559 such student, parents, or guardians so request in writing and such request is submitted to the presiding
1560 officer of the appropriate board.

1561 3. Discussion or consideration of the acquisition of real property for a public purpose, or of the
1562 disposition of publicly held real property, where discussion in an open meeting would adversely affect
1563 the bargaining position or negotiating strategy of the public body.

1564 4. The protection of the privacy of individuals in personal matters not related to public business.

1565 5. Discussion concerning a prospective business or industry or the expansion of an existing
1566 business or industry where no previous announcement has been made of the business' or industry's
1567 interest in locating or expanding its facilities in the community.

1568 6. Discussion or consideration of the investment of public funds where competition or bargaining
1569 is involved, where, if made public initially, the financial interest of the governmental unit would be
1570 adversely affected.

1571 7. Consultation with legal counsel and briefings by staff members or consultants pertaining to
1572 actual or probable litigation, where such consultation or briefing in open meeting would adversely affect
1573 the negotiating or litigating posture of the public body; and consultation with legal counsel employed or
1574 retained by a public body regarding specific legal matters requiring the provision of legal advice by such
1575 counsel. For the purposes of this subdivision, "probable litigation" means litigation that has been
1576 specifically threatened or on which the public body or its legal counsel has a reasonable basis to believe
1577 will be commenced by or against a known party. Nothing in this subdivision shall be construed to permit
1578 the closure of a meeting merely because an attorney representing the public body is in attendance or is
1579 consulted on a matter.

1580 8. In the case of boards of visitors of public institutions of higher education, discussion or
1581 consideration of matters relating to gifts, bequests and fund-raising activities, and grants and contracts
1582 for services or work to be performed by such institution. However, the terms and conditions of any such
1583 gifts, bequests, grants, and contracts made by a foreign government, a foreign legal entity, or a foreign
1584 person and accepted by a public institution of higher education in Virginia shall be subject to public
1585 disclosure upon written request to the appropriate board of visitors. For the purpose of this subdivision,
1586 (i) "foreign government" means any government other than the United States government or the
1587 government of a state or a political subdivision thereof; (ii) "foreign legal entity" means any legal entity
1588 created under the laws of the United States or of any state thereof if a majority of the ownership of the
1589 stock of such legal entity is owned by foreign governments or foreign persons or if a majority of the
1590 membership of any such entity is composed of foreign persons or foreign legal entities, or any legal
1591 entity created under the laws of a foreign government; and (iii) "foreign person" means any individual
1592 who is not a citizen or national of the United States or a trust territory or protectorate thereof.

1593 9. In the case of the boards of trustees of the Virginia Museum of Fine Arts, the Virginia
1594 Museum of Natural History, the Jamestown-Yorktown Foundation, and The Science Museum of
1595 Virginia, discussion or consideration of matters relating to specific gifts, bequests, and grants.

1596 10. Discussion or consideration of honorary degrees or special awards.

1597 11. Discussion or consideration of tests, examinations, or other records excluded from this
1598 chapter pursuant to subdivision 4 of § 2.2-3705.1.

1599 12. Discussion, consideration, or review by the appropriate House or Senate committees of
1600 possible disciplinary action against a member arising out of the possible inadequacy of the disclosure
1601 statement filed by the member, provided the member may request in writing that the committee meeting
1602 not be conducted in a closed meeting.

1603 13. Discussion of strategy with respect to the negotiation of a hazardous waste siting agreement
1604 or to consider the terms, conditions, and provisions of a hazardous waste siting agreement if the
1605 governing body in open meeting finds that an open meeting will have an adverse effect upon the
1606 negotiating position of the governing body or the establishment of the terms, conditions and provisions
1607 of the siting agreement, or both. All discussions with the applicant or its representatives may be
1608 conducted in a closed meeting.

1609 14. Discussion by the Governor and any economic advisory board reviewing forecasts of
1610 economic activity and estimating general and nongeneral fund revenues.

1611 15. Discussion or consideration of medical and mental health records excluded from this chapter
1612 pursuant to subdivision 1 of § 2.2-3705.5.

1613 16. Deliberations of the State Lottery Board in a licensing appeal action conducted pursuant to
1614 subsection D of § 58.1-4007 regarding the denial or revocation of a license of a lottery sales agent; and
1615 discussion, consideration or review of State Lottery Department matters related to proprietary lottery
1616 game information and studies or investigations exempted from disclosure under subdivision 6 of § 2.2-
1617 3705.3 and subdivision 11 of § 2.2-3705.7.

1618 17. Those portions of meetings by local government crime commissions where the identity of, or
1619 information tending to identify, individuals providing information about crimes or criminal activities
1620 under a promise of anonymity is discussed or disclosed.

1621 18. Those portions of meetings in which the Board of Corrections discusses or discloses the
1622 identity of, or information tending to identify, any prisoner who (i) provides information about crimes or
1623 criminal activities, (ii) renders assistance in preventing the escape of another prisoner or in the

1624 apprehension of an escaped prisoner, or (iii) voluntarily or at the instance of a prison official renders
1625 other extraordinary services, the disclosure of which is likely to jeopardize the prisoner's life or safety.

1626 19. Discussion of plans to protect public safety as it relates to terrorist activity and briefings by
1627 staff members, legal counsel, or law-enforcement or emergency service officials concerning actions
1628 taken to respond to such activity or a related threat to public safety; or discussion of reports or plans
1629 related to the security of any governmental facility, building or structure, or the safety of persons using
1630 such facility, building or structure.

1631 20. Discussion by the Board of the Virginia Retirement System, acting pursuant to § 51.1-
1632 124.30, or of any local retirement system, acting pursuant to § 51.1-803, or of the Rector and Visitors of
1633 the University of Virginia, acting pursuant to § 23-76.1, or by the Board of the Virginia College Savings
1634 Plan, acting pursuant to § 23-38.80, regarding the acquisition, holding or disposition of a security or
1635 other ownership interest in an entity, where such security or ownership interest is not traded on a
1636 governmentally regulated securities exchange, to the extent that such discussion (i) concerns
1637 confidential analyses prepared for the Rector and Visitors of the University of Virginia, prepared by the
1638 retirement system or by the Virginia College Savings Plan or provided to the retirement system or the
1639 Virginia College Savings Plan under a promise of confidentiality, of the future value of such ownership
1640 interest or the future financial performance of the entity, and (ii) would have an adverse effect on the
1641 value of the investment to be acquired, held or disposed of by the retirement system, the Rector and
1642 Visitors of the University of Virginia, or the Virginia College Savings Plan. Nothing in this subdivision
1643 shall be construed to prevent the disclosure of information relating to the identity of any investment
1644 held, the amount invested or the present value of such investment.

1645 21. Those portions of meetings in which individual child death cases are discussed by the State
1646 Child Fatality Review team established pursuant to § 32.1-283.1, and those portions of meetings in
1647 which individual child death cases are discussed by a regional or local child fatality review team
1648 established pursuant to § 32.1-283.2, and those portions of meetings in which individual death cases are
1649 discussed by family violence fatality review teams established pursuant to § 32.1-283.3.

1650 22. Those portions of meetings of the University of Virginia Board of Visitors or the Eastern
1651 Virginia Medical School Board of Visitors, as the case may be, and those portions of meetings of any
1652 persons to whom management responsibilities for the University of Virginia Medical Center or Eastern
1653 Virginia Medical School, as the case may be, have been delegated, in which there is discussed
1654 proprietary, business-related information pertaining to the operations of the University of Virginia
1655 Medical Center or Eastern Virginia Medical School, as the case may be, including business development
1656 or marketing strategies and activities with existing or future joint venturers, partners, or other parties
1657 with whom the University of Virginia Medical Center or Eastern Virginia Medical School, as the case
1658 may be, has formed, or forms, any arrangement for the delivery of health care, if disclosure of such
1659 information would adversely affect the competitive position of the Medical Center or Eastern Virginia
1660 Medical School, as the case may be.

1661 23. In the case of the Virginia Commonwealth University Health System Authority, discussion
1662 or consideration of any of the following: the acquisition or disposition of real or personal property where
1663 disclosure would adversely affect the bargaining position or negotiating strategy of the Authority;
1664 operational plans that could affect the value of such property, real or personal, owned or desirable for
1665 ownership by the Authority; matters relating to gifts, bequests and fund-raising activities; grants and
1666 contracts for services or work to be performed by the Authority; marketing or operational strategies
1667 where disclosure of such strategies would adversely affect the competitive position of the Authority;
1668 members of its medical and teaching staffs and qualifications for appointments thereto; and
1669 qualifications or evaluations of other employees.

1670 24. Those portions of the meetings of the Health Practitioners' Monitoring Program Committee
1671 within the Department of Health Professions to the extent such discussions identify any practitioner who
1672 may be, or who actually is, impaired pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of Title 54.1.

1673 25. Meetings or portions of meetings of the Board of the Virginia College Savings Plan wherein
1674 personal information, as defined in § 2.2-3801, which has been provided to the Board or its employees
1675 by or on behalf of individuals who have requested information about, applied for, or entered into prepaid

1676 tuition contracts or savings trust account agreements pursuant to Chapter 4.9 (§ 23-38.75 et seq.) of Title
1677 23 is discussed.

1678 26. Discussion or consideration, by the Wireless Carrier E-911 Cost Recovery Subcommittee
1679 created pursuant to § 56-484.15, of trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-
1680 336 et seq.), submitted by CMRS providers as defined in § 56-484.12, related to the provision of
1681 wireless E-911 service.

1682 27. Those portions of disciplinary proceedings by any regulatory board within the Department of
1683 Professional and Occupational Regulation, Department of Health Professions, or the Board of
1684 Accountancy conducted pursuant to § 2.2-4019 or 2.2-4020 during which the board deliberates to reach
1685 a decision or meetings of health regulatory boards or conference committees of such boards to consider
1686 settlement proposals in pending disciplinary actions or modifications to previously issued board orders
1687 as requested by either of the parties.

1688 28. Discussion or consideration of records excluded from this chapter pursuant to subdivision 11
1689 of § 2.2-3705.6 by a responsible public entity or an affected local jurisdiction, as those terms are defined
1690 in § 56-557, or any independent review panel appointed to review information and advise the
1691 responsible public entity concerning such records.

1692 29. Discussion of the award of a public contract involving the expenditure of public funds,
1693 including interviews of bidders or offerors, and discussion of the terms or scope of such contract, where
1694 discussion in an open session would adversely affect the bargaining position or negotiating strategy of
1695 the public body.

1696 30. Discussion or consideration of grant or loan application records excluded from this chapter
1697 pursuant to subdivision 17 of § 2.2-3705.6 by (i) the Commonwealth Health Research Board or (ii) the
1698 Innovation and Entrepreneurship Investment Authority or the Research and Technology Investment
1699 Advisory Committee appointed to advise the Innovation and Entrepreneurship Investment Authority.

1700 31. Discussion or consideration by the Commitment Review Committee of records excluded
1701 from this chapter pursuant to subdivision 9 of § 2.2-3705.2 relating to individuals subject to
1702 commitment as sexually violent predators under Chapter 9 (§ 37.2-900 et seq.) of Title 37.2.

1703 32. [Expired.]

1704 33. Discussion or consideration of confidential proprietary records and trade secrets excluded
1705 from this chapter pursuant to subdivision 18 of § 2.2-3705.6.

1706 34. Discussion or consideration by a local authority created in accordance with the Virginia
1707 Wireless Service Authorities Act (§ 15.2-5431.1 et seq.) of confidential proprietary records and trade
1708 secrets excluded from this chapter pursuant to subdivision 19 of § 2.2-3705.6.

1709 35. Discussion or consideration by the State Board of Elections or local electoral boards of
1710 voting security matters made confidential pursuant to § 24.2-625.1.

1711 36. Discussion or consideration by the Forensic Science Board or the Scientific Advisory
1712 Committee created pursuant to Article 2 (§ 9.1-1109 et seq.) of Chapter 11 of Title 9.1 of records
1713 excluded from this chapter pursuant to subdivision A 2 a of § 2.2-3706.

1714 37. Discussion or consideration by the Brown v. Board of Education Scholarship Program
1715 Awards Committee of records or confidential matters excluded from this chapter pursuant to subdivision
1716 3 of § 2.2-3705.4, and meetings of the Committee to deliberate concerning the annual maximum
1717 scholarship award, review and consider scholarship applications and requests for scholarship award
1718 renewal, and cancel, rescind, or recover scholarship awards.

1719 38. Discussion or consideration by the Virginia Port Authority of records excluded from this
1720 chapter pursuant to subdivision 1 of § 2.2-3705.6.

1721 39. Discussion or consideration by the Board of Trustees of the Virginia Retirement System
1722 acting pursuant to § 51.1-124.30, by the Investment Advisory Committee appointed pursuant to § 51.1-
1723 124.26, by any local retirement system, acting pursuant to § 51.1-803, by the Board of the Virginia
1724 College Savings Plan acting pursuant to § 23-38.80, or by the Virginia College Savings Plan's
1725 Investment Advisory Committee appointed pursuant to § 23-38.79:1 of records excluded from this
1726 chapter pursuant to subdivision 25 of § 2.2-3705.7.

1727 40. Discussion or consideration of records excluded from this chapter pursuant to subdivision 3
1728 of § 2.2-3705.6.

1729 41. Discussion or consideration by the Board of Education of records relating to the denial,
1730 suspension, or revocation of teacher licenses excluded from this chapter pursuant to subdivision 12 of §
1731 2.2-3705.3.

1732 42. Those portions of meetings of the Virginia Military Advisory Council or any commission
1733 created by executive order for the purpose of studying and making recommendations regarding
1734 preventing closure or realignment of federal military and national security installations and facilities
1735 located in Virginia and relocation of such facilities to Virginia, or a local or regional military affairs
1736 organization appointed by a local governing body, during which there is discussion of records excluded
1737 from this chapter pursuant to subdivision 12 of § 2.2-3705.2.

1738 43. Discussion or consideration by the Board of Trustees of the Veterans Services Foundation of
1739 records excluded from this chapter pursuant to subdivision 29 of § 2.2-3705.7.

1740 44. Discussion or consideration by the Virginia Tobacco Indemnification and Community
1741 Revitalization Commission of records excluded from this chapter pursuant to subdivision 23 of § 2.2-
1742 3705.6.

1743 45. Discussion or consideration by the board of directors of the Commercial Space Flight
1744 Authority of records excluded from this chapter pursuant to subdivision 24 of § 2.2-3705.6.

1745 B. No resolution, ordinance, rule, contract, regulation or motion adopted, passed or agreed to in a
1746 closed meeting shall become effective unless the public body, following the meeting, reconvenes in
1747 open meeting and takes a vote of the membership on such resolution, ordinance, rule, contract,
1748 regulation, or motion that shall have its substance reasonably identified in the open meeting.

1749 C. Public officers improperly selected due to the failure of the public body to comply with the
1750 other provisions of this section shall be de facto officers and, as such, their official actions are valid until
1751 they obtain notice of the legal defect in their election.

1752 D. Nothing in this section shall be construed to prevent the holding of conferences between two
1753 or more public bodies, or their representatives, but these conferences shall be subject to the same
1754 procedures for holding closed meetings as are applicable to any other public body.

1755 E. This section shall not be construed to (i) require the disclosure of any contract between the
1756 Department of Health Professions and an impaired practitioner entered into pursuant to Chapter 25.1 (§
1757 54.1-2515 et seq.) of Title 54.1 or (ii) require the board of directors of any authority created pursuant to
1758 the Industrial Development and Revenue Bond Act (§ 15.2-4900 et seq.), or any public body empowered
1759 to issue industrial revenue bonds by general or special law, to identify a business or industry to which
1760 subdivision A 5 applies. However, such business or industry shall be identified as a matter of public
1761 record at least 30 days prior to the actual date of the board's authorization of the sale or issuance of such
1762 bonds.

1763 **§ 2.2-3742. § 2.2-3712. Closed meetings procedures; certification of proceedings.**

1764 A. No closed meeting shall be held unless the public body proposing to convene such meeting
1765 has taken an affirmative recorded vote in an open meeting approving a motion that (i) identifies the
1766 subject matter, (ii) states the purpose of the meeting and (iii) makes specific reference to the applicable
1767 exemption from open meeting requirements provided in § 2.2-3707 or subsection A of § 2.2-3711. The
1768 matters contained in such motion shall be set forth in detail in the minutes of the open meeting. A
1769 general reference to the provisions of this chapter, the authorized exemptions from open meeting
1770 requirements, or the subject matter of the closed meeting shall not be sufficient to satisfy the
1771 requirements for holding a closed meeting.

1772 B. The notice provisions of this chapter shall not apply to closed meetings of any public body
1773 held solely for the purpose of interviewing candidates for the position of chief administrative officer.
1774 Prior to any such closed meeting for the purpose of interviewing candidates, the public body shall
1775 announce in an open meeting that such closed meeting shall be held at a disclosed or undisclosed
1776 location within 15 days thereafter.

1777 C. The public body holding a closed meeting shall restrict its discussion during the closed
1778 meeting only to those matters specifically exempted from the provisions of this chapter and identified in
1779 the motion required by subsection A.

1780 D. At the conclusion of any closed meeting, the public body holding such meeting shall
1781 immediately reconvene in an open meeting and shall take a roll call or other recorded vote to be

1782 included in the minutes of that body, certifying that to the best of each member's knowledge (i) only
1783 public business matters lawfully exempted from open meeting requirements under this chapter and (ii)
1784 only such public business matters as were identified in the motion by which the closed meeting was
1785 convened were heard, discussed or considered in the meeting by the public body. Any member of the
1786 public body who believes that there was a departure from the requirements of clauses (i) and (ii), shall
1787 so state prior to the vote, indicating the substance of the departure that, in his judgment, has taken place.
1788 The statement shall be recorded in the minutes of the public body.

1789 E. Failure of the certification required by subsection D to receive the affirmative vote of a
1790 majority of the members of the public body present during a meeting shall not affect the validity or
1791 confidentiality of such meeting with respect to matters considered therein in compliance with the
1792 provisions of this chapter. The recorded vote and any statement made in connection therewith, shall
1793 upon proper authentication, constitute evidence in any proceeding brought to enforce the provisions of
1794 this chapter.

1795 F. A public body may permit nonmembers to attend a closed meeting if such persons are deemed
1796 necessary or if their presence will reasonably aid the public body in its consideration of a topic that is a
1797 subject of the meeting.

1798 G. A member of a public body shall be permitted to attend a closed meeting held by any
1799 committee or subcommittee of that public body, or a closed meeting of any entity, however designated,
1800 created to perform the delegated functions of or to advise that public body. Such member shall in all
1801 cases be permitted to observe the closed meeting of the committee, subcommittee or entity. In addition
1802 to the requirements of § 2.2-3707, the minutes of the committee or other entity shall include the identity
1803 of the member of the parent public body who attended the closed meeting.

1804 H. Except as specifically authorized by law, in no event may any public body take action on
1805 matters discussed in any closed meeting, except at an open meeting for which notice was given as
1806 required by § 2.2-3707.

1807 I. Minutes may be taken during closed meetings of a public body, but shall not be required. Such
1808 minutes shall not be subject to mandatory public disclosure.

1809 2. That Chapter 37 (§ 2.2-3700 through 2.2-3714) of Title 2.2 of the Code of Virginia is repealed.

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