

SENATE BILL NO. _____ HOUSE BILL NO. _____

1 A BILL to amend and reenact §§ 2.2-3701, 2.2-3705.6, and 2.2-3713 of the Code of Virginia, relating to
2 the Virginia Freedom of Information Act; definition of confidential information; record
3 exclusion for same.

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

5 **1. That §§ 2.2-3701, 2.2-3705.6, and 2.2-3713 of the Code of Virginia are amended and reenacted**
6 **as follows:**

7 **§ 2.2-3701. Definitions.**

8 As used in this chapter, unless the context requires a different meaning:

9 "Closed meeting" means a meeting from which the public is excluded.

10 "Confidential information" means financial information, including balance sheets and financial
11 statements, or other information of a submitting entity that are not (i) generally available to the public
12 through regulatory disclosure or otherwise or (ii) trade secrets as defined in the Uniform Trade Secrets
13 Act (§ 59.1-336 et seq.), where if such information was made public, the financial interest or
14 competitive position of the submitting entity would be adversely affected.

15 "Electronic communication" means any audio or combined audio and visual communication
16 method.

17 "Emergency" means an unforeseen circumstance rendering the notice required by this chapter
18 impossible or impracticable and which circumstance requires immediate action.

19 "Information" as used in the exclusions established by §§ 2.2-3705.1 through 2.2-3705.7, means
20 the content within a public record that references a specifically identified subject matter, and shall not be
21 interpreted to require the production of information that is not embodied in a public record.

22 "Meeting" or "meetings" means the meetings including work sessions, when sitting physically,
23 or through telephonic or video equipment pursuant to § 2.2-3708 or 2.2-3708.1, as a body or entity, or as
24 an informal assemblage of (i) as many as three members or (ii) a quorum, if less than three, of the
25 constituent membership, wherever held, with or without minutes being taken, whether or not votes are

26 cast, of any public body. Neither the gathering of employees of a public body nor the gathering or
27 attendance of two or more members of a public body (i) at any place or function where no part of the
28 purpose of such gathering or attendance is the discussion or transaction of any public business, and such
29 gathering or attendance was not called or prearranged with any purpose of discussing or transacting any
30 business of the public body, or (ii) at a public forum, candidate appearance, or debate, the purpose of
31 which is to inform the electorate and not to transact public business or to hold discussions relating to the
32 transaction of public business, even though the performance of the members individually or collectively
33 in the conduct of public business may be a topic of discussion or debate at such public meeting, shall be
34 deemed a "meeting" subject to the provisions of this chapter.

35 "Open meeting" or "public meeting" means a meeting at which the public may be present.

36 "Public body" means any legislative body, authority, board, bureau, commission, district or
37 agency of the Commonwealth or of any political subdivision of the Commonwealth, including cities,
38 towns and counties, municipal councils, governing bodies of counties, school boards and planning
39 commissions; boards of visitors of public institutions of higher education; and other organizations,
40 corporations or agencies in the Commonwealth supported wholly or principally by public funds. It shall
41 include (i) the Virginia Birth-Related Neurological Injury Compensation Program and its board of
42 directors established pursuant to Chapter 50 (§ 38.2-5000 et seq.) of Title 38.2 and (ii) any committee,
43 subcommittee, or other entity however designated, of the public body created to perform delegated
44 functions of the public body or to advise the public body. It shall not exclude any such committee,
45 subcommittee or entity because it has private sector or citizen members. Corporations organized by the
46 Virginia Retirement System are "public bodies" for purposes of this chapter.

47 For the purposes of the provisions of this chapter applicable to access to public records,
48 constitutional officers and private police departments as defined in § 9.1-101 shall be considered public
49 bodies and, except as otherwise expressly provided by law, shall have the same obligations to disclose
50 public records as other custodians of public records.

51 "Public records" means all writings and recordings that consist of letters, words or numbers, or
52 their equivalent, set down by handwriting, typewriting, printing, photostating, photography, magnetic

53 impulse, optical or magneto-optical form, mechanical or electronic recording or other form of data
54 compilation, however stored, and regardless of physical form or characteristics, prepared or owned by,
55 or in the possession of a public body or its officers, employees or agents in the transaction of public
56 business. Records that are not prepared for or used in the transaction of public business are not public
57 records.

58 "Regional public body" means a unit of government organized as provided by law within defined
59 boundaries, as determined by the General Assembly, whose members are appointed by the participating
60 local governing bodies, and such unit includes two or more counties or cities.

61 "Scholastic records" means those records containing information directly related to a student or
62 an applicant for admission and maintained by a public body that is an educational agency or institution
63 or by a person acting for such agency or institution.

64 **§ 2.2-3705.6. Exclusions to application of chapter; proprietary records and trade secrets.**

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

69 1. Confidential information. In order for such information to be excluded from the provisions of
70 this chapter, the submitting entity shall make a written request to the public body (i) invoking such
71 exclusion upon submission of the information for which protection from disclosure is sought, (ii)
72 identifying with specificity the information for which protection is sought, and (iii) stating the reasons
73 why protection is necessary.

74 1a. Proprietary information gathered by or for the Virginia Port Authority as provided in § 62.1-
75 132.4 or 62.1-134.1.

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

78 3. Proprietary information, voluntarily provided by private business pursuant to a promise of
79 confidentiality from a public body, used by the public body for business, trade, and tourism development

80 or retention; and memoranda, working papers, or other information related to businesses that are
81 considering locating or expanding in Virginia, prepared by a public body, where competition or
82 bargaining is involved and where disclosure of such information would adversely affect the financial
83 interest of the public body.

84 4. Information that was filed as confidential under the Toxic Substances Information Act (§ 32.1-
85 239 et seq.), as such Act existed prior to July 1, 1992.

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

88 6. Confidential financial statements, balance sheets, trade secrets, and revenue and cost
89 projections provided to the Department of Rail and Public Transportation, provided such information is
90 exempt under the federal Freedom of Information Act or the federal Interstate Commerce Act or other
91 laws administered by the Surface Transportation Board or the Federal Railroad Administration with
92 respect to data provided in confidence to the Surface Transportation Board and the Federal Railroad
93 Administration.

94 7. Proprietary information related to inventory and sales, voluntarily provided by private energy
95 suppliers to the Department of Mines, Minerals and Energy, used by that Department for energy
96 contingency planning purposes or for developing consolidated statistical information on energy supplies.

97 8. Confidential proprietary information furnished to the Board of Medical Assistance Services or
98 the Medicaid Prior Authorization Advisory Committee pursuant to Article 4 (§ 32.1-331.12 et seq.) of
99 Chapter 10 of Title 32.1.

100 9. Proprietary, commercial or financial information, balance sheets, trade secrets, and revenue
101 and cost projections provided by a private transportation business to the Virginia Department of
102 Transportation and the Department of Rail and Public Transportation for the purpose of conducting
103 transportation studies needed to obtain grants or other financial assistance under the Transportation
104 Equity Act for the 21st Century (P.L. 105-178) for transportation projects if disclosure of such
105 information is exempt under the federal Freedom of Information Act or the federal Interstate Commerce
106 Act or other laws administered by the Surface Transportation Board or the Federal Railroad

107 Administration with respect to data provided in confidence to the Surface Transportation Board and the
108 Federal Railroad Administration. However, the exclusion provided by this subdivision shall not apply to
109 any wholly owned subsidiary of a public body.

110 10. Confidential information designated as provided in subsection F of § 2.2-4342 as trade
111 secrets or proprietary information by any person in connection with a procurement transaction or by any
112 person who has submitted to a public body an application for prequalification to bid on public
113 construction projects in accordance with subsection B of § 2.2-4317.

114 11. a. Memoranda, staff evaluations, or other information prepared by the responsible public
115 entity, its staff, outside advisors, or consultants exclusively for the evaluation and negotiation of
116 proposals filed under the Public-Private Transportation Act of 1995 (§ 33.2-1800 et seq.) or the Public-
117 Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.) where (i) if such
118 information was made public prior to or after the execution of an interim or a comprehensive agreement,
119 § 33.2-1820 or 56-575.17 notwithstanding, the financial interest or bargaining position of the public
120 entity would be adversely affected and (ii) the basis for the determination required in clause (i) is
121 documented in writing by the responsible public entity; and

122 b. Information provided by a private entity to a responsible public entity, affected jurisdiction, or
123 affected local jurisdiction pursuant to the provisions of the Public-Private Transportation Act of 1995 (§
124 33.2-1800 et seq.) or the Public-Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1
125 et seq.) if disclosure of such information would reveal (i) trade secrets of the private entity as defined in
126 the Uniform Trade Secrets Act (§ 59.1-336 et seq.); (ii) financial information of the private entity,
127 including balance sheets and financial statements, that are not generally available to the public through
128 regulatory disclosure or otherwise; or (iii) other information submitted by the private entity where if
129 such information was made public prior to the execution of an interim agreement or a comprehensive
130 agreement, the financial interest or bargaining position of the public or private entity would be adversely
131 affected. In order for the information specified in clauses (i), (ii), and (iii) to be excluded from the
132 provisions of this chapter, the private entity shall make a written request to the responsible public entity:

133 (1) Invoking such exclusion upon submission of the data or other materials for which protection
134 from disclosure is sought;

135 (2) Identifying with specificity the data or other materials for which protection is sought; and

136 (3) Stating the reasons why protection is necessary.

137 The responsible public entity shall determine whether the requested exclusion from disclosure is
138 necessary to protect the trade secrets or financial information of the private entity. To protect other
139 information submitted by the private entity from disclosure, the responsible public entity shall determine
140 whether public disclosure prior to the execution of an interim agreement or a comprehensive agreement
141 would adversely affect the financial interest or bargaining position of the public or private entity. The
142 responsible public entity shall make a written determination of the nature and scope of the protection to
143 be afforded by the responsible public entity under this subdivision. Once a written determination is made
144 by the responsible public entity, the information afforded protection under this subdivision shall
145 continue to be protected from disclosure when in the possession of any affected jurisdiction or affected
146 local jurisdiction.

147 Except as specifically provided in subdivision 11 a, nothing in this subdivision shall be construed
148 to authorize the withholding of (a) procurement records as required by § 33.2-1820 or 56-575.17; (b)
149 information concerning the terms and conditions of any interim or comprehensive agreement, service
150 contract, lease, partnership, or any agreement of any kind entered into by the responsible public entity
151 and the private entity; (c) information concerning the terms and conditions of any financing arrangement
152 that involves the use of any public funds; or (d) information concerning the performance of any private
153 entity developing or operating a qualifying transportation facility or a qualifying project.

154 For the purposes of this subdivision, the terms "affected jurisdiction," "affected local
155 jurisdiction," "comprehensive agreement," "interim agreement," "qualifying project," "qualifying
156 transportation facility," "responsible public entity," and "private entity" shall mean the same as those
157 terms are defined in the Public-Private Transportation Act of 1995 (§ 33.2-1800 et seq.) or in the Public-
158 Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.).

159 12. Confidential proprietary information or trade secrets, not publicly available, provided by a
160 private person or entity pursuant to a promise of confidentiality to the Virginia Resources Authority or
161 to a fund administered in connection with financial assistance rendered or to be rendered by the Virginia
162 Resources Authority where, if such information were made public, the financial interest of the private
163 person or entity would be adversely affected.

164 13. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), or
165 confidential proprietary information that is not generally available to the public through regulatory
166 disclosure or otherwise, provided by a (i) bidder or applicant for a franchise or (ii) franchisee under
167 Chapter 21 (§ 15.2-2100 et seq.) of Title 15.2 to the applicable franchising authority pursuant to a
168 promise of confidentiality from the franchising authority, to the extent the information relates to the
169 bidder's, applicant's, or franchisee's financial capacity or provision of new services, adoption of new
170 technologies or implementation of improvements, where such new services, technologies, or
171 improvements have not been implemented by the franchisee on a nonexperimental scale in the franchise
172 area, and where, if such information were made public, the competitive advantage or financial interests
173 of the franchisee would be adversely affected.

174 In order for trade secrets or confidential proprietary information to be excluded from the
175 provisions of this chapter, the bidder, applicant, or franchisee shall (a) invoke such exclusion upon
176 submission of the data or other materials for which protection from disclosure is sought, (b) identify the
177 data or other materials for which protection is sought, and (c) state the reason why protection is
178 necessary.

179 No bidder, applicant, or franchisee may invoke the exclusion provided by this subdivision if the
180 bidder, applicant, or franchisee is owned or controlled by a public body or if any representative of the
181 applicable franchising authority serves on the management board or as an officer of the bidder,
182 applicant, or franchisee.

183 14. Information of a proprietary nature furnished by a supplier of charitable gaming supplies to
184 the Department of Agriculture and Consumer Services pursuant to subsection E of § 18.2-340.34.

185 15. Information related to Virginia apple producer sales provided to the Virginia State Apple
186 Board pursuant to § 3.2-1215.

187 16. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.) of Title 59.1,
188 submitted by CMRS providers as defined in § 56-484.12 to the Wireless Carrier E-911 Cost Recovery
189 Subcommittee created pursuant to § 56-484.15, relating to the provision of wireless E-911 service.

190 17. (Effective until October 1, 2016) Information relating to a grant or loan application, or
191 accompanying a grant or loan application, to the Innovation and Entrepreneurship Investment Authority
192 pursuant to Article 3 (§ 2.2-2233.1 et seq.) of Chapter 22 of Title 2.2 or to the Commonwealth Health
193 Research Board pursuant to Chapter 22 (§ 23-277 et seq.) of Title 23 if disclosure of such information
194 would (i) reveal proprietary business or research-related information produced or collected by the
195 applicant in the conduct of or as a result of study or research on medical, rehabilitative, scientific,
196 technical, technological, or scholarly issues, when such information has not been publicly released,
197 published, copyrighted, or patented, and (ii) be harmful to the competitive position of the applicant.

198 17. (Effective October 1, 2016) Information relating to a grant or loan application, or
199 accompanying a grant or loan application, to the Innovation and Entrepreneurship Investment Authority
200 pursuant to Article 3 (§ 2.2-2233.1 et seq.) of Chapter 22 of Title 2.2 or to the Commonwealth Health
201 Research Board pursuant to Chapter 5.3 (§ 32.1-162.23 et seq.) of Title 32.1 if disclosure of such
202 information would (i) reveal proprietary business or research-related information produced or collected
203 by the applicant in the conduct of or as a result of study or research on medical, rehabilitative, scientific,
204 technical, technological, or scholarly issues, when such information has not been publicly released,
205 published, copyrighted, or patented, and (ii) be harmful to the competitive position of the applicant.

206 18. Confidential proprietary information and trade secrets developed and held by a local public
207 body (i) providing telecommunication services pursuant to § 56-265.4:4 and (ii) providing cable
208 television services pursuant to Article 1.1 (§ 15.2-2108.2 et seq.) of Chapter 21 of Title 15.2 if
209 disclosure of such information would be harmful to the competitive position of the locality.

210 In order for confidential proprietary information or trade secrets to be excluded from the
211 provisions of this chapter, the locality in writing shall (a) invoke the protections of this subdivision, (b)

212 identify with specificity the information for which protection is sought, and (c) state the reasons why
213 protection is necessary. However, the exemption provided by this subdivision shall not apply to any
214 authority created pursuant to the BVU Authority Act (§ 15.2-7200 et seq.).

215 19. Confidential proprietary information and trade secrets developed by or for a local authority
216 created in accordance with the Virginia Wireless Service Authorities Act (§ 15.2-5431.1 et seq.) to
217 provide qualifying communications services as authorized by Article 5.1 (§ 56-484.7:1 et seq.) of
218 Chapter 15 of Title 56, where disclosure of such information would be harmful to the competitive
219 position of the authority, except that information required to be maintained in accordance with § 15.2-
220 2160 shall be released.

221 20. Trade secrets as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.) or financial
222 information of a business, including balance sheets and financial statements, that are not generally
223 available to the public through regulatory disclosure or otherwise, provided to the Department of Small
224 Business and Supplier Diversity as part of an application for certification as a small, women-owned, or
225 minority-owned business in accordance with Chapter 16.1 (§ 2.2-1603 et seq.). In order for such trade
226 secrets or financial information to be excluded from the provisions of this chapter, the business shall (i)
227 invoke such exclusion upon submission of the data or other materials for which protection from
228 disclosure is sought, (ii) identify the data or other materials for which protection is sought, and (iii) state
229 the reasons why protection is necessary.

230 21. Information of a proprietary or confidential nature disclosed by a carrier to the State Health
231 Commissioner pursuant to §§ 32.1-276.5:1 and 32.1-276.7:1.

232 22. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), including,
233 but not limited to, financial information, including balance sheets and financial statements, that are not
234 generally available to the public through regulatory disclosure or otherwise, and revenue and cost
235 projections supplied by a private or nongovernmental entity to the State Inspector General for the
236 purpose of an audit, special investigation, or any study requested by the Office of the State Inspector
237 General in accordance with law.

238 In order for the information specified in this subdivision to be excluded from the provisions of
239 this chapter, the private or nongovernmental entity shall make a written request to the State Inspector
240 General:

- 241 a. Invoking such exclusion upon submission of the data or other materials for which protection
- 242 from disclosure is sought;
- 243 b. Identifying with specificity the data or other materials for which protection is sought; and
- 244 c. Stating the reasons why protection is necessary.

245 The State Inspector General shall determine whether the requested exclusion from disclosure is
246 necessary to protect the trade secrets or financial information of the private entity. The State Inspector
247 General shall make a written determination of the nature and scope of the protection to be afforded by it
248 under this subdivision.

249 23. Information relating to a grant application, or accompanying a grant application, submitted to
250 the Tobacco Region Revitalization Commission that would (i) reveal (a) trade secrets as defined in the
251 Uniform Trade Secrets Act (§ 59.1-336 et seq.), (b) financial information of a grant applicant that is not
252 a public body, including balance sheets and financial statements, that are not generally available to the
253 public through regulatory disclosure or otherwise, or (c) research-related information produced or
254 collected by the applicant in the conduct of or as a result of study or research on medical, rehabilitative,
255 scientific, technical, technological, or scholarly issues, when such information has not been publicly
256 released, published, copyrighted, or patented, and (ii) be harmful to the competitive position of the
257 applicant; and memoranda, staff evaluations, or other information prepared by the Commission or its
258 staff exclusively for the evaluation of grant applications. The exclusion provided by this subdivision
259 shall apply to grants that are consistent with the powers of and in furtherance of the performance of the
260 duties of the Commission pursuant to § 3.2-3103.

261 In order for the information specified in this subdivision to be excluded from the provisions of
262 this chapter, the applicant shall make a written request to the Commission:

- 263 a. Invoking such exclusion upon submission of the data or other materials for which protection
- 264 from disclosure is sought;

265 b. Identifying with specificity the data, information or other materials for which protection is
266 sought; and

267 c. Stating the reasons why protection is necessary.

268 The Commission shall determine whether the requested exclusion from disclosure is necessary to
269 protect the trade secrets, financial information, or research-related information of the applicant. The
270 Commission shall make a written determination of the nature and scope of the protection to be afforded
271 by it under this subdivision.

272 24. a. Information held by the Commercial Space Flight Authority relating to rate structures or
273 charges for the use of projects of, the sale of products of, or services rendered by the Authority if
274 disclosure of such information would adversely affect the financial interest or bargaining position of the
275 Authority or a private entity providing the information to the Authority; or

276 b. Information provided by a private entity to the Commercial Space Flight Authority if
277 disclosure of such information would (i) reveal (a) trade secrets of the private entity as defined in the
278 Uniform Trade Secrets Act (§ 59.1-336 et seq.); (b) financial information of the private entity, including
279 balance sheets and financial statements, that are not generally available to the public through regulatory
280 disclosure or otherwise; or (c) other information submitted by the private entity and (ii) adversely affect
281 the financial interest or bargaining position of the Authority or private entity.

282 In order for the information specified in clauses (a), (b), and (c) of subdivision 24 b to be
283 excluded from the provisions of this chapter, the private entity shall make a written request to the
284 Authority:

285 (1) Invoking such exclusion upon submission of the data or other materials for which protection
286 from disclosure is sought;

287 (2) Identifying with specificity the data or other materials for which protection is sought; and

288 (3) Stating the reasons why protection is necessary.

289 The Authority shall determine whether the requested exclusion from disclosure is necessary to
290 protect the trade secrets or financial information of the private entity. To protect other information
291 submitted by the private entity from disclosure, the Authority shall determine whether public disclosure

292 would adversely affect the financial interest or bargaining position of the Authority or private entity. The
293 Authority shall make a written determination of the nature and scope of the protection to be afforded by
294 it under this subdivision.

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

300 26. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), provided to
301 the Department of Environmental Quality pursuant to the provisions of § 10.1-1458. In order for such
302 trade secrets to be excluded from the provisions of this chapter, the submitting party shall (i) invoke this
303 exclusion upon submission of the data or materials for which protection from disclosure is sought, (ii)
304 identify the data or materials for which protection is sought, and (iii) state the reasons why protection is
305 necessary.

306 27. Information of a proprietary nature furnished by a licensed public-use airport to the
307 Department of Aviation for funding from programs administered by the Department of Aviation or the
308 Virginia Aviation Board, where if such information was made public, the financial interest of the public-
309 use airport would be adversely affected.

310 In order for the information specified in this subdivision to be excluded from the provisions of
311 this chapter, the public-use airport shall make a written request to the Department of Aviation:

312 a. Invoking such exclusion upon submission of the data or other materials for which protection
313 from disclosure is sought;

314 b. Identifying with specificity the data or other materials for which protection is sought; and

315 c. Stating the reasons why protection is necessary.

316 28. (Effective until October 1, 2016) Records submitted as a grant or loan application, or
317 accompanying a grant or loan application, for an award from the Virginia Research Investment Fund
318 pursuant to Chapter 28 (§ 23-304 et seq.) of Title 23, to the extent that such records contain proprietary

319 business or research-related information produced or collected by the applicant in the conduct of or as a
320 result of study or research on medical, rehabilitative, scientific, technical, technological, or scholarly
321 issues, when such information has not been publicly released, published, copyrighted, or patented, if the
322 disclosure of such information would be harmful to the competitive position of the applicant.

323 28. (Effective October 1, 2016) Records submitted as a grant or loan application, or
324 accompanying a grant or loan application, for an award from the Virginia Research Investment Fund
325 pursuant to Article 8 (§ 23.1-3130 et seq.) of Chapter 31 of Title 23.1, to the extent that such records
326 contain proprietary business or research-related information produced or collected by the applicant in
327 the conduct of or as a result of study or research on medical, rehabilitative, scientific, technical,
328 technological, or scholarly issues, when such information has not been publicly released, published,
329 copyrighted, or patented, if the disclosure of such information would be harmful to the competitive
330 position of the applicant.

331 **§ 2.2-3713. Proceedings for enforcement of chapter.**

332 A. Any person, including the attorney for the Commonwealth acting in his official or individual
333 capacity, denied the rights and privileges conferred by this chapter may proceed to enforce such rights
334 and privileges by filing a petition for mandamus or injunction, supported by an affidavit showing good
335 cause. Such petition may be brought in the name of the person notwithstanding that a request for public
336 records was made by the person's attorney in his representative capacity. Venue for the petition shall be
337 addressed as follows:

338 1. In a case involving a local public body, to the general district court or circuit court of the
339 county or city from which the public body has been elected or appointed to serve and in which such
340 rights and privileges were so denied;

341 2. In a case involving a regional public body, to the general district or circuit court of the county
342 or city where the principal business office of such body is located; and

343 3. In a case involving a board, bureau, commission, authority, district, institution, or agency of
344 the state government, including a public institution of higher education, or a standing or other committee

345 of the General Assembly, to the general district court or the circuit court of the residence of the
346 aggrieved party or of the City of Richmond.

347 B. In any action brought before a general district court, a corporate petitioner may appear
348 through its officer, director or managing agent without the assistance of counsel, notwithstanding any
349 provision of law or Rule of the Supreme Court of Virginia to the contrary.

350 C. Notwithstanding the provisions of § 8.01-644, the petition for mandamus or injunction shall
351 be heard within seven days of the date when the same is made, provided the party against whom the
352 petition is brought has received a copy of the petition at least three working days prior to filing. The
353 hearing on any petition made outside of the regular terms of the circuit court of a locality that is included
354 in a judicial circuit with another locality or localities shall be given precedence on the docket of such
355 court over all cases that are not otherwise given precedence by law.

356 D. The petition shall allege with reasonable specificity the circumstances of the denial of the
357 rights and privileges conferred by this chapter. A single instance of denial of the rights and privileges
358 conferred by this chapter shall be sufficient to invoke the remedies granted herein. If the court finds the
359 denial to be in violation of the provisions of this chapter, the petitioner shall be entitled to recover
360 reasonable costs, including costs and reasonable fees for expert witnesses, and attorneys' fees from the
361 public body if the petitioner substantially prevails on the merits of the case, unless special circumstances
362 would make an award unjust. In making this determination, a court may consider, among other things,
363 the reliance of a public body on an opinion of the Attorney General or a decision of a court that
364 substantially supports the public body's position.

365 E. If a public body withholds trade secret information pursuant to subdivision 1 of § 2.2-3705.6
366 and the requester brings an action under this chapter to challenge such withholding, the requester may
367 name the submitting entity or its successor in interest as an additional defendant in the action.
368 Additionally, upon request of the public body, the court, by order pursuant to the provisions of § 8.01-7,
369 may add the submitting entity as an additional defendant in the action. If, as a result of the action, the
370 court requires the public body to produce such information because it was improperly withheld pursuant
371 to this subdivision, any award of reasonable costs and attorney fees to the requester pursuant to the

372 provisions of this subsection shall be paid by the submitting entity or the public body, or both, in the
373 proportion deemed appropriate by the court.

374 E.F. In any action to enforce the provisions of this chapter, the public body shall bear the burden
375 of proof to establish an exclusion by a preponderance of the evidence. No court shall be required to
376 accord any weight to the determination of a public body as to whether an exclusion applies. Any failure
377 by a public body to follow the procedures established by this chapter shall be presumed to be a violation
378 of this chapter.

379 F.G. Failure by any person to request and receive notice of the time and place of meetings as
380 provided in § 2.2-3707 shall not preclude any person from enforcing his rights and privileges conferred
381 by this chapter.

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