



Commonwealth Health Research Board (CHRB)
Freedom of Information Act (FOIA) Records Subcommittee
Meeting: Discussion of CHRB FOIA Exemption
Thursday, August 18, 2016 at 10:00 am
House Room C of the General Assembly Building

Commonwealth Health Research Board [CHRB or Board] Goals, Purposes and Accomplishments

The CHRB was created by Virginia Code § 23-278 to provide financial support for research efforts having the potential of maximizing human health benefits for the citizens of the Commonwealth. This initiative of the General Assembly and the Governor used the proceeds from the sale of Trigon stock to create the framework and fiscal resources for a research grant program. The funds result from the stock and cash distributed to the Commonwealth of Virginia pursuant to the conversion of Trigon Blue Cross and Blue Shield from a mutual insurance company to a stock corporation. Income from the funds is used to make grant awards. Research efforts eligible for support by the Board may include traditional medical and biomedical research relating to the causes and cures of diseases, as well as research related to health services and the delivery of health care.

In accordance with Virginia Code § 23-279, the Board encourages collaborative research efforts among two or more institutions or organizations, gives priority to those research efforts where Board support can be leveraged to foster contributions from federal agencies or other entities, and supports both new research efforts and the expansion or continuation of existing research efforts. CHRB grant recipients to date have leveraged approximately \$27.5 million in additional private and federal grant funds to further their research studies.

Commonwealth Health Research Fund [CHRF]

Virginia Code § 51.1-124.36 delegates the authority to invest and manage the assets of the Commonwealth Health Research Fund [CHRF] to the Virginia Retirement System [VRS]. Assets of the [CHRF] are pooled with the \$68.1 billion [as of June 30, 2016] VRS investment fund; however, the provision requires the VRS to maintain a separate accounting for the CHRF assets.

Grant funding is calculated by an amount not to exceed six percent of the moving average of the market value of the CHRF calculated over the previous five years on a one-year delayed basis, net of any administrative fee assessed pursuant to subsection E of § 51.1-124.36.



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Entities Eligible for CHRB Grant Funding

State-supported Virginia institutions of higher education
Agencies of the Commonwealth of Virginia
Nonprofit Organizations exempt from income taxation pursuant to § 501 c (3) of the Internal Revenue Code located in the Commonwealth of Virginia.

Current statute: § 2.2-3705.6 (17) Exclusions to application of chapter; proprietary records and trade secrets.

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

17. Records submitted as a grant or loan application, or accompanying a grant or loan application, to the Innovation and Entrepreneurship Investment Authority pursuant to Article 3 (§ 2.2-2233.1 et seq.) of Chapter 22 of Title 2.2 or to the Commonwealth Health Research Board pursuant to Chapter 22 (§ 23-277 et seq.) of Title 23 to the extent such records contain proprietary business or research-related information produced or collected by the applicant in the conduct of or as a result of study or research on medical, rehabilitative, scientific, technical, technological, or scholarly issues, when such information has not been publicly released, published, copyrighted, or patented, if the disclosure of such information would be harmful to the competitive position of the applicant.



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Explanation for the need for the CHRB's particular exemption is provided below:

The competition for CHRB research funds is significant and has resulted in an annual average of 80 applications over the last 5 years, with an average award rate of 8%.

Each Concept Paper submitted to the Board for funding consideration contains innovative research-related information collected or produced by the applicant. All applications are judged according to scientific review criteria, which include an evaluation concerning whether the proposal is innovative.

The scientific reviewers consider the following inquiries in evaluating each proposal:

- Does the project employ novel concepts, approaches or methods?
- Are the aims original and innovative?
- Does the project challenge existing paradigms or develop new methodologies or technologies?

The criteria for innovation in the CHRB procedures supports the requirement that research-related information in the application has not been publicly released, published, copyrighted, or patented, and the disclosure of such information would be harmful to the competitive position of the applicant.

Furthermore, CHRB applicants also apply for funding from other funding sources, such as the National Institutes of Health ("NIH"), which also have very low success rates (less than 10 % depending on the individual Institute at NIH, for example). NIH has the same requirement that applications that are not funded are not released under the Freedom of Information Act, Code of Federal Regulations, Title 45, Sec. 5.65 Exemption four: Trade secrets and confidential commercial or financial information.

Therefore, the CHRB's ability to maintain the confidentiality of such previously undisclosed research-related information is critical for the success of the CHRB application process. Without the CHRB's ability to ensure that it will withhold trade secrets and commercial or financial information that is obtained from an applicant, investigators would be unwilling to provide that information to the



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CHRB for fear that the information may be used by competitors to obtain funding from the CHRB or other sources. The current statute: § 2.2-3705.6 (17) Exclusions to application of chapter; proprietary records and trade secrets, makes it possible for the CHRB to achieve the General Assembly's objectives in creating the CHRB.

CHRB Policy: Release of Concept Papers and Full Proposal Submissions

Current CHRB Policy provides that, Copies of grant proposals funded by the CHRB are provided to the public upon request, in accordance with the Virginia Freedom of Information Act, Section 2.2-3700 *et seq.*, of the *Code of Virginia* (1950), as amended.

Once such a request is made, the Principal Investigator (PI) and the Grantee Institution or Organization is contacted by the CHRB Administrator prior to the release of any funded CHRB grant proposals to afford the PI and the Grantee Institution or Organization an opportunity to identify any information it deems proprietary. The PI and the Grantee Institution or Organization must submit its position regarding the information it deems to be proprietary in writing to the CHRB Administrator no later than four calendar days of the date it is notified of the request for disclosure of the grant proposal. The decision regarding what, if any, information is to be withheld from disclosure pursuant to the foregoing exemption to the Virginia Freedom of Information Act rests within the sole discretion of the CHRB's Chair. Copies of Concept Papers and Full Proposals that do not result in a Grant Award are not released to the public.