

## SENATE BILL NO. \_\_\_\_\_ HOUSE BILL NO. \_\_\_\_\_

1 A BILL to amend and reenact §§ 2.2-3705.1, 2.2-3705.4, 2.2-3705.8, and 2.2-3714 of the Code of  
2 Virginia, relating to the Virginia Freedom of Information Act; personnel records; letters of  
3 recommendation.

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

5 **1. That §§ 2.2-3705.1, 2.2-3705.4, 2.2-3705.8, and 2.2-3714 of the Code of Virginia are amended**  
6 **and reenacted as follows:**

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

9 The following ~~records are~~ information is excluded from the mandatory disclosure provisions of  
10 this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is  
11 prohibited by law: Redaction of information excluded under this section from a public record shall be  
12 conducted in accordance with § 2.2-3704.01.

13 1. Personnel ~~records containing~~ information concerning identifiable individuals, ~~except that~~  
14 access that (i) is used or has been used to determine that individual's qualification for employment,  
15 promotion, assignment, or additional compensation, including evaluations and termination or other  
16 disciplinary actions; (ii) contains such individual's personal or demographic information; (iii) otherwise  
17 documents the employment relationship or (iv) would otherwise constitute an unwarranted invasion of  
18 such individual's personal privacy. Access, however, shall not be denied to the person who is the subject  
19 thereof. Nothing in this subdivision shall be construed to require access to any recommendation or letter  
20 of reference from a third party that is a part of the subject's personnel information.

21 Any person who is the subject of ~~any personnel record~~ such information and who is 18 years of  
22 age or older may waive [LHausenfluck3], in writing, the protections afforded by this subdivision. If the  
23 protections are so waived, ~~the public body shall open such records for inspection and copying such~~  
24 information shall be disclosed, except as otherwise provided in this subdivision.

25 No provision of this chapter or Chapter 38 (§ 2.2-3800 et seq.) shall be construed as denying  
26 public access to (i) contracts between a public body and its officers or employees, other than contracts  
27 settling public employee employment disputes exempted under this subdivision; (ii) records of the name,  
28 position, job classification, official salary, or rate of pay of, and records of the allowances or  
29 reimbursements for expenses paid to, any officer, official, or employee of a public body; or (iii) records  
30 of the compensation or benefits paid by any corporation organized by the Virginia Retirement System or  
31 its officers or employees. The provisions of this subdivision, however, shall not require public access to  
32 records of the official salaries or rates of pay of public employees whose annual rate of pay is \$10,000 or  
33 less.

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

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

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

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

49 When, in the reasonable opinion of such public body, any such test or examination no longer has  
50 any potential for future use, and the security of future tests or examinations will not be jeopardized, the  
51 test or examination shall be made available to the public. However, minimum competency tests

52 administered to public school children shall be made available to the public contemporaneously with  
53 statewide release of the scores of those taking such tests, but in no event shall such tests be made  
54 available to the public later than six months after the administration of such tests.

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

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

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

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

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

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

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

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

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

92 **§ 2.2-3705.4. Exclusions to application of chapter; educational records and certain records**  
93 **of educational institutions.**

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

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

104 The parent or legal guardian of a student may prohibit, by written request, the release of any  
105 individual information regarding that student until the student reaches the age of 18 years. For scholastic

106 records of students under the age of 18 years, the right of access may be asserted only by his legal  
107 guardian or parent, including a noncustodial parent, unless such parent's parental rights have been  
108 terminated or a court of competent jurisdiction has restricted or denied such access. For scholastic  
109 records of students who are emancipated or attending a state-supported institution of higher education,  
110 the right of access may be asserted by the student.

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

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

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

120 4. Data, records or information of a proprietary nature produced or collected by or for faculty or  
121 staff of public institutions of higher education, other than the institutions' financial or administrative  
122 records, in the conduct of or as a result of study or research on medical, scientific, technical or scholarly  
123 issues, whether sponsored by the institution alone or in conjunction with a governmental body or a  
124 private concern, where such data, records or information has not been publicly released, published,  
125 copyrighted or patented.

126 5. All records of the University of Virginia or the University of Virginia Medical Center or  
127 Eastern Virginia Medical School, as the case may be, that contain proprietary, business-related  
128 information pertaining to the operations of the University of Virginia Medical Center or Eastern Virginia  
129 Medical School, as the case may be, including business development or marketing strategies and  
130 activities with existing or future joint venturers, partners, or other parties with whom the University of  
131 Virginia Medical Center or Eastern Virginia Medical School, as the case may be, has formed, or forms,

132 any arrangement for the delivery of health care, if disclosure of such information would be harmful to  
133 the competitive position of the Medical Center or Eastern Virginia Medical School, as the case may be.

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

140 7. Records maintained in connection with fundraising activities by or for a public institution of  
141 higher education to the extent that such records reveal (i) personal fundraising strategies relating to  
142 identifiable donors or prospective donors or (ii) wealth assessments; estate, financial, or tax planning  
143 information; health-related information; employment, familial, or marital status information; electronic  
144 mail addresses, facsimile or telephone numbers; birth dates or social security numbers of identifiable  
145 donors or prospective donors. Nothing in this subdivision, however, shall be construed to authorize the  
146 withholding of records relating to the amount, date, purpose, and terms of the pledge or donation, or the  
147 identity of the donor unless the donor has requested anonymity in connection with or as a condition of  
148 making a pledge or donation. The exclusion provided by this subdivision shall not apply to protect from  
149 disclosure (i) the identities of sponsors providing grants to or contracting with the institution for the  
150 performance of research services or other work or (ii) the terms and conditions of such grants or  
151 contracts.

152 8. Records of a threat assessment team established by a public institution of higher education  
153 pursuant to § 23-9.2:10 relating to the assessment or intervention with a specific individual. However, in  
154 the event an individual who has been under assessment commits an act, or is prosecuted for the  
155 commission of an act that has caused the death of, or caused serious bodily injury, including any felony  
156 sexual assault, to another person, the records of such threat assessment team concerning the individual  
157 under assessment shall be made available as provided by this chapter, with the exception of any criminal  
158 history records obtained pursuant to § 19.2-389 or 19.2-389.1, health records obtained pursuant to §

159 32.1-127.1:03, or scholastic records as defined in § 22.1-289. The public body providing such records  
160 shall remove information identifying any person who provided information to the threat assessment  
161 team under a promise of confidentiality.

162 **§ 2.2-3705.8. Limitation on record exclusions for certain consultant's reports.**

163 ~~A. Neither any provision of this chapter nor any provision of Chapter 38 (§ 2.2-3800 et seq.) of~~  
164 ~~this title shall be construed as denying public access to (i) contracts between a public body and its~~  
165 ~~officers or employees, other than contracts settling public employee employment disputes held~~  
166 ~~confidential as personnel records under § 2.2-3705.1; (ii) records of the position, job classification,~~  
167 ~~official salary or rate of pay of, and records of the allowances or reimbursements for expenses paid to~~  
168 ~~any officer, official or employee of a public body; or (iii) the compensation or benefits paid by any~~  
169 ~~corporation organized by the Virginia Retirement System or its officers or employees.~~

170 ~~The provisions of this subsection, however, shall not require public access to records of the~~  
171 ~~official salaries or rates of pay of public employees whose annual rate of pay is \$10,000 or less.~~

172 ~~B.~~ Nothing in this chapter shall be construed as denying public access to the nonexempt portions  
173 of a report of a consultant hired by or at the request of a local public body or the mayor or chief  
174 executive or administrative officer of such public body if (i) the contents of such report have been  
175 distributed or disclosed to members of the local public body or (ii) the local public body has scheduled  
176 any action on a matter that is the subject of the consultant's report.

177 **§ 2.2-3714. Violations and penalties.**

178 In a proceeding commenced against any officer, employee, or member of a public body under §  
179 2.2-3713 for a violation of § 2.2-3704, 2.2-3705.1 through ~~2.2-3705.8~~ 2.2-3705.7, 2.2-3706, 2.2-3707,  
180 2.2-3708, 2.2-3708.1, 2.2-3710, 2.2-3711 or 2.2-3712, the court, if it finds that a violation was willfully  
181 and knowingly made, shall impose upon such officer, employee, or member in his individual capacity,  
182 whether a writ of mandamus or injunctive relief is awarded or not, a civil penalty of not less than \$500  
183 nor more than \$2,000, which amount shall be paid into the State Literary Fund. For a second or  
184 subsequent violation, such civil penalty shall be not less than \$2,000 nor more than \$5,000.

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