



COMMONWEALTH of VIRGINIA

Department of Health

P O BOX 2448

RICHMOND, VA 23218

July 28, 2017

Marissa J. Levine, MD, MPH, FAAFP

State Health Commissioner

TTY 7-1-1 OR

1-800-828-1120

Alan Gernhardt, Senior Attorney
Virginia Freedom of Information Act
Advisory Council
900 East Main Street, 10th Floor
Richmond, Virginia 23219

Dear Mr. Gernhardt: *Alan*

This is in response to your memo dated July 17, 2017, and our subsequent telephone conversation, in which you requested the Virginia Department of Health's (VDH) review of a Virginia Freedom of Information Act (FOIA) exclusion found at §2.2-3705.6(4) of the Code of Virginia. This FOIA exclusion is for "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." Specifically, you requested VDH's perspective concerning whether there continues to be a need for this FOIA exclusion.

Prior to 1992, the Code of Virginia required extensive reporting to VDH from commercial establishments concerning their use of toxic substances. While many of the specific reporting requirements were repealed from the Toxic Substances Information Act effective July 1, 1992, §32.1-244 of the Code of Virginia still requires that:

Each person who operates a commercial establishment that uses as a raw material, catalyst, final product or process solvent or manufactures any chemical or mixture in a manner that the person knows, or reasonably should know, is toxic and under the circumstances of its manufacture or use may pose a substantial threat to human health or to the environment shall have the affirmative duty to report that information to the Board within five days of receiving it.

At this time, VDH does not receive or maintain any trade secrets, patents, or copyright material from businesses specified as confidential under the Toxic Substances Information Act. Such records previously in the possession of VDH were destroyed in 2016 in compliance with the provisions of the Virginia Public Records Act and requirements of the Library of Virginia. However, given the provisions of §32.1-244, it is possible that such information could still be reported to VDH at some point in the future. Therefore, VDH recommends that the existing FOIA exemption found at §2.2-3705.6(4) be retained.

I hope that this information is helpful to you. Please let me know if you have any questions or require additional information.

Sincerely,

Joseph J. Hilbert
Joseph J. Hilbert, Director
Governmental and Regulatory Affairs,

VDH VIRGINIA
DEPARTMENT
OF HEALTH
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