

SENATE BILL NO. _____ HOUSE BILL NO. _____

1 A BILL to amend and reenact §§ 2.2-3701, 2.2-3705.7, and 2.2-3713 of the Code of Virginia, relating to
2 the Virginia Freedom of Information Act.

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

4 **1. That §§ 2.2-3701, 2.2-3705.7, and 2.2-3713 of the Code of Virginia are amended and reenacted as**
5 **follows:**

6 **§ 2.2-3701. Definitions.**

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

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

9 "Electronic communication" means any audio or combined audio and visual communication
10 method.

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

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

16 "Meeting" or "meetings" means the meetings including work sessions, when sitting physically, or
17 through telephonic or video equipment pursuant to § 2.2-3708 or 2.2-3708.1, as a body or entity, or as an
18 informal assemblage of (i) as many as three members or (ii) a quorum, if less than three, of the constituent
19 membership, wherever held, with or without minutes being taken, whether or not votes are cast, of any
20 public body. Neither the gathering of employees of a public body nor the gathering or attendance of two
21 or more members of a public body (i) at any place or function where no part of the purpose of such
22 gathering or attendance is the discussion or transaction of any public business, and such gathering or
23 attendance was not called or prearranged with any purpose of discussing or transacting any business of
24 the public body, or (ii) at a public forum, candidate appearance, or debate, the purpose of which is to
25 inform the electorate and not to transact public business or to hold discussions relating to the transaction

26 of public business, even though the performance of the members individually or collectively in the conduct
27 of public business may be a topic of discussion or debate at such public meeting, shall be deemed a
28 "meeting" subject to the provisions of this chapter.

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

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

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

45 "Public records" means all writings and recordings that consist of letters, words or numbers, or
46 their equivalent, set down by handwriting, typewriting, printing, photostating, photography, magnetic
47 impulse, optical or magneto-optical form, mechanical or electronic recording or other form of data
48 compilation, however stored, and regardless of physical form or characteristics, prepared or owned by, or
49 in the possession of a public body or its officers, employees or agents in the transaction of public business.
50 Records that are not prepared or owned by, or in the possession of a public body or its officers, employees
51 or agents in the transaction of public business are not public records.

52 "Regional public body" means a unit of government organized as provided by law within defined
53 boundaries, as determined by the General Assembly, which unit includes two or more localities.

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

57 **§ 2.2-3705.7. Exclusions to application of chapter; records of specific public bodies and**
58 **certain other limited exclusions.**

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

63 1. State income, business, and estate tax returns, personal property tax returns, and confidential
64 records held pursuant to § 58.1-3.

65 2. a. Working papers and correspondence of the Office of the Governor, the Lieutenant Governor,
66 or the Attorney General; the members of the General Assembly, the Division of Legislative Services, or
67 the Clerks of the House of Delegates or the Senate of Virginia; the mayor or chief executive officer of any
68 political subdivision of the Commonwealth; or the president or other chief executive officer of any public
69 institution of higher education in the Commonwealth. However, no information that is otherwise open to
70 inspection under this chapter shall be deemed excluded by virtue of the fact that it has been attached to or
71 incorporated within any working paper or correspondence. Further, information publicly available or not
72 otherwise subject to an exclusion under this chapter or other provision of law that has been aggregated,
73 combined, or changed in format without substantive analysis or revision shall not be deemed working
74 papers. Nothing in this subdivision shall be construed to authorize the withholding of any resumes or
75 applications submitted by persons who are appointed by the Governor pursuant to § 2.2-106 or 2.2-107.

76 b. Social media records of the members of the General Assembly when such records (i) relate to
77 the use of a social media account by a member in such member's individual capacity and (ii) are not

78 prepared or owned by, or in the possession of a public body or its officers, employees or agents in the
79 transaction of public business.

80 As used in this subdivision 2:

81 "Members of the General Assembly" means each member of the Senate of Virginia and the House
82 of Delegates and their legislative aides when working on behalf of such member.

83 "Office of the Governor" means the Governor; the Governor's chief of staff, counsel, director of
84 policy, and Cabinet Secretaries; the Assistant to the Governor for Intergovernmental Affairs; and those
85 individuals to whom the Governor has delegated his authority pursuant to § 2.2-104.

86 "Social media account" means a personal account with an electronic medium, service, or
87 application through which users may create, share, or view user-generated content, including, without
88 limitation, videos, photographs, blogs, podcasts, messages, emails, and website profiles and locations.

89 "Working papers" means those records prepared by or for a public official identified in this
90 subdivision for his personal or deliberative use.

91 3. Information contained in library records that can be used to identify (i) both (a) any library
92 patron who has borrowed material from a library and (b) the material such patron borrowed or (ii) any
93 library patron under 18 years of age. For the purposes of clause (ii), access shall not be denied to the
94 parent, including a noncustodial parent, or guardian of such library patron.

95 4. Contract cost estimates prepared for the confidential use of the Department of Transportation in
96 awarding contracts for construction or the purchase of goods or services, and records and automated
97 systems prepared for the Department's Bid Analysis and Monitoring Program.

98 5. Lists of registered owners of bonds issued by a political subdivision of the Commonwealth,
99 whether the lists are maintained by the political subdivision itself or by a single fiduciary designated by
100 the political subdivision.

101 6. Information furnished by a member of the General Assembly to a meeting of a standing
102 committee, special committee, or subcommittee of his house established solely for the purpose of
103 reviewing members' annual disclosure statements and supporting materials filed under § 30-110 or of
104 formulating advisory opinions to members on standards of conduct, or both.

105 7. Customer account information of a public utility affiliated with a political subdivision of the
106 Commonwealth, including the customer's name and service address, but excluding the amount of utility
107 service provided and the amount of money charged or paid for such utility service.

108 8. Personal information, as defined in § 2.2-3801, (i) filed with the Virginia Housing Development
109 Authority concerning individuals who have applied for or received loans or other housing assistance or
110 who have applied for occupancy of or have occupied housing financed, owned or otherwise assisted by
111 the Virginia Housing Development Authority; (ii) concerning persons participating in or persons on the
112 waiting list for federally funded rent-assistance programs; (iii) filed with any local redevelopment and
113 housing authority created pursuant to § 36-4 concerning persons participating in or persons on the waiting
114 list for housing assistance programs funded by local governments or by any such authority; or (iv) filed
115 with any local redevelopment and housing authority created pursuant to § 36-4 or any other local
116 government agency concerning persons who have applied for occupancy or who have occupied affordable
117 dwelling units established pursuant to § 15.2-2304 or 15.2-2305. However, access to one's own
118 information shall not be denied.

119 9. Information regarding the siting of hazardous waste facilities, except as provided in § 10.1-
120 1441, if disclosure of such information would have a detrimental effect upon the negotiating position of a
121 governing body or on the establishment of the terms, conditions, and provisions of the siting agreement.

122 10. Information on the site-specific location of rare, threatened, endangered, or otherwise
123 imperiled plant and animal species, natural communities, caves, and significant historic and archaeological
124 sites if, in the opinion of the public body that has the responsibility for such information, disclosure of the
125 information would jeopardize the continued existence or the integrity of the resource. This exclusion shall
126 not apply to requests from the owner of the land upon which the resource is located.

127 11. Memoranda, graphics, video or audio tapes, production models, data, and information of a
128 proprietary nature produced by or for or collected by or for the Virginia Lottery relating to matters of a
129 specific lottery game design, development, production, operation, ticket price, prize structure, manner of
130 selecting the winning ticket, manner of payment of prizes to holders of winning tickets, frequency of
131 drawings or selections of winning tickets, odds of winning, advertising, or marketing, where such

132 information not been publicly released, published, copyrighted, or patented. Whether released, published,
133 or copyrighted, all game-related information shall be subject to public disclosure under this chapter upon
134 the first day of sales for the specific lottery game to which it pertains.

135 12. Information held by the Virginia Retirement System, acting pursuant to § 51.1-124.30, or a
136 local retirement system, acting pursuant to § 51.1-803, or by a local finance board or board of trustees of
137 a trust established by one or more local public bodies to invest funds for post-retirement benefits other
138 than pensions, acting pursuant to Article 8 (§ 15.2-1544 et seq.) of Chapter 15 of Title 15.2, or by the
139 board of visitors of the University of Virginia, acting pursuant to § 23.1-2210, or by the Virginia College
140 Savings Plan, acting pursuant to § 23.1-704, relating to the acquisition, holding, or disposition of a security
141 or other ownership interest in an entity, where such security or ownership interest is not traded on a
142 governmentally regulated securities exchange, if disclosure of such information would (i) reveal
143 confidential analyses prepared for the board of visitors of the University of Virginia, prepared by the
144 retirement system, a local finance board or board of trustees, or the Virginia College Savings Plan, or
145 provided to the retirement system, a local finance board or board of trustees, or the Virginia College
146 Savings Plan under a promise of confidentiality of the future value of such ownership interest or the future
147 financial performance of the entity and (ii) have an adverse effect on the value of the investment to be
148 acquired, held, or disposed of by the retirement system, a local finance board or board of trustees, the
149 board of visitors of the University of Virginia, or the Virginia College Savings Plan. Nothing in this
150 subdivision shall be construed to prevent the disclosure of information relating to the identity of any
151 investment held, the amount invested, or the present value of such investment.

152 13. Financial, medical, rehabilitative, and other personal information concerning applicants for or
153 recipients of loan funds submitted to or maintained by the Assistive Technology Loan Fund Authority
154 under Chapter 11 (§ 51.5-53 et seq.) of Title 51.5.

155 14. Information held by the Virginia Commonwealth University Health System Authority
156 pertaining to any of the following: an individual's qualifications for or continued membership on its
157 medical or teaching staffs; proprietary information gathered by or in the possession of the Authority from
158 third parties pursuant to a promise of confidentiality; contract cost estimates prepared for confidential use

159 in awarding contracts for construction or the purchase of goods or services; information of a proprietary
160 nature produced or collected by or for the Authority or members of its medical or teaching staffs; financial
161 statements not publicly available that may be filed with the Authority from third parties; the identity,
162 accounts, or account status of any customer of the Authority; consulting or other reports paid for by the
163 Authority to assist the Authority in connection with its strategic planning and goals; the determination of
164 marketing and operational strategies where disclosure of such strategies would be harmful to the
165 competitive position of the Authority; and information of a proprietary nature produced or collected by or
166 for employees of the Authority, other than the Authority's financial or administrative records, in the
167 conduct of or as a result of study or research on medical, scientific, technical, or scholarly issues, whether
168 sponsored by the Authority alone or in conjunction with a governmental body or a private concern, when
169 such information has not been publicly released, published, copyrighted, or patented. This exclusion shall
170 also apply when such information is in the possession of Virginia Commonwealth University.

171 15. Information held by the Department of Environmental Quality, the State Water Control Board,
172 the State Air Pollution Control Board, or the Virginia Waste Management Board relating to (i) active
173 federal environmental enforcement actions that are considered confidential under federal law and (ii)
174 enforcement strategies, including proposed sanctions for enforcement actions. Upon request, such
175 information shall be disclosed after a proposed sanction resulting from the investigation has been proposed
176 to the director of the agency. This subdivision shall not be construed to prevent the disclosure of
177 information related to inspection reports, notices of violation, and documents detailing the nature of any
178 environmental contamination that may have occurred or similar documents.

179 16. Information related to the operation of toll facilities that identifies an individual, vehicle, or
180 travel itinerary, including vehicle identification data or vehicle enforcement system information; video or
181 photographic images; Social Security or other identification numbers appearing on driver's licenses; credit
182 card or bank account data; home addresses; phone numbers; or records of the date or time of toll facility
183 use.

184 17. Information held by the Virginia Lottery pertaining to (i) the social security number, tax
185 identification number, state sales tax number, home address and telephone number, personal and lottery

186 banking account and transit numbers of a retailer, and financial information regarding the nonlottery
187 operations of specific retail locations and (ii) individual lottery winners, except that a winner's name,
188 hometown, and amount won shall be disclosed.

189 18. Information held by the Board for Branch Pilots relating to the chemical or drug testing of a
190 person regulated by the Board, where such person has tested negative or has not been the subject of a
191 disciplinary action by the Board for a positive test result.

192 19. Information pertaining to the planning, scheduling, and performance of examinations of holder
193 records pursuant to the Uniform Disposition of Unclaimed Property Act (§ 55-210.1 et seq.) prepared by
194 or for the State Treasurer or his agents or employees or persons employed to perform an audit or
195 examination of holder records.

196 20. Information held by the Virginia Department of Emergency Management or a local governing
197 body relating to citizen emergency response teams established pursuant to an ordinance of a local
198 governing body that reveal the name, address, including e-mail address, telephone or pager numbers, or
199 operating schedule of an individual participant in the program.

200 21. Information held by state or local park and recreation departments and local and regional park
201 authorities concerning identifiable individuals under the age of 18 years. However, nothing in this
202 subdivision shall operate to prevent the disclosure of information defined as directory information under
203 regulations implementing the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, unless the
204 public body has undertaken the parental notification and opt-out requirements provided by such
205 regulations. Access shall not be denied to the parent, including a noncustodial parent, or guardian of such
206 person, unless the parent's parental rights have been terminated or a court of competent jurisdiction has
207 restricted or denied such access. For such information of persons who are emancipated, the right of access
208 may be asserted by the subject thereof. Any parent or emancipated person who is the subject of the
209 information may waive, in writing, the protections afforded by this subdivision. If the protections are so
210 waived, the public body shall open such information for inspection and copying.

211 22. Information submitted for inclusion in the Statewide Alert Network administered by the
212 Department of Emergency Management that reveal names, physical addresses, email addresses, computer

213 or internet protocol information, telephone numbers, pager numbers, other wireless or portable
214 communications device information, or operating schedules of individuals or agencies, where the release
215 of such information would compromise the security of the Statewide Alert Network or individuals
216 participating in the Statewide Alert Network.

217 23. Information held by the Judicial Inquiry and Review Commission made confidential by § 17.1-
218 913.

219 24. Information held by the Virginia Retirement System acting pursuant to § 51.1-124.30, a local
220 retirement system acting pursuant to § 51.1-803 (hereinafter collectively referred to as the retirement
221 system), or the Virginia College Savings Plan, acting pursuant to § 23.1-704 relating to:

222 a. Internal deliberations of or decisions by the retirement system or the Virginia College Savings
223 Plan on the pursuit of particular investment strategies, or the selection or termination of investment
224 managers, prior to the execution of such investment strategies or the selection or termination of such
225 managers, if disclosure of such information would have an adverse impact on the financial interest of the
226 retirement system or the Virginia College Savings Plan; and

227 b. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), provided by a
228 private entity to the retirement system or the Virginia College Savings Plan if disclosure of such records
229 would have an adverse impact on the financial interest of the retirement system or the Virginia College
230 Savings Plan.

231 For the records specified in subdivision b to be excluded from the provisions of this chapter, the
232 entity shall make a written request to the retirement system or the Virginia College Savings Plan:

233 (1) Invoking such exclusion prior to or upon submission of the data or other materials for which
234 protection from disclosure is sought;

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

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

237 The retirement system or the Virginia College Savings Plan shall determine whether the requested
238 exclusion from disclosure meets the requirements set forth in subdivision b.

239 Nothing in this subdivision shall be construed to prevent the disclosure of the identity or amount
240 of any investment held or the present value and performance of all asset classes and subclasses.

241 25. Information held by the Department of Corrections made confidential by § 53.1-233.

242 26. Information maintained by the Department of the Treasury or participants in the Local
243 Government Investment Pool (§ 2.2-4600 et seq.) and required to be provided by such participants to the
244 Department to establish accounts in accordance with § 2.2-4602.

245 27. Personal information, as defined in § 2.2-3801, contained in the Veterans Care Center Resident
246 Trust Funds concerning residents or patients of the Department of Veterans Services Care Centers, except
247 that access shall not be denied to the person who is the subject of the information.

248 28. Information maintained in connection with fundraising activities by the Veterans Services
249 Foundation pursuant to § 2.2-2716 that reveal the address, electronic mail address, facsimile or telephone
250 number, social security number or other identification number appearing on a driver's license, or credit
251 card or bank account data of identifiable donors, except that access shall not be denied to the person who
252 is the subject of the information. Nothing in this subdivision, however, shall be construed to prevent the
253 disclosure of information relating to the amount, date, purpose, and terms of the pledge or donation or the
254 identity of the donor, unless the donor has requested anonymity in connection with or as a condition of
255 making a pledge or donation. The exclusion provided by this subdivision shall not apply to protect from
256 disclosure (i) the identities of sponsors providing grants to or contracting with the foundation for the
257 performance of services or other work or (ii) the terms and conditions of such grants or contracts.

258 29. Information prepared for and utilized by the Commonwealth's Attorneys' Services Council in
259 the training of state prosecutors or law-enforcement personnel, where such information is not otherwise
260 available to the public and the disclosure of such information would reveal confidential strategies,
261 methods, or procedures to be employed in law-enforcement activities or materials created for the
262 investigation and prosecution of a criminal case.

263 30. Information provided to the Department of Aviation by other entities of the Commonwealth in
264 connection with the operation of aircraft where the information would not be subject to disclosure by the
265 entity providing the information. The entity providing the information to the Department of Aviation shall

266 identify the specific information to be protected and the applicable provision of this chapter that excludes
267 the information from mandatory disclosure.

268 31. Information created or maintained by or on the behalf of the judicial performance evaluation
269 program related to an evaluation of any individual justice or judge made confidential by § 17.1-100.

270 32. Information reflecting the substance of meetings in which (i) individual sexual assault cases
271 are discussed by any sexual assault team established pursuant to § 15.2-1627.4 or (ii) individual child
272 abuse or neglect cases or sex offenses involving a child are discussed by multidisciplinary child abuse
273 teams established pursuant to § 15.2-1627.5. The findings of any such team may be disclosed or published
274 in statistical or other aggregated form that does not disclose the identity of specific individuals.

275 33. Information contained in the strategic plan, marketing plan, or operational plan prepared by
276 the Virginia Economic Development Partnership Authority pursuant to § 2.2-2237.1 regarding target
277 companies, specific allocation of resources and staff for marketing activities, and specific marketing
278 activities that would reveal to the Commonwealth's competitors for economic development projects the
279 strategies intended to be deployed by the Commonwealth, thereby adversely affecting the financial interest
280 of the Commonwealth. The executive summaries of the strategic plan, marketing plan, and operational
281 plan shall not be redacted or withheld pursuant to this subdivision.

282 **§ 2.2-3713. Proceedings for enforcement of chapter.**

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

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

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

294 3. In a case involving a board, bureau, commission, authority, district, institution, or agency of the
295 state government, including a public institution of higher education, or a standing or other committee of
296 the General Assembly, to the general district court or the circuit court of the residence of the aggrieved
297 party or of the City of Richmond.

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

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

307 D. The petition shall allege with reasonable specificity the circumstances of the denial of the rights
308 and privileges conferred by this chapter. A single instance of denial of the rights and privileges conferred
309 by this chapter shall be sufficient to invoke the remedies granted herein. If the court finds the denial to be
310 in violation of the provisions of this chapter, the petitioner shall be entitled to recover reasonable costs,
311 ~~including costs and reasonable fees for expert witnesses,~~ and ~~attorneys' attorney~~ fees from the public body,
312 such costs including costs and reasonable fees for expert witnesses, if the petitioner substantially prevails
313 on the merits of the case, unless special circumstances would make an award unjust. In making this
314 determination, a court may consider, among other things, the reliance of a public body on an opinion of
315 the Attorney General or a decision of a court that substantially supports the public body's position.

316 E. In any action to enforce the provisions of this chapter, the public body shall bear the burden of
317 proof to establish an exclusion by a preponderance of the evidence. No court shall be required to accord
318 any weight to the determination of a public body as to whether an exclusion applies. Any failure by a

319 public body to follow the procedures established by this chapter shall be presumed to be a violation of this
320 chapter.

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

324 G. The public body shall be a necessary party to any enforcement proceeding brought pursuant to
325 this section even though an officer, employee, or member may also be named in his official capacity.

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