

VIRGINIA FOIA vs. NATIONAL LANDSCAPE

Comparative Analysis: Uses of “Personal Information” in Virginia FOIA Against a 50-State Survey

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Purpose: This memorandum compares the Records Subcommittee’s June 2025 analysis of “personal information” in FOIA against the findings of a 50-state survey (2026). It identifies where Virginia’s current approach aligns with, or diverges from trends amongst national FOIA or open-records laws, and outlines the survey findings for Council consideration.

01 VIRGINIA’S POSITION AS COMPARED TO THE NATIONAL LANDSCAPE

Virginia currently occupies a position that is rare nationally but not unique: it has a robust companion-statute definition of “personal information” in § 2.2-3801 (Government Data Collection and Dissemination Practices Act) that is selectively cross-referenced in three FOIA exemptions, while three other FOIA exemptions use the phrase without any cross-reference or definition. This structure places Virginia closest to New York and South Carolina as identified in the survey, states where a companion privacy statute defines the term and the open-records law incorporates it by reference in specific provisions, but with the important difference that Virginia’s cross-referencing is intentionally selective rather than uniform.

02 SCOPE OF VIRGINIA’S DEFINITION VS. SURVEY RESULTS

Virginia’s § 2.2-3801 definition appears broader than many of the definitions identified in the 50-state survey. The table below compares it against four survey categories and several states.

Model	Survey State(s)	Virginia § 2.2-3801 Coverage
Narrow / Identifier-Based	Ohio (§ 149.45): SSN, tax ID, driver’s license, financial account numbers only	Virginia includes all these categories as part of a broader definition
Broad / Comprehensive	Maryland (MPIA § 4-101(h)): name, address, email, driver’s license, medical/disability, photograph, SSN, telephone	Virginia adds ancestry, religion, political ideology, criminal/employment record, organizational membership, and inferred characteristics (fingerprints, voice prints)
Use-Based	New York (PPPL § 92(7)): any information that can be used to identify an individual; Wisconsin (§ 19.62): information associable with an individual through any identifier	Virginia’s clause (ii) (“affords a basis for inferring personal characteristics”); Virginia also enumerates other specific categories
Associational / List-Based	Iowa (§ 22A.1) and Nebraska (§ 20-802): identifies membership/donor status in a nonprofit organization only	Virginia’s “record of presence, registration, or membership in an organization” is broader than either state’s narrow nonprofit-affiliation definition

03 USAGE OF PERSONAL INFORMATION IN FOIA: DEFINED VS. UNDEFINED INSTANCES

The June 2025 research identified seven uses of “personal information” in FOIA, of which four cross-reference § 2.2-3801 and three do not. The survey revealed this pattern nationally: inconsistent terminology across a single statute is a characteristic of states that have attempted to address personal information without a unifying chapter-wide definition. The table below outlines Virginia’s current usage as captured by the 2025 research.

Code Section	Phrase / Context	Defined?
§ 2.2-3705.4(A)(6)	“Personal information, as defined in § 2.2-3801” — Commonwealth Savers Plan contracts	Yes
§ 2.2-3711(A)(25)	“Personal information, as defined in § 2.2-3801” — Meetings exemption (Savers Plan)	Yes
§ 2.2-3705.7(8)	“Personal information, as defined in § 2.2-3801” — VHDA loans / housing assistance	Yes
§ 2.2-3705.7(27)	“Personal information, as defined in § 2.2-3801” — Veterans Care Center Trust Funds	Yes
§ 2.2-3705.7(13)	“Personal information” (no cross-reference) — Assistive Technology Loan Fund	No
§ 2.2-3705.7(36)	“Personal information” (no cross-reference) — Virginia Lottery voluntary exclusion	No
§ 2.2-3705.7(37)	“Personal information” (no cross-reference) — Virginia Lottery prohibited conduct reporting	No

Additional related terms used in FOIA without chapter-wide definition: “Personally identifiable information” (§§ 2.2-3705.4(A)(3), (A)(8), 2.2-3711(A)(42)); “personal contact information” (defined narrowly within §§ 2.2-3705.1(10), 2.2-3705.3(8) only); “identifying information of a personal, medical, or financial nature” (§§ 2.2-3705.2(7), 2.2-3706(D)); “personally identifying information” (§ 2.2-3705.4(A)(8)).

04 KEY DIFFERENCES AND DIVERGENCES FROM THE NATIONAL PATTERN

The following three differences between Virginia’s current approach and the national results are offered for the Council’s deliberation.

Divergence 1 — Virginia Already Has a More Expansive Companion Definition Than Most States

The 50-state survey identified only 16 states with any form of definition, and the majority locate their definition in a companion statute rather than the open-records law itself. § 2.2-3801 is among the most comprehensive companion-statute definitions in the national dataset, and is broader than Maryland’s in that § 2.2-3801 adds ancestry, religion, political ideology, criminal record, organizational membership, and inferred biometric characteristics.

Divergence 2 — Virginia’s Terminology Proliferation Exceeds the National Norm

The survey documents terminology inconsistency across states (at least five different defined terms used nationally). Virginia has a different situation, where FOIA uses at least six distinct formulations — “personal information,” “personally identifiable information,” “personally identifying information,” “personal contact information,” “identifying information of a personal, medical, or financial nature,” and “personal and proprietary information” none of which is uniformly defined in § 2.2-3701. Only “personal contact information” is defined, and only within the specific subdivisions that use it. It appears that based on the survey’s dataset, few other states had a similar style of use within a single open-records statute.

Divergence 3 — Virginia’s § 2.2-3801 Omits Several Categories Common in Some State Definitions

Virginia’s § 2.2-3801 definition does not expressly list email addresses or personal telephone numbers as enumerated elements both of which appear in Maryland’s MPIA § 4-101(h) and in several other state definitions. Virginia’s general clauses (“describes, locates or indexes” an individual; “affords a basis for inferring personal characteristics”) may capture these in practice; further information is required to determine this, however. Maryland’s definition also expressly excludes driver’s status, driving offenses, and five-digit ZIP codes, targeted exclusions that Virginia’s definition does not replicate.

05 SUMMARY OF COMPARATIVE FINDINGS

The 50-state survey and the Subcommittee's June 2025 analysis, read together, support the following conclusions.

- 1. Virginia's § 2.2-3801 definition may be among the most comprehensive in the country** while Maryland and Illinois may serve as useful comparators for language going forward.
- 2. Virginia's partial cross-referencing pattern mirrors a documented national trend** but Virginia's degree of terminological proliferation within a single statute is more pronounced than most states in the survey dataset.