

SENATE BILL NO. \_\_\_\_\_ HOUSE BILL NO. \_\_\_\_\_

1 A BILL to amend and reenact §§ 2.2-3701 and 2.2-3705.6 of the Code of Virginia, relating to the  
2 Virginia Freedom of Information Act; definition of confidential information; record exclusion  
3 for same.

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

5 **1. That §§ 2.2-3701 and 2.2-3705.6 of the Code of Virginia are amended and reenacted as follows:**

6 **§ 2.2-3701. Definitions.**

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

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

9 "Confidential information" means financial information, including balance sheets and financial  
10 statements, or other information of a submitting entity that are not (i) generally available to the public  
11 through regulatory disclosure or otherwise or (ii) trade secrets as defined in the Uniform Trade Secrets  
12 Act (§ 59.1-336 et seq.), where if such information was made public, the financial interest or  
13 competitive position of the submitting entity would be adversely affected.

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

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

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

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

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

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

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

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

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

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

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

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

63 **§ 2.2-3705.6. Exclusions to application of chapter; proprietary records and trade secrets.**

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

68 1. Confidential information. In order for such information to be excluded from the provisions of  
69 this chapter, the submitting entity shall make a written request to the public body (i) invoking such  
70 exclusion upon submission of the information for which protection from disclosure is sought, (ii)  
71 identifying with specificity the information for which protection is sought, and (iii) stating the reasons  
72 why protection is necessary. The public body may determine whether the requested exclusion from  
73 disclosure is necessary to protect the commercial or financial information of the submitting entity under  
74 this subdivision.

75 1a. Proprietary information gathered by or for the Virginia Port Authority as provided in § 62.1-  
76 132.4 or 62.1-134.1.

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

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

85           4. Information that was filed as confidential under the Toxic Substances Information Act (§ 32.1-  
86 239 et seq.), as such Act existed prior to July 1, 1992.

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

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

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

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

101           9. Proprietary, commercial or financial information, balance sheets, trade secrets, and revenue  
102 and cost projections provided by a private transportation business to the Virginia Department of  
103 Transportation and the Department of Rail and Public Transportation for the purpose of conducting  
104 transportation studies needed to obtain grants or other financial assistance under the Transportation  
105 Equity Act for the 21st Century (P.L. 105-178) for transportation projects if disclosure of such

106 information is exempt under the federal Freedom of Information Act or the federal Interstate Commerce  
107 Act or other laws administered by the Surface Transportation Board or the Federal Railroad  
108 Administration with respect to data provided in confidence to the Surface Transportation Board and the  
109 Federal Railroad Administration. However, the exclusion provided by this subdivision shall not apply to  
110 any wholly owned subsidiary of a public body.

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

115 11. a. Memoranda, staff evaluations, or other information prepared by the responsible public  
116 entity, its staff, outside advisors, or consultants exclusively for the evaluation and negotiation of  
117 proposals filed under the Public-Private Transportation Act of 1995 (§ 33.2-1800 et seq.) or the Public-  
118 Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.) where (i) if such  
119 information was made public prior to or after the execution of an interim or a comprehensive agreement,  
120 § 33.2-1820 or 56-575.17 notwithstanding, the financial interest or bargaining position of the public  
121 entity would be adversely affected and (ii) the basis for the determination required in clause (i) is  
122 documented in writing by the responsible public entity; and

123 b. Information provided by a private entity to a responsible public entity, affected jurisdiction, or  
124 affected local jurisdiction pursuant to the provisions of the Public-Private Transportation Act of 1995 (§  
125 33.2-1800 et seq.) or the Public-Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1  
126 et seq.) if disclosure of such information would reveal (i) trade secrets of the private entity as defined in  
127 the Uniform Trade Secrets Act (§ 59.1-336 et seq.); (ii) financial information of the private entity,  
128 including balance sheets and financial statements, that are not generally available to the public through  
129 regulatory disclosure or otherwise; or (iii) other information submitted by the private entity where if  
130 such information was made public prior to the execution of an interim agreement or a comprehensive  
131 agreement, the financial interest or bargaining position of the public or private entity would be adversely

132 affected. In order for the information specified in clauses (i), (ii), and (iii) to be excluded from the  
133 provisions of this chapter, the private entity shall make a written request to the responsible public entity:

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

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

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

138 The responsible public entity shall determine whether the requested exclusion from disclosure is  
139 necessary to protect the trade secrets or financial information of the private entity. To protect other  
140 information submitted by the private entity from disclosure, the responsible public entity shall determine  
141 whether public disclosure prior to the execution of an interim agreement or a comprehensive agreement  
142 would adversely affect the financial interest or bargaining position of the public or private entity. The  
143 responsible public entity shall make a written determination of the nature and scope of the protection to  
144 be afforded by the responsible public entity under this subdivision. Once a written determination is made  
145 by the responsible public entity, the information afforded protection under this subdivision shall  
146 continue to be protected from disclosure when in the possession of any affected jurisdiction or affected  
147 local jurisdiction.

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

155 For the purposes of this subdivision, the terms "affected jurisdiction," "affected local  
156 jurisdiction," "comprehensive agreement," "interim agreement," "qualifying project," "qualifying  
157 transportation facility," "responsible public entity," and "private entity" shall mean the same as those

158 terms are defined in the Public-Private Transportation Act of 1995 (§ 33.2-1800 et seq.) or in the Public-  
159 Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.).

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

165 13. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), or  
166 confidential proprietary information that is not generally available to the public through regulatory  
167 disclosure or otherwise, provided by a (i) bidder or applicant for a franchise or (ii) franchisee under  
168 Chapter 21 (§ 15.2-2100 et seq.) of Title 15.2 to the applicable franchising authority pursuant to a  
169 promise of confidentiality from the franchising authority, to the extent the information relates to the  
170 bidder's, applicant's, or franchisee's financial capacity or provision of new services, adoption of new  
171 technologies or implementation of improvements, where such new services, technologies, or  
172 improvements have not been implemented by the franchisee on a nonexperimental scale in the franchise  
173 area, and where, if such information were made public, the competitive advantage or financial interests  
174 of the franchisee would be adversely affected.

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

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

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

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

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

191 17. (Effective until October 1, 2016) Information relating to a grant or loan application, or  
192 accompanying a grant or loan application, to the Innovation and Entrepreneurship Investment Authority  
193 pursuant to Article 3 (§ 2.2-2233.1 et seq.) of Chapter 22 of Title 2.2 or to the Commonwealth Health  
194 Research Board pursuant to Chapter 22 (§ 23-277 et seq.) of Title 23 if disclosure of such information  
195 would (i) reveal proprietary business or research-related information produced or collected by the  
196 applicant in the conduct of or as a result of study or research on medical, rehabilitative, scientific,  
197 technical, technological, or scholarly issues, when such information has not been publicly released,  
198 published, copyrighted, or patented, and (ii) be harmful to the competitive position of the applicant.

199 17. (Effective October 1, 2016) Information relating to a grant or loan application, or  
200 accompanying a grant or loan application, to the Innovation and Entrepreneurship Investment Authority  
201 pursuant to Article 3 (§ 2.2-2233.1 et seq.) of Chapter 22 of Title 2.2 or to the Commonwealth Health  
202 Research Board pursuant to Chapter 5.3 (§ 32.1-162.23 et seq.) of Title 32.1 if disclosure of such  
203 information would (i) reveal proprietary business or research-related information produced or collected  
204 by the applicant in the conduct of or as a result of study or research on medical, rehabilitative, scientific,  
205 technical, technological, or scholarly issues, when such information has not been publicly released,  
206 published, copyrighted, or patented, and (ii) be harmful to the competitive position of the applicant.

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



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

216 19. Confidential proprietary information and trade secrets developed by or for a local authority  
217 created in accordance with the Virginia Wireless Service Authorities Act (§ 15.2-5431.1 et seq.) to  
218 provide qualifying communications services as authorized by Article 5.1 (§ 56-484.7:1 et seq.) of  
219 Chapter 15 of Title 56, where disclosure of such information would be harmful to the competitive  
220 position of the authority, except that information required to be maintained in accordance with § 15.2-  
221 2160 shall be released.

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

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

233 22. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), including,  
234 but not limited to, financial information, including balance sheets and financial statements, that are not  
235 generally available to the public through regulatory disclosure or otherwise, and revenue and cost  
236 projections supplied by a private or nongovernmental entity to the State Inspector General for the

237 purpose of an audit, special investigation, or any study requested by the Office of the State Inspector  
238 General in accordance with law.

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

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

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

245 c. Stating the reasons why protection is necessary.

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

250 23. Information relating to a grant application, or accompanying a grant application, submitted to  
251 the Tobacco Region Revitalization Commission that would (i) reveal (a) trade secrets as defined in the  
252 Uniform Trade Secrets Act (§ 59.1-336 et seq.), (b) financial information of a grant applicant that is not  
253 a public body, including balance sheets and financial statements, that are not generally available to the  
254 public through regulatory disclosure or otherwise, or (c) research-related information produced or  
255 collected by the applicant in the conduct of or as a result of study or research on medical, rehabilitative,  
256 scientific, technical, technological, or scholarly issues, when such information has not been publicly  
257 released, published, copyrighted, or patented, and (ii) be harmful to the competitive position of the  
258 applicant; and memoranda, staff evaluations, or other information prepared by the Commission or its  
259 staff exclusively for the evaluation of grant applications. The exclusion provided by this subdivision  
260 shall apply to grants that are consistent with the powers of and in furtherance of the performance of the  
261 duties of the Commission pursuant to § 3.2-3103.

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

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

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

268 c. Stating the reasons why protection is necessary.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

316 c. Stating the reasons why protection is necessary.

317           28. (Effective until October 1, 2016) Records submitted as a grant or loan application, or  
318 accompanying a grant or loan application, for an award from the Virginia Research Investment Fund  
319 pursuant to Chapter 28 (§ 23-304 et seq.) of Title 23, to the extent that such records contain proprietary  
320 business or research-related information produced or collected by the applicant in the conduct of or as a  
321 result of study or research on medical, rehabilitative, scientific, technical, technological, or scholarly  
322 issues, when such information has not been publicly released, published, copyrighted, or patented, if the  
323 disclosure of such information would be harmful to the competitive position of the applicant.

324           28. (Effective October 1, 2016) Records submitted as a grant or loan application, or  
325 accompanying a grant or loan application, for an award from the Virginia Research Investment Fund  
326 pursuant to Article 8 (§ 23.1-3130 et seq.) of Chapter 31 of Title 23.1, to the extent that such records  
327 contain proprietary business or research-related information produced or collected by the applicant in  
328 the conduct of or as a result of study or research on medical, rehabilitative, scientific, technical,  
329 technological, or scholarly issues, when such information has not been publicly released, published,  
330 copyrighted, or patented, if the disclosure of such information would be harmful to the competitive  
331 position of the applicant.

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