

SENATE BILL NO. _____ HOUSE BILL NO. _____

1 A BILL to amend and reenact §§ 2.2-3705.1 and 2.2-3705.4 of the Code of Virginia, relating to the
2 Virginia Freedom of Information Act; letters of recommendation.

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

4 **1. That §§ 2.2-3705.1 and 2.2-3705.4 of the Code of Virginia are amended and reenacted as**
5 **follows:**

6 **§ 2.2-3705.1. Exclusions to application of chapter; exclusions of general application to**
7 **public bodies.**

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. Personnel records containing information concerning identifiable individuals, except that
11 access shall not be denied to the person who is the subject thereof; however, nothing in this subdivision
12 shall be construed to require access to any recommendation or letter of reference from a third party that
13 is a part of the subject's personnel file [LHausenfluck2]. Any person who is the subject of any personnel
14 record and who is 18 years of age or older may waive [LHausenfluck3], in writing, the protections
15 afforded by this subdivision. If the protections are so waived, the public body shall open such records
16 for inspection and copying.

17 2. Written advice of legal counsel to state, regional or local public bodies or the officers or
18 employees of such public bodies, and any other records protected by the attorney-client privilege.

19 3. Legal memoranda and other work product compiled specifically for use in litigation or for use
20 in an active administrative investigation concerning a matter that is properly the subject of a closed
21 meeting under § 2.2-3711.

22 4. Any test or examination used, administered or prepared by any public body for purposes of
23 evaluation of (i) any student or any student's performance, (ii) any employee or employment seeker's
24 qualifications or aptitude for employment, retention, or promotion, or (iii) qualifications for any license
25 or certificate issued by a public body.

26 As used in this subdivision, "test or examination" shall include (a) any scoring key for any such
27 test or examination and (b) any other document that would jeopardize the security of the test or
28 examination. Nothing contained in this subdivision shall prohibit the release of test scores or results as
29 provided by law, or limit access to individual records as provided by law. However, the subject of such
30 employment tests shall be entitled to review and inspect all records relative to his performance on such
31 employment tests.

32 When, in the reasonable opinion of such public body, any such test or examination no longer has
33 any potential for future use, and the security of future tests or examinations will not be jeopardized, the
34 test or examination shall be made available to the public. However, minimum competency tests
35 administered to public school children shall be made available to the public contemporaneously with
36 statewide release of the scores of those taking such tests, but in no event shall such tests be made
37 available to the public later than six months after the administration of such tests.

38 5. Records recorded in or compiled exclusively for use in closed meetings lawfully held pursuant
39 to § 2.2-3711. However, no record that is otherwise open to inspection under this chapter shall be
40 deemed exempt by virtue of the fact that it has been reviewed or discussed in a closed meeting.

41 6. Vendor proprietary information software that may be in the official records of a public body.
42 For the purpose of this subdivision, "vendor proprietary software" means computer programs acquired
43 from a vendor for purposes of processing data for agencies or political subdivisions of the
44 Commonwealth.

45 7. Computer software developed by or for a state agency, state-supported institution of higher
46 education or political subdivision of the Commonwealth.

47 8. Appraisals and cost estimates of real property subject to a proposed purchase, sale or lease,
48 prior to the completion of such purchase, sale or lease.

49 9. Records concerning reserves established in specific claims administered by the Department of
50 the Treasury through its Division of Risk Management as provided in Article 5 (§ 2.2-1832 et seq.) of
51 Chapter 18 of this title, or by any county, city, or town; and investigative notes, correspondence and
52 information furnished in confidence with respect to an investigation of a claim or a potential claim

53 against a public body's insurance policy or self-insurance plan. However, nothing in this subdivision
54 shall prohibit the disclosure of information taken from inactive reports upon expiration of the period of
55 limitations for the filing of a civil suit.

56 10. Personal information, as defined in § 2.2-3801, including electronic mail addresses, furnished
57 to a public body for the purpose of receiving electronic mail from the public body, provided that the
58 electronic mail recipient has requested that the public body not disclose such information. However,
59 access shall not be denied to the person who is the subject of the record.

60 11. Communications and materials required to be kept confidential pursuant to § 2.2-4119 of the
61 Virginia Administrative Dispute Resolution Act (§ 2.2-4115 et seq.).

62 12. Records relating to the negotiation and award of a specific contract where competition or
63 bargaining is involved and where the release of such records would adversely affect the bargaining
64 position or negotiating strategy of the public body. Such records shall not be withheld after the public
65 body has made a decision to award or not to award the contract. In the case of procurement transactions
66 conducted pursuant to the Virginia Public Procurement Act (§ 2.2-4300 et seq.), the provisions of this
67 subdivision shall not apply, and any release of records relating to such transactions shall be governed by
68 the Virginia Public Procurement Act.

69 13. Those portions of records that contain account numbers or routing information for any credit
70 card, debit card, or other account with a financial institution of any person or public body. However,
71 access shall not be denied to the person who is the subject of the record. For the purposes of this
72 subdivision, "financial institution" means any organization authorized to do business under state or
73 federal laws relating to financial institutions, including, without limitation, banks and trust companies,
74 savings banks, savings and loan companies or associations, and credit unions.

75 **§ 2.2-3705.4. Exclusions to application of chapter; educational records and certain records**
76 **of educational institutions.**

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

79 1. Scholastic records containing information concerning identifiable individuals, except that such
80 access shall not be denied to the person who is the subject thereof, or the parent or legal guardian of the
81 student; however, nothing in this subdivision shall be construed to require access to any
82 recommendation or letter of reference from a third party that is a part of such [VWagner1] scholastic
83 record. However [LHausenfluck4], no student shall have access to (i) financial records of a parent or
84 guardian or (ii) records of instructional, supervisory, and administrative personnel and educational
85 personnel ancillary thereto, that are in the sole possession of the maker thereof and that are not
86 accessible or revealed to any other person except a substitute.

87 The parent or legal guardian of a student may prohibit, by written request, the release of any
88 individual information regarding that student until the student reaches the age of 18 years. For scholastic
89 records of students under the age of 18 years, the right of access may be asserted only by his legal
90 guardian or parent, including a noncustodial parent, unless such parent's parental rights have been
91 terminated or a court of competent jurisdiction has restricted or denied such access. For scholastic
92 records of students who are emancipated or attending a state-supported institution of higher education,
93 the right of access may be asserted by the student.

94 Any person who is the subject of any scholastic record and who is 18 years of age or older may
95 waive, in writing, the protections afforded by this subdivision. If the protections are so waived, the
96 public body shall open such records for inspection and copying.

97 2. Confidential letters and statements of recommendation placed in the records of educational
98 agencies or institutions respecting (i) admission to any educational agency or institution, (ii) an
99 application for employment or promotion, or (iii) receipt of an honor or honorary recognition.

100 3. Records of the Brown v. Board of Education Scholarship Awards Committee relating to
101 personally identifiable information, including scholarship applications, personal financial information,
102 and confidential correspondence and letters of recommendation.

103 4. Data, records or information of a proprietary nature produced or collected by or for faculty or
104 staff of public institutions of higher education, other than the institutions' financial or administrative
105 records, in the conduct of or as a result of study or research on medical, scientific, technical or scholarly

106 issues, whether sponsored by the institution alone or in conjunction with a governmental body or a
107 private concern, where such data, records or information has not been publicly released, published,
108 copyrighted or patented.

109 5. All records of the University of Virginia or the University of Virginia Medical Center or
110 Eastern Virginia Medical School, as the case may be, that contain proprietary, business-related
111 information pertaining to the operations of the University of Virginia Medical Center or Eastern Virginia
112 Medical School, as the case may be, including business development or marketing strategies and
113 activities with existing or future joint venturers, partners, or other parties with whom the University of
114 Virginia Medical Center or Eastern Virginia Medical School, as the case may be, has formed, or forms,
115 any arrangement for the delivery of health care, if disclosure of such information would be harmful to
116 the competitive position of the Medical Center or Eastern Virginia Medical School, as the case may be.

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

123 7. Records maintained in connection with fundraising activities by or for a public institution of
124 higher education to the extent that such records reveal (i) personal fundraising strategies relating to
125 identifiable donors or prospective donors or (ii) wealth assessments; estate, financial, or tax planning
126 information; health-related information; employment, familial, or marital status information; electronic
127 mail addresses, facsimile or telephone numbers; birth dates or social security numbers of identifiable
128 donors or prospective donors. Nothing in this subdivision, however, shall be construed to authorize the
129 withholding of records relating to the amount, date, purpose, and terms of the pledge or donation, or the
130 identity of the donor unless the donor has requested anonymity in connection with or as a condition of
131 making a pledge or donation. The exclusion provided by this subdivision shall not apply to protect from
132 disclosure (i) the identities of sponsors providing grants to or contracting with the institution for the

133 performance of research services or other work or (ii) the terms and conditions of such grants or
134 contracts.

135 8. Records of a threat assessment team established by a public institution of higher education
136 pursuant to § 23-9.2:10 relating to the assessment or intervention with a specific individual. However, in
137 the event an individual who has been under assessment commits an act, or is prosecuted for the
138 commission of an act that has caused the death of, or caused serious bodily injury, including any felony
139 sexual assault, to another person, the records of such threat assessment team concerning the individual
140 under assessment shall be made available as provided by this chapter, with the exception of any criminal
141 history records obtained pursuant to § 19.2-389 or 19.2-389.1, health records obtained pursuant to §
142 32.1-127.1:03, or scholastic records as defined in § 22.1-289. The public body providing such records
143 shall remove information identifying any person who provided information to the threat assessment
144 team under a promise of confidentiality.

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