

# VIRGINIA ACTS OF ASSEMBLY -- 2016 SESSION

## CHAPTER 620

*An Act to amend and reenact §§ 2.2-3701, 2.2-3704, 2.2-3705.1 through 2.2-3705.7, 2.2-3711, and 2.2-3713 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 2.2-3704.01, relating to the Virginia Freedom of Information Act; record exclusions; rule of redaction; no weight accorded to public body's determination.*

[H 817]

Approved April 1, 2016

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-3701, 2.2-3704, 2.2-3705.1 through 2.2-3705.7, 2.2-3711, and 2.2-3713 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 2.2-3704.01 as follows:

§ 2.2-3705.1. Exclusions to application of chapter; exclusions of general application to public bodies.

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

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

4. ~~Plans and information to prevent or respond~~ *Information concerning the prevention or response* to terrorist activity or cyber attacks, ~~the disclosure of which would jeopardize the safety of any person,~~ including (i) critical infrastructure sector or structural components; (ii) vulnerability assessments, operational, procedural, transportation, and tactical planning or training manuals, and staff meeting minutes ~~or other records~~; (iii) engineering or architectural records ~~plans or drawings, or records containing information derived from such records, to the extent plans or drawings; and (iv) information not lawfully available to the public regarding specific cybersecurity threats or vulnerabilities or security plans and measures of an entity, facility, building, structure, information technology system, or software program if disclosure of such records information would (a) reveal the location or operation of security equipment and systems, elevators, ventilation, fire protection, emergency, electrical, telecommunications or utility equipment and systems of any public building, structure or information storage facility, or telecommunications or utility equipment or systems; and (iv) information not lawfully available to the public regarding specific cybersecurity threats or vulnerabilities or security plans and~~

~~measures of an entity, facility, building structure, information technology system, or software program or (b) jeopardize the safety of any person.~~

The same categories of ~~records of~~ *information concerning* any person or entity submitted to a public body for the purpose of antiterrorism response planning or cybersecurity planning or protection may be withheld from disclosure if such person or entity in writing ~~(a) (1) invokes the protections of this subdivision, (b) (2) identifies with specificity the records or portions thereof~~ *information* for which protection is sought, and ~~(c) (3) states with reasonable particularity why the protection of such records~~ *information* from public disclosure is necessary to meet the objective of antiterrorism or cybersecurity planning or protection. Such statement shall be a public record and shall be disclosed upon request.

**Nothing in this subdivision shall be construed to ~~prohibit the disclosure~~ *authorize the withholding of records information* relating to the structural or environmental soundness of any building, nor shall it ~~prevent the disclosure~~ *authorize the withholding of information relating to any building in connection with an inquiry into the performance of that building after it has been subjected to fire, explosion, natural disaster, or other catastrophic event.***

~~7. Security Information concerning security plans and specific assessment components of school safety audits, as provided in § 22.1-279.8.~~

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

~~10-9. Subscriber data, which for the purposes of this subdivision, means the name, address, telephone number, and any other information identifying a subscriber of a telecommunications carrier, provided directly or indirectly by a telecommunications carrier to a public body that operates a 911 or E-911 emergency dispatch system or an emergency notification or reverse 911 system, if the data is in a form not made available by the telecommunications carrier to the public generally. Nothing in this subdivision shall ~~prevent the release~~ *authorize the withholding of subscriber data generated in connection with specific calls to a 911 emergency system, where the requester is seeking to obtain public records about the use of the system in response to a specific crime, emergency or other event as to which a citizen has initiated a 911 call.*~~

*For the purposes of this subdivision, "subscriber data" means the name, address, telephone number, and any other information identifying a subscriber of a telecommunications carrier.*

~~11-10. Subscriber data, which for the purposes of this subdivision, means the name, address, telephone number, and any other information identifying a subscriber of a telecommunications carrier, collected by a local governing body in accordance with the Enhanced Public Safety Telephone Services Act (§ 56-484.12 et seq.), and other identifying information of a personal, medical, or financial nature provided to a local governing body in connection with a 911 or E-~~

911 emergency dispatch system or an emergency notification or reverse 911 system, if such records are not otherwise publicly available.

**Nothing in this subdivision shall ~~prevent the release~~ authorize the withholding of subscriber data generated in connection with specific calls to a 911 emergency system, where the requester is seeking to obtain public records about the use of the system in response to a specific crime, emergency or other event as to which a citizen has initiated a 911 call.**

*For the purposes of this subdivision, "subscriber data" means the name, address, telephone number, and any other information identifying a subscriber of a telecommunications carrier.*

15. *Information concerning the disaster recovery plans or the evacuation plans for such facilities in the event of fire, explosion, natural disaster, or other catastrophic event for hospitals and nursing homes regulated by the Board of Health pursuant to Chapter 5 (§ 32.1-123 et seq.) of Title 32.1 provided to the Department of Health. Nothing in this subdivision shall be construed to ~~prohibit the disclosure~~ authorize the withholding of records information relating to the effectiveness of executed evacuation plans after the occurrence of fire, explosion, natural disaster, or other catastrophic event.*

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

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

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

7. Investigative notes, correspondence and information furnished in confidence, and records otherwise exempted by this chapter or any Virginia statute, provided to or produced by or for (i) the Auditor of Public Accounts; (ii) the Joint Legislative Audit and Review Commission; (iii) an appropriate authority as defined in § 2.2-3010 with respect to an allegation of wrongdoing or abuse under the Fraud and Abuse Whistle Blower Protection Act (§ 2.2-3009 et seq.); (iv) the

Office of the State Inspector General with respect to an investigation initiated through the Fraud, Waste and Abuse Hotline or an investigation initiated pursuant to Chapter 3.2 (§ 2.2-307 et seq.); (v) internal auditors appointed by the head of a state agency or by any public institution of higher education; (vi) the committee or the auditor with respect to an investigation or audit conducted pursuant to § 15.2-825; or (vii) the auditors, appointed by the local governing body of any county, city, or town or a school board, who by charter, ordinance, or statute have responsibility for conducting an investigation of any officer, department, or program of such body. ~~Records of Information contained in~~ completed investigations shall be disclosed in a form that does not reveal the identity of the complainants or persons supplying information to investigators. **Unless disclosure is prohibited excluded by this section subdivision, the records information disclosed shall include, but not be limited to, the agency involved, the identity of the person who is the subject of the complaint, the nature of the complaint, and the actions taken to resolve the complaint. If an investigation does not lead to corrective action, the identity of the person who is the subject of the complaint may be released only with the consent of the subject person. Local governing bodies shall adopt guidelines to govern the disclosure required by this subdivision.**

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

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

12. Investigator notes, and other correspondence and information, furnished in confidence with respect to an active investigation conducted by or for the Board of Education related to the denial, suspension, or revocation of teacher licenses. However, this subdivision shall not prohibit the disclosure of ~~records such information~~ to a local school board or division superintendent for the purpose of permitting such board or superintendent to consider or to take personnel action with regard to an employee. **Records of Information contained in completed investigations shall be disclosed in a form that does not reveal the identity of any complainant or person supplying information to investigators. The records information disclosed shall include information regarding the school or facility involved, the identity of the person who was the subject of the complaint, the nature of the complaint, and the actions taken to resolve the**

complaint. If an investigation fails to support a complaint or does not lead to corrective action, the identity of the person who was the subject of the complaint may be released only with the consent of the subject person. No personally identifiable information in the records regarding a current or former student shall be released except as permitted by state or federal law.

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

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

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

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

17. ~~Records of Information held by the State Health Commissioner relating to the health of any person or persons subject to an order of quarantine or an order of isolation pursuant to Article 3.02 (§ 32.1-48.05 et seq.) of Chapter 2 of Title 32.1; this provision shall not, however,~~ *However, nothing in this subdivision shall be construed to prohibit the disclosure authorize the withholding of statistical summaries, abstracts, or other information in aggregate form.*

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

12. ~~Records of Information held by the Virginia Retirement System, acting pursuant to § 51.1-124.30, or of a local retirement system, acting pursuant to § 51.1-803, or of the Rector and Visitors of the University of Virginia, acting pursuant to § 23-76.1, or of the Virginia College Savings Plan, acting pursuant to § 23-38.77, relating to the acquisition, holding, or disposition of~~

a security or other ownership interest in an entity, where such security or ownership interest is not traded on a governmentally regulated securities exchange, ~~to the extent that: if disclosure of such information would~~ (i) ~~such records contain~~ reveal confidential analyses prepared for the Rector and Visitors of the University of Virginia, prepared by the retirement system or the Virginia College Savings Plan, or provided to the retirement system or the Virginia College Savings Plan under a promise of confidentiality, of the future value of such ownership interest or the future financial performance of the entity; and (ii) ~~disclosure of such confidential analyses would have an adverse effect on the value of the investment to be acquired, held, or disposed of by the retirement system, the Rector and Visitors of the University of Virginia, or the Virginia College Savings Plan.~~ **Nothing in this subdivision shall be construed to prevent the disclosure of records authorize the withholding of information relating to the identity of any investment held, the amount invested, or the present value of such investment.**

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

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