

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

1 A BILL to amend and reenact § 2.2-3705.7 of the Code of Virginia, relating to Freedom of Information  
2 Act; certain records of the Department of Game and Inland Fisheries.

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

4 **1. That § 2.2-3705.7 of the Code of Virginia is amended and reenacted as follows:**

5 § 2.2-3705.7. Exclusions to application of chapter; records of specific public bodies and certain  
6 other limited exemptions.

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

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

11 2. Working papers and correspondence of the Office of the Governor; Lieutenant Governor; the  
12 Attorney General; the members of the General Assembly or the Division of Legislative Services; the  
13 mayor or chief executive officer of any political subdivision of the Commonwealth; or the president or  
14 other chief executive officer of any public institution of higher education in Virginia. However, no  
15 record, which is otherwise open to inspection under this chapter, shall be deemed exempt by virtue of  
16 the fact that it has been attached to or incorporated within any working paper or correspondence.

17 As used in this subdivision:

18 "Office of the Governor" means the Governor; his chief of staff, counsel, director of policy,  
19 Cabinet Secretaries, and the Director of the Virginia Liaison Office; and those individuals to whom the  
20 Governor has delegated his authority pursuant to § 2.2-104.

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

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

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

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

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

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

38 8. Personal information, as defined in § 2.2-3801, (i) filed with the Virginia Housing  
39 Development Authority concerning individuals who have applied for or received loans or other housing  
40 assistance or who have applied for occupancy of or have occupied housing financed, owned or otherwise  
41 assisted by the Virginia Housing Development Authority; (ii) concerning persons participating in or  
42 persons on the waiting list for federally funded rent-assistance programs; (iii) filed with any local  
43 redevelopment and housing authority created pursuant to § 36-4 concerning persons participating in or  
44 persons on the waiting list for housing assistance programs funded by local governments or by any such  
45 authority; or (iv) filed with any local redevelopment and housing authority created pursuant to § 36-4 or  
46 any other local government agency concerning persons who have applied for occupancy or who have  
47 occupied affordable dwelling units established pursuant to § 15.2-2304 or 15.2-2305. However, access  
48 to one's own information shall not be denied.

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

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

58           11. Records, memoranda, working papers, graphics, video or audio tapes, production models,  
59 data and information of a proprietary nature produced by or for or collected by or for the State Lottery  
60 Department relating to matters of a specific lottery game design, development, production, operation,  
61 ticket price, prize structure, manner of selecting the winning ticket, manner of payment of prizes to  
62 holders of winning tickets, frequency of drawings or selections of winning tickets, odds of winning,  
63 advertising, or marketing, where such official records have not been publicly released, published,  
64 copyrighted or patented. Whether released, published or copyrighted, all game-related information shall  
65 be subject to public disclosure under this chapter upon the first day of sales for the specific lottery game  
66 to which it pertains.

67           12. Records of the Virginia Retirement System, acting pursuant to § 51.1-124.30, or of a local  
68 retirement system, acting pursuant to § 51.1-803, or of the Rector and Visitors of the University of  
69 Virginia, acting pursuant to § 23-76.1, or of the Virginia College Savings Plan, acting pursuant to § 23-  
70 38.77, relating to the acquisition, holding or disposition of a security or other ownership interest in an  
71 entity, where such security or ownership interest is not traded on a governmentally regulated securities  
72 exchange, to the extent that: (i) such records contain confidential analyses prepared for the Rector and  
73 Visitors of the University of Virginia, prepared by the retirement system or the Virginia College Savings  
74 Plan, or provided to the retirement system or the Virginia College Savings Plan under a promise of  
75 confidentiality, of the future value of such ownership interest or the future financial performance of the  
76 entity; and (ii) disclosure of such confidential analyses would have an adverse effect on the value of the  
77 investment to be acquired, held or disposed of by the retirement system, the Rector and Visitors of the  
78 University of Virginia, or the Virginia College Savings Plan. Nothing in this subdivision shall be

79 construed to prevent the disclosure of records relating to the identity of any investment held, the amount  
80 invested, or the present value of such investment.

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

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

87 15. Records of the Virginia Commonwealth University Health System Authority pertaining to  
88 any of the following: an individual's qualifications for or continued membership on its medical or  
89 teaching staffs; proprietary information gathered by or in the possession of the Authority from third  
90 parties pursuant to a promise of confidentiality; contract cost estimates prepared for confidential use in  
91 awarding contracts for construction or the purchase of goods or services; data, records or information of  
92 a proprietary nature produced or collected by or for the Authority or members of its medical or teaching  
93 staffs; financial statements not publicly available that may be filed with the Authority from third parties;  
94 the identity, accounts or account status of any customer of the Authority; consulting or other reports paid  
95 for by the Authority to assist the Authority in connection with its strategic planning and goals; the  
96 determination of marketing and operational strategies where disclosure of such strategies would be  
97 harmful to the competitive position of the Authority; and data, records or information of a proprietary  
98 nature produced or collected by or for employees of the Authority, other than the Authority's financial or  
99 administrative records, in the conduct of or as a result of study or research on medical, scientific,  
100 technical or scholarly issues, whether sponsored by the Authority alone or in conjunction with a  
101 governmental body or a private concern, when such data, records or information have not been publicly  
102 released, published, copyrighted or patented.

103 16. Records of the Department of Environmental Quality, the State Water Control Board, State  
104 Air Pollution Control Board or the Virginia Waste Management Board relating to (i) active federal  
105 environmental enforcement actions that are considered confidential under federal law and (ii)

106 enforcement strategies, including proposed sanctions for enforcement actions. Upon request, such  
107 records shall be disclosed after a proposed sanction resulting from the investigation has been proposed  
108 to the director of the agency. This subdivision shall not be construed to prohibit the disclosure of records  
109 related to inspection reports, notices of violation, and documents detailing the nature of any  
110 environmental contamination that may have occurred or similar documents.

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

116 18. Records of the State Lottery Department pertaining to (i) the social security number, tax  
117 identification number, state sales tax number, home address and telephone number, personal and lottery  
118 banking account and transit numbers of a retailer, and financial information regarding the nonlottery  
119 operations of specific retail locations; and (ii) individual lottery winners, except that a winner's name,  
120 hometown, and amount won shall be disclosed.

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

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

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

132 22. Records of state or local park and recreation departments and local and regional park  
133 authorities to the extent such records contain information identifying a person under the age of 18 years,  
134 where the parent or legal guardian of such person has requested in writing that such information not be  
135 disclosed. However, nothing in this subdivision shall operate to prohibit the disclosure of information  
136 defined as directory information under regulations implementing the Family Educational Rights and  
137 Privacy Act, 20 U.S.C. § 1232g, unless the public body has undertaken the parental notification and opt-  
138 out requirements provided by such regulations. Access shall not be denied to the parent, including a  
139 noncustodial parent, or guardian of such person, unless the parent's parental rights have been terminated  
140 or a court of competent jurisdiction has restricted or denied such access. For records of such persons  
141 who are emancipated, the right of access may be asserted by the subject thereof.

142 23. Records submitted for inclusion in the Statewide Alert Network administered by the  
143 Department of Emergency Management, to the extent that they reveal names, physical addresses, email  
144 addresses, computer or internet protocol information, telephone numbers, pager numbers, other wireless  
145 or portable communications device information, or operating schedules of individuals or agencies,  
146 where the release of such information would compromise the security of the Statewide Alert Network or  
147 individuals participating in the Statewide Alert Network.

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

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

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

157 b. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), provided by a  
158 private entity to the retirement system or the Virginia College Savings Plan, to the extent disclosure of

159 such records would have an adverse impact on the financial interest of the retirement system or the  
160 Virginia College Savings Plan.

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

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

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

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

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

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

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

172 27. Records maintained by the Department of the Treasury or participants in the Local  
173 Government Investment Pool (§ 2.2-4600 et seq.), to the extent such records relate to information  
174 required to be provided by such participants to the Department to establish accounts in accordance with  
175 § 2.2-4602.

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

179 29. Records maintained in connection with fundraising activities by the Veterans Services  
180 Foundation pursuant to § 2.2-2716 to the extent that such records reveal the address, electronic mail  
181 address, facsimile or telephone number, social security number or other identification number appearing  
182 on a driver's license, or credit card or bank account data of identifiable donors, except that access shall  
183 not be denied to the person who is the subject of the record. Nothing in this subdivision, however, shall  
184 be construed to authorize the withholding of records relating to the amount, date, purpose, and terms of  
185 the pledge or donation or the identity of the donor. The exclusion provided by this subdivision shall not

186 apply to protect from disclosure (i) the identities of sponsors providing grants to or contracting with the  
187 foundation for the performance of services or other work or (ii) the terms and conditions of such grants  
188 or contracts.

189 30. Records maintained by the Department of Game and Inland Fisheries to the extent such  
190 records contain the home telephone number, electronic mail address, or credit card or bank account data  
191 of individual applicants for or holders of any hunting, fishing, boating, or trapping license issued by an  
192 agent of the Department of Game and Inland Fisheries, provided that such individuals have requested  
193 that the Department not disclose such information. However, statistical summaries, abstracts, or other  
194 records containing information in an aggregate form that does not identify individual applicants or  
195 licensees shall be disclosed. Nothing in this subdivision shall be construed to prohibit the release of such  
196 records (i) in accordance with a proper judicial order; (ii) to any law-enforcement agency, officer, or  
197 authorized agent thereof acting in the performance of official law-enforcement duties; or (iii) to the  
198 person who is the subject of the record.

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