

Mr. Gernhardt,

Please accept this as an agency comment on the FOIA exemption provided in § 2.2-3705.6.

Exclusions to application of chapter; proprietary records and trade secrets.

The pertinent clause is in bold.

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

1. Proprietary information gathered by or for the Virginia Port Authority as provided in § 62.1-132.4 or 62.1-134.1.

2. Financial statements not publicly available filed with applications for industrial development financings in accordance with Chapter 49 (§ 15.2-4900 et seq.) of Title 15.2.

3. Proprietary information, voluntarily provided by private business pursuant to a promise of confidentiality from a public body, used by the public body for business, trade, and tourism development or retention; and memoranda, working papers, or other information related to businesses that are considering locating or expanding in Virginia, prepared by a public body, where competition or bargaining is involved and where disclosure of such information would adversely affect the financial interest of the public body.

4. Information that was filed as confidential under the Toxic Substances Information Act (§ 32.1-239 et seq.), as such Act existed prior to July 1, 1992.

5. Fisheries data that would permit identification of any person or vessel, except when required by court order as specified in § 28.2-204.

AGENCY COMMENT:

This FOIA exemption is intended to preserve from public release records pertaining to individuals' landings of seafood products. The agency collects a variety of harvest information necessary to formulate species management plans, to maintain sustainably managed harvests, and to monitor the harvest of quota-managed species to ensure those species are not overfished. To do so, all licensed commercial harvests are required to report their catches monthly. As a result, the agency possesses records that would reveal what a harvester caught, how much was caught, and when it was caught. Release of this information would allow anyone with knowledge of market prices to determine with a reasonable degree of certitude the annual income of every commercially licensed harvester, and would be akin to releasing to their annual incomes. The agency licenses more than 2,800 commercial harvesters in the Commonwealth of Virginia. The agency supports maintaining this FOIA exemption.

John M.R. Bull
Commissioner
Virginia Marine Resources Commission
[757-247-2205](tel:757-247-2205)