

SENATE BILL NO. _____ HOUSE BILL NO. _____

1 A BILL to amend and reenact §§ 2.2-3705.2 and 2.2-3705.3 of the Code of Virginia, relating to the
2 Virginia Freedom of Information Act; public safety and administrative investigations;
3 clarification of terminology.

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

5 **1. That §§ 2.2-3705.2 and 2.2-3705.3 of the Code of Virginia are amended and reenacted as**
6 **follows:**

7 **§ 2.2-3705.2. Exclusions to application of chapter; records relating to public safety.**

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

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

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

18 Those portions of engineering and construction drawings and plans that reveal critical structural
19 components, security equipment and systems, ventilation systems, fire protection equipment, mandatory
20 building emergency equipment or systems, elevators, electrical systems, telecommunications equipment
21 and systems, and other utility equipment and systems submitted for the purpose of complying with the
22 Uniform Statewide Building Code (§ 36-97 et seq.) or the Statewide Fire Prevention Code (§ 27-94 et
23 seq.), the disclosure of which would jeopardize the safety or security of any public or private
24 commercial office, multifamily residential or retail building or its occupants in the event of terrorism or
25 other threat to public safety, to the extent that the owner or lessee of such property, equipment or system

26 in writing (i) invokes the protections of this paragraph; (ii) identifies the drawings, plans, or other
27 materials to be protected; and (iii) states the reasons why protection is necessary.

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

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

34 4. Plans and information to prevent or respond to terrorist activity or cyber attacks, the disclosure
35 of which would jeopardize the safety of any person, including (i) critical infrastructure sector or
36 structural components; (ii) vulnerability assessments, operational, procedural, transportation, and tactical
37 planning or training manuals, and staff meeting minutes or other records; (iii) engineering or
38 architectural records, or records containing information derived from such records, to the extent such
39 records reveal the location or operation of security equipment and systems, elevators, ventilation, fire
40 protection, emergency, electrical, telecommunications or utility equipment and systems of any public
41 building, structure or information storage facility, or telecommunications or utility equipment or
42 systems; and (iv) information not lawfully available to the public regarding specific cybersecurity
43 threats or vulnerabilities or security plans and measures of an entity, facility, building structure,
44 information technology system, or software program. The same categories of records of any person or
45 entity submitted to a public body for the purpose of antiterrorism response planning or cybersecurity
46 planning or protection may be withheld from disclosure if such person or entity in writing (a) invokes
47 the protections of this subdivision, (b) identifies with specificity the records or portions thereof for
48 which protection is sought, and (c) states with reasonable particularity why the protection of such
49 records from public disclosure is necessary to meet the objective of antiterrorism or cybersecurity
50 planning or protection. Such statement shall be a public record and shall be disclosed upon request.

51 Nothing in this subdivision shall be construed to ~~prohibit the disclosure~~ authorize the withholding of
52 records relating to the structural or environmental soundness of any building, nor shall it ~~prevent the~~

53 | ~~disclosure~~ authorize the withholding of information relating to any building in connection with an
54 inquiry into the performance of that building after it has been subjected to fire, explosion, natural
55 disaster or other catastrophic event.

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

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

67 7. Security plans and specific assessment components of school safety audits, as provided in §
68 22.1-279.8.

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

73 8. [Expired.]

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

78 10. Subscriber data, which for the purposes of this subdivision, means the name, address,
79 | telephone number, and any other information identifying a subscriber of a ~~telecommunications carrier~~

80 communications services provider, provided directly or indirectly by a ~~telecommunications carrier~~
81 communications services provider to a public body that operates a 911 or E-911 emergency dispatch
82 system or an emergency notification or reverse 911 system, if the data is in a form not made available by
83 the ~~telecommunications carrier~~ communications services provider to the public generally. Nothing in
84 this subdivision shall prevent the release of subscriber data generated in connection with specific calls to
85 a 911 emergency system, where the requester is seeking to obtain public records about the use of the
86 system in response to a specific crime, emergency or other event as to which a citizen has initiated a 911
87 call. For the purposes of this subdivision, "communications services provider" means the same as that
88 term is defined in § 58.1-647.

89 11. Subscriber data, which for the purposes of this subdivision, means the name, address,
90 telephone number, and any other information identifying a subscriber of a ~~telecommunications carrier~~
91 communications services provider, collected by a local governing body in accordance with the Enhanced
92 Public Safety Telephone Services Act (§ 56-484.12 et seq.), and other identifying information of a
93 personal, medical, or financial nature provided to a local governing body in connection with a 911 or E-
94 911 emergency dispatch system or an emergency notification or reverse 911 system, if such records are
95 not otherwise publicly available. Nothing in this subdivision shall prevent the release of subscriber data
96 generated in connection with specific calls to a 911 emergency system, where the requester is seeking to
97 obtain public records about the use of the system in response to a specific crime, emergency or other
98 event as to which a citizen has initiated a 911 call. For the purposes of this subdivision,
99 "communications services provider" means the same as that term is defined in § 58.1-647.

100 12. Records of the Virginia Military Advisory Council or any commission created by executive
101 order for the purpose of studying and making recommendations regarding preventing closure or
102 realignment of federal military and national security installations and facilities located in Virginia and
103 relocation of such facilities to Virginia, or a local or regional military affairs organization appointed by a
104 local governing body, to the extent such records (i) contain information relating to strategies under
105 consideration or development by the Council or such commission or organizations to prevent the closure
106 or realignment of federal military installations located in Virginia or the relocation of national security

107 facilities located in Virginia, to limit the adverse economic effect of such realignment, closure, or
108 relocation, or to seek additional tenant activity growth from the Department of Defense or federal
109 government or (ii) disclose trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et
110 seq.), provided to the Council or such commission or organizations in connection with their work. In
111 order to invoke the trade secret protection provided by clause (ii), the submitting entity shall, in writing
112 and at the time of submission (a) invoke this exclusion, (b) identify with specificity the information for
113 which such protection is sought, and (c) state the reason why such protection is necessary. Nothing in
114 this subdivision shall be construed to authorize the withholding of all or part of any record, other than a
115 trade secret that has been specifically identified as required by this subdivision, after the Department of
116 Defense or federal agency has issued a final, unappealable decision, or in the event of litigation, a court
117 of competent jurisdiction has entered a final, unappealable order concerning the closure, realignment, or
118 expansion of the military installation or tenant activities, or the relocation of the national security
119 facility, for which records are sought.

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

129 14. Documentation or other information relating to the Statewide Agencies Radio System
130 (STARS) or any other similar local or regional public safety communications system that (i) describes
131 the design, function, programming, operation, or access control features of the overall system,
132 components, structures, individual networks, and subsystems of the STARS or any other similar local or
133 regional communications system or (ii) relates to radio frequencies assigned to or utilized by STARS or

134 any other similar local or regional communications system, code plugs, circuit routing, addressing
135 schemes, talk groups, fleet maps, encryption, programming maintained by or utilized by STARS or any
136 other similar local or regional public safety communications system; those portions of engineering and
137 construction drawings and plans that reveal critical structural components, interconnectivity, security
138 equipment and systems, network monitoring, network operation center, master sites, ventilation systems,
139 fire protection equipment, mandatory building emergency equipment, electrical systems, and other
140 utility equipment and systems related to STARS or any other similar local or regional public safety
141 communications system; and special event plans, operational plans, storm plans, or other pre-arranged
142 programming, the disclosure of which would reveal surveillance techniques, personnel deployments,
143 alarm or security systems or technologies, or operational and transportation plans or protocols, to the
144 extent such disclosure would jeopardize the security of any governmental facility, building, or structure
145 or the safety of any person.

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

149 16. Records of hospitals and nursing homes regulated by the Board of Health pursuant to Chapter
150 5 (§ 32.1-123 et seq.) of Title 32.1 provided to the Department of Health, to the extent such records
151 reveal the disaster recovery plans or the evacuation plans for such facilities in the event of fire,
152 explosion, natural disaster, or other catastrophic event. Nothing in this subdivision shall be construed to
153 ~~prohibit the disclosure~~ authorize the withholding of records relating to the effectiveness of executed
154 evacuation plans after the occurrence of fire, explosion, natural disaster, or other catastrophic event.

155 **§ 2.2-3705.3. Exclusions to application of chapter; records relating to administrative**
156 **investigations.**

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

159 1. (Effective until July 1, 2018) Confidential records of all investigations of applications for
160 licenses and permits, and of all licensees and permittees, made by or submitted to the Alcoholic

161 Beverage Control Board, the Virginia Lottery, the Virginia Racing Commission, the Department of
162 Agriculture and Consumer Services relating to investigations and applications pursuant to Article 1.1:1
163 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2, or the Private Security Services Unit of the
164 Department of Criminal Justice Services.

165 1. (Effective July 1, 2018) Confidential records of all investigations of applications for licenses
166 and permits, and of all licensees and permittees, made by or submitted to the Virginia Alcoholic
167 Beverage Control Authority, the Virginia Lottery, the Virginia Racing Commission, the Department of
168 Agriculture and Consumer Services relating to investigations and applications pursuant to Article 1.1:1
169 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2, or the Private Security Services Unit of the
170 Department of Criminal Justice Services.

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

173 3. Investigator notes, and other correspondence and information, furnished in confidence with
174 respect to an active investigation of individual employment discrimination complaints made to the
175 Department of Human Resource Management, to such personnel of any local public body, including
176 local school boards, as are responsible for conducting such investigations in confidence, or to any public
177 institution of higher education. However, nothing in this ~~section~~ subdivision shall ~~prohibit the disclosure~~
178 be construed to authorize the withholding of information taken from inactive reports in a form that does
179 not reveal the identity of charging parties, persons supplying the information, or other individuals
180 involved in the investigation.

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

183 5. Investigative notes and other correspondence and information furnished in confidence with
184 respect to an investigation or conciliation process involving an alleged unlawful discriminatory practice
185 under the Virginia Human Rights Act (§ 2.2-3900 et seq.) or under any local ordinance adopted in
186 accordance with the authority specified in § 2.2-524, or adopted pursuant to § 15.2-965, or adopted prior
187 to July 1, 1987, in accordance with applicable law, relating to local human rights or human relations

188 commissions. However, nothing in this section shall prohibit the distribution of information taken from
189 inactive reports in a form that does not reveal the identity of the parties involved or other persons
190 supplying information.

191 6. Records of studies and investigations by the Virginia Lottery of (i) lottery agents, (ii) lottery
192 vendors, (iii) lottery crimes under §§ 58.1-4014 through 58.1-4018, (iv) defects in the law or regulations
193 that cause abuses in the administration and operation of the lottery and any evasions of such provisions,
194 or (v) the use of the lottery as a subterfuge for organized crime and illegal gambling where such official
195 records have not been publicly released, published or copyrighted. All studies and investigations
196 referred to under clauses (iii), (iv), and (v) shall be open to inspection and copying upon completion of
197 the study or investigation.

198 7. Investigative notes, correspondence and information furnished in confidence, and records
199 otherwise exempted by this chapter or any Virginia statute, provided to or produced by or for (i) the
200 Auditor of Public Accounts; (ii) the Joint Legislative Audit and Review Commission; (iii) an appropriate
201 authority as defined in § 2.2-3010 with respect to an allegation of wrongdoing or abuse under the Fraud
202 and Abuse Whistle Blower Protection Act (§ 2.2-3009 et seq.); (iv) the Office of the State Inspector
203 General with respect to an investigation initiated through the Fraud, Waste and Abuse Hotline or an
204 investigation initiated pursuant to Chapter 3.2 (§ 2.2-307 et seq.); (v) internal auditors appointed by the
205 head of a state agency or by any public institution of higher education; (vi) the committee or the auditor
206 with respect to an investigation or audit conducted pursuant to § 15.2-825; or (vii) the auditors,
207 appointed by the local governing body of any county, city, or town or a school board, who by charter,
208 ordinance, or statute have responsibility for conducting an investigation of any officer, department, or
209 program of such body. Records of completed investigations shall be disclosed in a form that does not
210 reveal the identity of the complainants or persons supplying information to investigators. Unless
211 ~~disclosure is prohibited by this section~~ exempted by this subdivision, the records disclosed shall include,
212 but not be limited to, the agency involved, the identity of the person who is the subject of the complaint,
213 the nature of the complaint, and the actions taken to resolve the complaint. If an investigation does not
214 lead to corrective action, the identity of the person who is the subject of the complaint may be released

215 only with the consent of the subject person. Local governing bodies shall adopt guidelines to govern the
216 disclosure required by this subdivision.

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

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

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

230 11. Records furnished to or prepared by the Board of Education pursuant to subsection D of §
231 22.1-253.13:3 in connection with the review or investigation of any alleged breach in security,
232 unauthorized alteration, or improper administration of tests by local school board employees responsible
233 for the distribution or administration of the tests. However, nothing in this section subdivision shall ~~not~~
234 prohibit the disclosure be construed to authorize the withholding of records ~~to from~~ (i) a local school
235 board or division superintendent for the purpose of permitting such board or superintendent to consider
236 or to take personnel action with regard to an employee or (ii) any requester, after the conclusion of a
237 review or investigation, in a form that (a) does not reveal the identity of any person making a complaint
238 or supplying information to the Board on a confidential basis and (b) does not compromise the security
239 of any test mandated by the Board.

240 12. Investigator notes, and other correspondence and information, furnished in confidence with
241 respect to an active investigation conducted by or for the Board of Education related to the denial,

242 suspension, or revocation of teacher licenses. However, nothing in this subdivision shall ~~not prohibit the~~
243 ~~disclosure~~ be construed to authorize the withholding of records ~~to~~ from a local school board or division
244 superintendent for the purpose of permitting such board or superintendent to consider or to take
245 personnel action with regard to an employee. Records of completed investigations shall be disclosed in a
246 form that does not reveal the identity of any complainant or person supplying information to
247 investigators. The records disclosed shall include information regarding the school or facility involved,
248 the identity of the person who was the subject of the complaint, the nature of the complaint, and the
249 actions taken to resolve the complaint. If an investigation fails to support a complaint or does not lead to
250 corrective action, the identity of the person who was the subject of the complaint may be released only
251 with the consent of the subject person. No personally identifiable information in the records regarding a
252 current or former student shall be released except as permitted by state or federal law.

253 13. Records, notes and information provided in confidence and related to an investigation by the
254 Attorney General under Article 1 (§ 3.2-4200 et seq.) or Article 3 (§ 3.2-4204 et seq.) of Chapter 42 of
255 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,
256 or Article 1 (§ 58.1-1000) of Chapter 10 of Title 58.1. However, records related to an investigation that
257 has been inactive for more than six months shall, upon request, be disclosed provided such disclosure is
258 not otherwise prohibited by law and does not reveal the identity of charging parties, complainants,
259 persons supplying information, witnesses, or other individuals involved in the investigation.

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