



# COMMONWEALTH of VIRGINIA

## Department of Agriculture and Consumer Services

PO Box 1163, Richmond, Virginia 23218

Phone: 804/786-3501 • fax: 804/371-2945 • Hearing Impaired: 800/828-1120

[www.vdacs.virginia.gov](http://www.vdacs.virginia.gov)

*Sandra J. Adams*  
Commissioner

March 9, 2016

Ms. Maria J.K. Everett, Esq.  
Executive Director/Senior Attorney  
Virginia Freedom of Information Advisory Council  
General Assembly Building  
201 North 9<sup>th</sup> Street, Second Floor  
Richmond, VA 23219

Dear Ms. Everett:

I am writing in response to your letter to Kevin Schmidt from this agency dated December 22, 2015, requesting that the Virginia Department of Agriculture and Consumer Services (VDACS) assist in reviewing Virginia Freedom of Information Act (FOIA) exemptions concerning proprietary records and trade secrets.

VDACS wishes to provide the following written comments so that you may post them for all participants to review prior to the first meeting of the proprietary records and trade secrets work group this year:

**Va. Code § 2.2-3705.6**

*14. Documents and other information of a proprietary nature furnished by a supplier of charitable gaming supplies to the Department of Agriculture and Consumer Services pursuant to subsection E of § 18.2-340.34.*

**VDACS requests that this exemption be retained as is**

Charitable gaming suppliers are privately held companies, and their financial activities are not routinely available to the public. Documents and other information of a proprietary nature furnished by a supplier typically consist of all financial activities with a particular charitable gaming organization, software, hardware, testing reports on said software and hardware, and business contracts. Charitable gaming suppliers are adamant about keeping their proprietary information out of the hands of their competitors, and with the current exemption in place, are willing to provide such information to VDACS because they know the information will be protected from disclosure. The agency's access to proprietary information enables it to approve electronic gaming equipment intended for the charitable gaming market, conduct analysis on financial activities, identify missing receipts, and identify criminal activity.

15. *Records and reports related to Virginia apple producer sales provided to the Virginia State Apple Board pursuant to § 3.2-1215.*

**VDACS requests that this exemption be removed**

VDACS believes that this exemption is no longer necessary, as the Virginia State Apple Board does not currently collect sales information. Further, the agency believes that the requirement in subdivision 6 of § 3.2-103 that the Commissioner of Agriculture and Consumer Services hold in confidence tax returns required by any agricultural commodity board established pursuant to Title 3.2 of the Code of Virginia protects those excise tax records or reports required of apple producers.

25. *Documents and other information of a proprietary nature furnished by an agricultural landowner or operator to the Department of Conservation and Recreation, the Department of Environmental Quality, the Department of Agriculture and Consumer Services or any political subdivision, agency, or board of the Commonwealth pursuant to §§ 10.1-104.7, 10.1-104.8, and 10.1-104.9, other than when required as part of a state or federal regulatory enforcement action.*

**VDACS requests that this exemption be retained as is.**

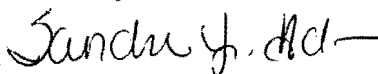
VDACS believes that this specific exemption is important to retain as is. As an example of records protected under this exemption, the agency could possess records regarding the nutrients applied to a particular farm, the release of which could result in the release of specific fertilizer formulas or blends as well as proprietary rates of micronutrients applied to the farm, all proprietary information related to the operation of that farm.

**Generic Exemption**

VDACS may be supportive of the concept of one or more generic exemptions replacing the specific exemptions in Va. Code § 2.2-3705.6, including subdivisions 14 and 25. However, the agency's support of such revisions could only occur if the agency is certain that the generic exemption is crafted in such a manner as to at least cover the specific exemptions included in subdivisions 14 and 25 of § 2.2-3705.6.

Again, I appreciate the opportunity that you provided to present written comments on the exemptions concerning proprietary records and trade secrets affecting VDACS. Please direct any questions as well as information regarding upcoming meetings of the Virginia Freedom of Information Advisory Council to Kevin Schmidt, Director, Office of Policy, Planning, and Research. Kevin may be reached at (804) 786-1346 or [kevin.schmidt@vdacs.virginia.gov](mailto:kevin.schmidt@vdacs.virginia.gov).

Sincerely



Sandra J. Adams  
Commissioner

cc: Kevin Schmidt, Director, Office of Policy, Planning, and Research