

SENATE BILL NO. \_\_\_\_\_ HOUSE BILL NO. \_\_\_\_\_

1 A BILL to amend and reenact §§ 2.2-3701,2.2-3704, 2.2-3704.1, 2.2-3704.2, 2.2-3705.1 through 2.2-  
2 3705.8, 2.2-3711, 2.2-3714, 2.2-3806, 22.1-253.13:3, 22.1-279.8, 23.1-2425, 32.1-48.08, 32.1-  
3 48.011, 32.1-48.015, 32.1-283.1, 32.1-283.2, 32.1-283.3, 32.1-283.5, 32.1-283.6, 44-146.18, 44-  
4 146.22, 54.1-2517, and 54.1-2523 of the Code of Virginia, relating to the Virginia Freedom of  
5 Information Act; public access to records of public bodies.

6 **Annotated--This proposed draft is the consolidation of the FOIA Council Records Subcommittee's**  
7 **legislative recommendations made during the course of the HJR 96 Study (2014--2016).**  
8 **Each recommendation of the Records Subcommittee incorporated in this omnibus draft**  
9 **has been approved by the FOIA Council.**

10 **How to use this document: Each recommended change in this document is annotated to provide**  
11 **the following information: the legislative draft (LD) identification number of the**  
12 **recommended change before incorporation into this omnibus draft, the date when**  
13 **recommendation was adopted by the Records Subcommittee, and the date the**  
14 **recommendation was approved by the FOIA Council.**

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

16 **1. That §§ 2.2-3701,2.2-3704, 2.2-3704.1, 2.2-3704.2, 2.2-3705.1 through 2.2-3705.8, 2.2-3711, 2.2-**  
17 **3714, 2.2-3806, 22.1-253.13:3, 22.1-279.8, 23.1-2425, 32.1-48.08, 32.1-48.011, 32.1-48.015, 32.1-**  
18 **283.1, 32.1-283.2, 32.1-283.3, 32.1-283.5, 32.1-283.6, 44-146.18, 44-146.22, 54.1-2517, and 54.1-2523**  
19 **of the Code of Virginia are amended and reenacted as follows:**

20 **§ 2.2-3701. Definitions.**

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

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

23 "Electronic communication" means any audio or combined audio and visual communication  
24 method.

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

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

30 "Meeting" or "meetings" means the meetings including work sessions, when sitting physically,  
31 or through telephonic or video equipment pursuant to § 2.2-3708 or 2.2-3708.1, as a body or entity, or as  
32 an informal assemblage of (i) as many as three members or (ii) a quorum, if less than three, of the  
33 constituent membership, wherever held, with or without minutes being taken, whether or not votes are  
34 cast, of any public body. Neither the gathering of employees of a public body nor the gathering or  
35 attendance of two or more members of a public body (i) at any place or function where no part of the  
36 purpose of such gathering or attendance is the discussion or transaction of any public business, and such  
37 gathering or attendance was not called or prearranged with any purpose of discussing or transacting any  
38 business of the public body, or (ii) at a public forum, candidate appearance, or debate, the purpose of  
39 which is to inform the electorate and not to transact public business or to hold discussions relating to the  
40 transaction of public business, even though the performance of the members individually or collectively  
41 in the conduct of public business may be a topic of discussion or debate at such public meeting, shall be  
42 deemed a "meeting" subject to the provisions of this chapter.

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

44 "Public body" means any legislative body, authority, board, bureau, commission, district or  
45 agency of the Commonwealth or of any political subdivision of the Commonwealth, including cities,  
46 towns and counties, municipal councils, governing bodies of counties, school boards and planning  
47 commissions; boards of visitors of public institutions of higher education; and other organizations,  
48 corporations or agencies in the Commonwealth supported wholly or principally by public funds. It shall  
49 include (i) the Virginia Birth-Related Neurological Injury Compensation Program and its board of  
50 directors established pursuant to Chapter 50 (§ 38.2-5000 et seq.) of Title 38.2 and (ii) any committee,  
51 subcommittee, or other entity however designated, of the public body created to perform delegated

52 functions of the public body or to advise the public body. It shall not exclude any such committee,  
53 subcommittee or entity because it has private sector or citizen members. Corporations organized by the  
54 Virginia Retirement System are "public bodies" for purposes of this chapter.

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

59 "Public records" means all writings and recordings that consist of letters, words or numbers, or  
60 their equivalent, set down by handwriting, typewriting, printing, photostating, photography, magnetic  
61 impulse, optical or magneto-optical form, mechanical or electronic recording or other form of data  
62 compilation, however stored, and regardless of physical form or characteristics, prepared or owned by,  
63 or in the possession of a public body or its officers, employees or agents in the transaction of public  
64 business. ~~Records that are not prepared for or used in the transaction of public business are not public~~  
65 ~~records.~~ [\[LD 17100698; recommended by Records Subcommittee on 9/8/16; Approved by FOIA](#)  
66 [Council 10/17/16.\]](#)

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

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

73 **§ 2.2-3704. Public records to be open to inspection; procedure for requesting records and**  
74 **responding to request; charges; transfer of records for storage, etc.** [\[LD 17100765; recommended](#)  
75 [by Records Subcommittee on 9/29/16; Approved by FOIA Council 11/21/16.\]](#)

76 A. Except as otherwise specifically provided by law, all public records shall be open to  
77 ~~inspection and copying by any~~ citizens of the Commonwealth, ~~representatives of newspapers and~~  
78 ~~magazines with circulation in the Commonwealth, and representatives of radio and television stations~~

79 broadcasting in or into the Commonwealth during the regular office hours of the custodian of such  
80 records. Access to such records shall ~~not be denied to citizens of the Commonwealth, representatives of~~  
81 ~~newspapers and magazines with circulation in the Commonwealth, and representatives of radio and~~  
82 ~~television stations broadcasting in or into the Commonwealth~~ be provided by the custodian in  
83 accordance with this chapter by inspection or by providing copies of the requested records, at the option  
84 of the requester. The custodian may require the requester to provide his name and legal address. The  
85 custodian of such records shall take all necessary precautions for their preservation and safekeeping.

86 B. A request for public records shall identify the requested records with reasonable specificity.  
87 The request need not make reference to this chapter in order to invoke the provisions of this chapter or  
88 to impose the time limits for response by a public body. Any public body that is subject to this chapter  
89 and that is the custodian of the requested records shall promptly, but in all cases within five working  
90 days of receiving a request, provide the requested records to the requester or make one of the following  
91 responses in writing:

92 1. The requested records are being entirely withheld. Such response shall identify with  
93 reasonable particularity the volume and subject matter of withheld records, and cite, as to each category  
94 of withheld records, the specific Code section that authorizes the withholding of the records.

95 2. The requested records are being provided in part and are being withheld in part. Such response  
96 shall identify with reasonable particularity the subject matter of withheld portions, and cite, as to each  
97 category of withheld records, the specific Code section that authorizes the withholding of the records.

98 3. The requested records could not be found or do not exist. However, if the public body that  
99 received the request knows that another public body has the requested records, the response shall include  
100 contact information for the other public body.

101 4. It is not practically possible to provide the requested records or to determine whether they are  
102 available within the five-work-day period. Such response shall specify the conditions that make a  
103 response impossible. If the response is made within five working days, the public body shall have an  
104 additional seven work days in which to provide one of the four preceding responses.

105 C. Any public body may petition the appropriate court for additional time to respond to a request  
106 for records when the request is for an extraordinary volume of records or requires an extraordinarily  
107 lengthy search, and a response by the public body within the time required by this chapter will prevent  
108 the public body from meeting its operational responsibilities. Before proceeding with the petition,  
109 however, the public body shall make reasonable efforts to reach an agreement with the requester  
110 concerning the production of the records requested.

111 D. Subject to the provisions of subsection G, no public body shall be required to create a new  
112 record if the record does not already exist. However, a public body may abstract or summarize  
113 information under such terms and conditions as agreed between the requester and the public body.

114 E. Failure to respond to a request for records shall be deemed a denial of the request and shall  
115 constitute a violation of this chapter.

116 F. A public body may make reasonable charges not to exceed its actual cost incurred in  
117 accessing, duplicating, supplying, or searching for the requested records. No public body shall impose  
118 any extraneous, intermediary, or surplus fees or expenses to recoup the general costs associated with  
119 creating or maintaining records or transacting the general business of the public body. Any duplicating  
120 fee charged by a public body shall not exceed the actual cost of duplication. The public body may also  
121 make a reasonable charge for the cost incurred in supplying records produced from a geographic  
122 information system at the request of anyone other than the owner of the land that is the subject of the  
123 request. However, such charges shall not exceed the actual cost to the public body in supplying such  
124 records, except that the public body may charge, on a pro rata per acre basis, for the cost of creating  
125 topographical maps developed by the public body, for such maps or portions thereof, which encompass  
126 a contiguous area greater than 50 acres. All charges for the supplying of requested records shall be  
127 estimated in advance at the request of the citizen.

128 G. Public records maintained by a public body in an electronic data processing system, computer  
129 database, or any other structured collection of data shall be made available to a requester at a reasonable  
130 cost, not to exceed the actual cost in accordance with subsection F. When electronic or other databases  
131 are combined or contain exempt and nonexempt records, the public body may provide access to the

132 exempt records if not otherwise prohibited by law, but shall provide access to the nonexempt records as  
133 provided by this chapter.

134 Public bodies shall produce nonexempt records maintained in an electronic database in any  
135 tangible medium identified by the requester, including, where the public body has the capability, the  
136 option of posting the records on a website or delivering the records through an electronic mail address  
137 provided by the requester, if that medium is used by the public body in the regular course of business.  
138 No public body shall be required to produce records from an electronic database in a format not  
139 regularly used by the public body. However, the public body shall make reasonable efforts to provide  
140 records in any format under such terms and conditions as agreed between the requester and public body,  
141 including the payment of reasonable costs. The excision of exempt fields of information from a database  
142 or the conversion of data from one available format to another shall not be deemed the creation,  
143 preparation, or compilation of a new public record.

144 H. In any case where a public body determines in advance that charges for producing the  
145 requested records are likely to exceed \$200, the public body may, before continuing to process the  
146 request, require the requester to agree to payment of a deposit not to exceed the amount of the advance  
147 determination. The deposit shall be credited toward the final cost of supplying the requested records.  
148 The period within which the public body shall respond under this section shall be tolled for the amount  
149 of time that elapses between notice of the advance determination and the response of the requester.

150 I. Before processing a request for records, a public body may require the requester to pay any  
151 amounts owed to the public body for previous requests for records that remain unpaid 30 days or more  
152 after billing.

153 J. In the event a public body has transferred possession of public records to any entity, including  
154 but not limited to any other public body, for storage, maintenance, or archiving, the public body  
155 initiating the transfer of such records shall remain the custodian of such records for purposes of  
156 responding to requests for public records made pursuant to this chapter and shall be responsible for  
157 retrieving and supplying such public records to the requester. In the event a public body has transferred  
158 public records for storage, maintenance, or archiving and such transferring public body is no longer in

159 existence, any public body that is a successor to the transferring public body shall be deemed the  
160 custodian of such records. In the event no successor entity exists, the entity in possession of the public  
161 records shall be deemed the custodian of the records for purposes of compliance with this chapter, and  
162 shall retrieve and supply such records to the requester. Nothing in this subsection shall be construed to  
163 apply to records transferred to the Library of Virginia for permanent archiving pursuant to the duties  
164 imposed by the Virginia Public Records Act (§ 42.1-76 et seq.). In accordance with § 42.1-79, the  
165 Library of Virginia shall be the custodian of such permanently archived records and shall be responsible  
166 for responding to requests for such records made pursuant to this chapter.

167 **§ 2.2-3704.1. Posting of notice of rights and responsibilities by state and local public bodies;**  
168 **assistance by the Freedom of Information Advisory Council. [Staff recommendation considered**  
169 **and approved by FOIA Council 11/21/16.]**

170 A. All state public bodies subject to the provisions of this chapter ~~and~~, any county or city, and  
171 any town with a population of more than 250, and any school board, shall make available the following  
172 information to the public upon request and shall post a link to such information on the homepage of their  
173 respective official public government websites:

174 1. A plain English explanation of the rights of a requester under this chapter, the procedures to  
175 obtain public records from the public body, and the responsibilities of the public body in complying with  
176 this chapter. For purposes of this section, "plain English" means written in nontechnical, readily  
177 understandable language using words of common everyday usage and avoiding legal terms and phrases  
178 or other terms and words of art whose usage or special meaning primarily is limited to a particular field  
179 or profession;

180 2. Contact information for the FOIA officer designated by the public body pursuant to § 2.2-  
181 3704.2 to (i) assist a requester in making a request for records or (ii) respond to requests for public  
182 records;

183 3. A general description, summary, list, or index of the types of public records maintained by  
184 such ~~state~~ public body;

185 4. A general description, summary, list, or index of any exemptions in law that permit or require  
186 such public records to be withheld from release;

187 5. Any policy the public body has concerning the type of public records it routinely withholds  
188 from release as permitted by this chapter or other law; and

189 6. The following statement: "A public body may make reasonable charges not to exceed its  
190 actual cost incurred in accessing, duplicating, supplying, or searching for the requested records. No  
191 public body shall impose any extraneous, intermediary, or surplus fees or expenses to recoup the general  
192 costs associated with creating or maintaining records or transacting the general business of the public  
193 body. Any duplicating fee charged by a public body shall not exceed the actual cost of duplication. All  
194 charges for the supplying of requested records shall be estimated in advance at the request of the citizen  
195 as set forth in subsection F of § 2.2-3704 of the Code of Virginia."

196 B. The Freedom of Information Advisory Council, created pursuant to § 30-178, shall assist in  
197 the development and implementation of the provisions of subsection A, upon request.

198 **§ 2.2-3704.2. Public bodies to designate FOIA officer.** [\[Technical correction by staff\]](#)

199 A. All state public bodies, including state authorities, that are subject to the provisions of this  
200 chapter and all local public bodies that are subject to the provisions of this chapter, shall designate and  
201 publicly identify one or more Freedom of Information Act officers (FOIA officer) whose responsibility  
202 is to serve as a point of contact for members of the public in requesting public records and to coordinate  
203 the public body's compliance with the provisions of this chapter.

204 B. For such state public bodies, the name and contact information of the public body's FOIA  
205 officer to whom members of the public may direct requests for public records and who will oversee the  
206 public body's compliance with the provisions of this chapter shall be made available to the public upon  
207 request and be posted on the respective public body's [official public government](#) website at the time of  
208 designation and maintained thereafter on such website for the duration of the designation.

209 C. For such local public bodies, the name and contact information of the public body's FOIA  
210 officer to whom members of the public may direct requests for public records and who will oversee the  
211 public body's compliance with the provisions of this chapter shall be made available in a way reasonably



212 calculated to provide notice to the public, including posting at the public body's place of business,  
213 posting on its [official public government](#) website, or including such information in its publications.

214 D. For the purposes of this section, local public bodies shall include constitutional officers.

215 E. Any such FOIA officer shall possess specific knowledge of the provisions of this chapter and  
216 be trained at least annually by legal counsel for the public body or the Virginia Freedom of Information  
217 Advisory Council.

218 **§ 2.2-3705.1. Exclusions to application of chapter; exclusions of general application to**  
219 **public bodies.** [\[LD 17100766--re: global language change \("Nothing to prevent disclosure..."\);](#)  
220 [recommended by Records Subcommittee on 9/29/16; Approved by FOIA Council 11/21/16.\]](#)

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

225 1. Personnel information concerning identifiable individuals, except that access shall not be  
226 denied to the person who is the subject thereof. Any person who is the subject of such information and  
227 who is 18 years of age or older may waive, in writing, the protections afforded by this subdivision. If the  
228 protections are so waived, such information shall be disclosed. Nothing in this subdivision shall be  
229 construed to authorize the withholding of any resumes or applications submitted by persons who are  
230 appointed by the Governor pursuant to § 2.2-106 or 2.2-107.

231 [No provision of this chapter or any provision of Chapter 38 \(§ 2.2-3800 et seq.\) shall be](#)  
232 [construed as denying public access to \(i\) contracts between a public body and its officers or employees,](#)  
233 [other than contracts settling public employee employment disputes held confidential as personnel](#)  
234 [records under § 2.2-3705.1; \(ii\) records of the position, job classification, official salary or rate of pay](#)  
235 [of, and records of the allowances or reimbursements for expenses paid to any officer, official or](#)  
236 [employee of a public body; or \(iii\) the compensation or benefits paid by any corporation organized by](#)  
237 [the Virginia Retirement System or its officers or employees. The provisions of this subdivision,](#)  
238 [however, shall not require public access to records of the official salaries or rates of pay of public](#)

239 [employees whose annual rate of pay is \\$10,000 or less. \[LD 15100326; recommended by Records](#)  
240 [Subcommittee on 8/25/15; Approved by FOIA Council 11/21/16.\]](#)

241 2. Written advice of legal counsel to state, regional or local public bodies or the officers or  
242 employees of such public bodies, and any other information protected by the attorney-client privilege.

243 3. Legal memoranda and other work product compiled specifically for use in litigation or for use  
244 in an active administrative investigation concerning a matter that is properly the subject of a closed  
245 meeting under § 2.2-3711.

246 4. Any test or examination used, administered or prepared by any public body for purposes of  
247 evaluation of (i) any student or any student's performance, (ii) any employee or employment seeker's  
248 qualifications or aptitude for employment, retention, or promotion, or (iii) qualifications for any license  
249 or certificate issued by a public body.

250 As used in this subdivision, "test or examination" shall include (a) any scoring key for any such  
251 test or examination and (b) any other document that would jeopardize the security of the test or  
252 examination. Nothing contained in this subdivision shall prohibit the release of test scores or results as  
253 provided by law, or limit access to individual records as provided by law. However, the subject of such  
254 employment tests shall be entitled to review and inspect all records relative to his performance on such  
255 employment tests.

256 When, in the reasonable opinion of such public body, any such test or examination no longer has  
257 any potential for future use, and the security of future tests or examinations will not be jeopardized, the  
258 test or examination shall be made available to the public. However, minimum competency tests  
259 administered to public school children shall be made available to the public contemporaneously with  
260 statewide release of the scores of those taking such tests, but in no event shall such tests be made  
261 available to the public later than six months after the administration of such tests.

262 5. Records recorded in or compiled exclusively for use in closed meetings lawfully held pursuant  
263 to § 2.2-3711. However, no record that is otherwise open to inspection under this chapter shall be  
264 deemed exempt by virtue of the fact that it has been reviewed or discussed in a closed meeting.

265 6. Vendor proprietary information software that may be in the public records of a public body.  
266 For the purpose of this subdivision, "vendor proprietary information software" means computer  
267 programs acquired from a vendor for purposes of processing data for agencies or political subdivisions  
268 of the Commonwealth.

269 7. Computer software developed by or for a state agency, state-supported institution of higher  
270 education or political subdivision of the Commonwealth.

271 8. Appraisals and cost estimates of real property subject to a proposed purchase, sale, or lease,  
272 prior to the completion of such purchase, sale, or lease.

273 9. Information concerning reserves established in specific claims administered by the  
274 Department of the Treasury through its Division of Risk Management as provided in Article 5 (§ 2.2-  
275 1832 et seq.) of Chapter 18, or by any county, city, or town; and investigative notes, correspondence and  
276 information furnished in confidence with respect to an investigation of a claim or a potential claim  
277 against a public body's insurance policy or self-insurance plan. However, nothing in this subdivision  
278 shall ~~authorize the withholding prevent the disclosure~~ of information taken from inactive reports upon  
279 expiration of the period of limitations for the filing of a civil suit.

280 10. Personal contact information, ~~as defined in § 2.2-3801~~, including electronic mail addresses,  
281 furnished to a public body for the purpose of receiving electronic mail from the public body, provided  
282 that the electronic mail recipient has requested that the public body not disclose such information.  
283 However, access shall not be denied to the person who is the subject of the record. As used in this  
284 subdivision, "personal contact information" means home address, home telephone number, personal cell  
285 phone number, personal email address, or work address or telephone number. [LD 15100327;  
286 recommended by Records Subcommittee on 11/5/14; Approved by FOIA Council 6/23/16.]

287 11. Communications and materials required to be kept confidential pursuant to § 2.2-4119 of the  
288 Virginia Administrative Dispute Resolution Act (§ 2.2-4115 et seq.).

289 12. Information relating to the negotiation and award of a specific contract where competition or  
290 bargaining is involved and where the release of such information would adversely affect the bargaining  
291 position or negotiating strategy of the public body. Such information shall not be withheld after the

292 public body has made a decision to award or not to award the contract. In the case of procurement  
293 transactions conducted pursuant to the Virginia Public Procurement Act (§ 2.2-4300 et seq.), the  
294 provisions of this subdivision shall not apply, and any release of information relating to such  
295 transactions shall be governed by the Virginia Public Procurement Act.

296 13. Account numbers or routing information for any credit card, debit card, or other account with  
297 a financial institution of any person or public body. However, access shall not be denied to the person  
298 who is the subject of the information. For the purposes of this subdivision, "financial institution" means  
299 any organization authorized to do business under state or federal laws relating to financial institutions,  
300 including, without limitation, banks and trust companies, savings banks, savings and loan companies or  
301 associations, and credit unions.

302 § 2.2-3705.2. Exclusions to application of chapter; records relating to public safety. [LD  
303 17100766--re: global language change ("Nothing to prevent disclosure..."; recommended by  
304 Records Subcommittee on 9/29/16; Approved by FOIA Council 11/21/16 and LD 16100995 (Public  
305 safety consolidation; recommended by Records Subcommittee on 10/7/15; Approved by FOIA  
306 Council 6/23/16.)]

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

311 1. Confidential information, including victim identity, provided to or obtained by staff in a rape  
312 crisis center or a program for battered spouses.

313 2. ~~Information contained in engineering and construction drawings and plans submitted for the~~  
314 ~~sole purpose of complying with the Building Code in obtaining a building permit if disclosure of such~~  
315 ~~information would identify specific trade secrets or other information that would be harmful to the~~  
316 ~~competitive position of the owner or lessee. However, such information shall be exempt only until the~~  
317 ~~building is completed. Information relating to the safety or environmental soundness of any building~~  
318 ~~shall not be exempt from disclosure.~~

319 ~~Information contained in engineering and construction drawings and plans that reveal critical~~  
320 ~~structural components, security equipment and systems, ventilation systems, fire protection equipment,~~  
321 ~~mandatory building emergency equipment or systems, elevators, electrical systems, telecommunications~~  
322 ~~equipment and systems, and other utility equipment and systems submitted for the purpose of complying~~  
323 ~~with the Uniform Statewide Building Code (§ 36-97 et seq.) or the Statewide Fire Prevention Code (§~~  
324 ~~27-94 et seq.) if disclosure of such information would jeopardize the safety or security of any public or~~  
325 ~~private commercial office, multifamily residential, or retail building or its occupants in the event of~~  
326 ~~terrorism or other threat to public safety. In order for the information to be excluded from mandatory~~  
327 ~~disclosure, the owner or lessee of such property, equipment, or system in writing shall (i) invoke the~~  
328 ~~protections of this paragraph; (ii) identify the drawings, plans, or other materials to be protected; and~~  
329 ~~(iii) state the reasons why protection is necessary.~~

330 ~~Nothing in this subdivision shall authorize the withholding of information relating to any~~  
331 ~~building in connection with an inquiry into the performance of that building after it has been subjected~~  
332 ~~to fire, explosion, natural disaster, or other catastrophic event.~~

333 ~~3. Information that describes the design, function, operation, or access control features of any~~  
334 ~~security system, whether manual or automated, which is used to control access to or use of any~~  
335 ~~automated data processing or telecommunications system.~~

336 ~~4. Information concerning the prevention or response to terrorist activity or cyber attacks,~~  
337 ~~including (i) critical infrastructure information; (ii) vulnerability assessments, operational, procedural,~~  
338 ~~transportation, and tactical planning or training manuals, and staff meeting minutes; (iii) engineering or~~  
339 ~~architectural plans or drawings, or information derived from such plans or drawings; and (iv)~~  
340 ~~information not lawfully available to the public regarding specific cybersecurity threats or vulnerabilities~~  
341 ~~or security plans and measures of an entity, facility, building, structure, information technology system,~~  
342 ~~or software program if disclosure of such information would (a) reveal the location or operation of~~  
343 ~~security equipment and systems, elevators, ventilation, fire protection, emergency, electrical,~~  
344 ~~telecommunications or utility equipment and systems of any public building, structure or information~~

345 ~~storage facility, or telecommunications or utility equipment or systems or (b) jeopardize the safety of~~  
346 ~~any person.~~

347 ~~The same categories of information concerning any person or entity submitted to a public body~~  
348 ~~for the purpose of antiterrorism response planning or cybersecurity planning or protection may be~~  
349 ~~withheld from disclosure if such person or entity in writing (1) invokes the protections of this~~  
350 ~~subdivision, (2) identifies with specificity the information for which protection is sought, and (3) states~~  
351 ~~with reasonable particularity why the protection of such information from public disclosure is necessary~~  
352 ~~to meet the objective of antiterrorism, cybersecurity planning or protection, or critical infrastructure~~  
353 ~~information security and resilience. Such statement shall be a public record and shall be disclosed upon~~  
354 ~~request.~~

355 ~~Any public body receiving a request for records excluded under this subdivision shall notify the~~  
356 ~~Secretary of Public Safety and Homeland Security or his designee of such request and the response~~  
357 ~~made by the public body in accordance with § 2.2-3704.~~

358 ~~Nothing in this subdivision shall be construed to authorize the withholding of information~~  
359 ~~relating to the structural or environmental soundness of any building, nor shall it authorize the~~  
360 ~~withholding of information relating to any building in connection with an inquiry into the performance~~  
361 ~~of that building after it has been subjected to fire, explosion, natural disaster, or other catastrophic event.~~

362 ~~As used in this subdivision, "critical infrastructure information" means the same as that term is~~  
363 ~~defined in 6 U.S.C. § 131.~~

364 ~~5-3.~~ Information that would disclose the security aspects of a system safety program plan  
365 adopted pursuant to 49 C.F.R. Part 659 by the Commonwealth's designated Rail Fixed Guideway  
366 Systems Safety Oversight agency; and information in the possession of such agency, the release of  
367 which would jeopardize the success of an ongoing investigation of a rail accident or other incident  
368 threatening railway safety.

369 ~~6.~~ Information contained in engineering and architectural drawings, operational, procedural,  
370 tactical planning or training manuals, or staff meeting minutes if disclosure of such information would  
371 (i) reveal surveillance techniques, personnel deployments, alarm or security systems or technologies, or

372 ~~operational and transportation plans or protocols or (ii) jeopardize the security of any governmental~~  
373 ~~facility, building, or structure or the safety of persons using such facility, building, or structure.~~

374 7.4. Information concerning security plans and specific assessment components of school safety  
375 audits, as provided in § 22.1-279.8.

376 Nothing in this subdivision shall be construed to ~~authorize the withholding prevent the disclosure~~  
377 of information relating to the effectiveness of security plans after (i) any school building or property has  
378 been subjected to fire, explosion, natural disaster, or other catastrophic event or (ii) any person on school  
379 property has suffered or been threatened with any personal injury.

380 ~~8.5.~~ Information concerning the mental health assessment of an individual subject to  
381 commitment as a sexually violent predator under Chapter 9 (§ 37.2-900 et seq.) of Title 37.2 held by the  
382 Commitment Review Committee; except that in no case shall information identifying the victims of a  
383 sexually violent predator be disclosed.

384 9.6. Subscriber data provided directly or indirectly by a telecommunications carrier to a public  
385 body that operates a 911 or E-911 emergency dispatch system or an emergency notification or reverse  
386 911 system if the data is in a form not made available by the telecommunications carrier to the public  
387 generally. Nothing in this subdivision shall ~~authorize the withholding prevent the disclosure~~ of  
388 subscriber data generated in connection with specific calls to a 911 emergency system, where the  
389 requester is seeking to obtain public records about the use of the system in response to a specific crime,  
390 emergency or other event as to which a citizen has initiated a 911 call.

391 For the purposes of this subdivision, "subscriber data" means the name, address, telephone  
392 number, and any other information identifying a subscriber of a telecommunications carrier.

393 ~~10.7.~~ Subscriber data collected by a local governing body in accordance with the Enhanced  
394 Public Safety Telephone Services Act (§ 56-484.12 et seq.) and other identifying information of a  
395 personal, medical, or financial nature provided to a local governing body in connection with a 911 or E-  
396 911 emergency dispatch system or an emergency notification or reverse 911 system if such records are  
397 not otherwise publicly available.

398 | Nothing in this subdivision shall ~~authorize the withholding~~ prevent the disclosure of subscriber  
399 | data generated in connection with specific calls to a 911 emergency system, where the requester is  
400 | seeking to obtain public records about the use of the system in response to a specific crime, emergency  
401 | or other event as to which a citizen has initiated a 911 call.

402 | For the purposes of this subdivision, "subscriber data" means the name, address, telephone  
403 | number, and any other information identifying a subscriber of a telecommunications carrier.

404 | ~~11.8.~~ 8. Information held by the Virginia Military Advisory Council or any commission created by  
405 | executive order for the purpose of studying and making recommendations regarding preventing closure  
406 | or realignment of federal military and national security installations and facilities located in Virginia and  
407 | relocation of such facilities to Virginia, or a local or regional military affairs organization appointed by a  
408 | local governing body, that would (i) reveal strategies under consideration or development by the Council  
409 | or such commission or organizations to prevent the closure or realignment of federal military  
410 | installations located in Virginia or the relocation of national security facilities located in Virginia, to  
411 | limit the adverse economic effect of such realignment, closure, or relocation, or to seek additional tenant  
412 | activity growth from the Department of Defense or federal government or (ii) disclose trade secrets, as  
413 | defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), provided to the Council or such  
414 | commission or organizations in connection with their work.

415 | In order to invoke the trade secret protection provided by clause (ii), the submitting entity shall,  
416 | in writing and at the time of submission (a) invoke this exclusion, (b) identify with specificity the  
417 | information for which such protection is sought, and (c) state the reason why such protection is  
418 | necessary. Nothing in this subdivision shall be construed to ~~authorize the withholding~~ prevent the  
419 | disclosure of all or part of any record, other than a trade secret that has been specifically identified as  
420 | required by this subdivision, after the Department of Defense or federal agency has issued a final,  
421 | unappealable decision, or in the event of litigation, a court of competent jurisdiction has entered a final,  
422 | unappealable order concerning the closure, realignment, or expansion of the military installation or  
423 | tenant activities, or the relocation of the national security facility, for which records are sought.



424 ~~12-9.~~ Information, as determined by the State Comptroller, that describes the design, function,  
425 operation, or implementation of internal controls over the Commonwealth's financial processes and  
426 systems, and the assessment of risks and vulnerabilities of those controls, including the annual  
427 assessment of internal controls mandated by the State Comptroller, if disclosure of such information  
428 would jeopardize the security of the Commonwealth's financial assets. However, records relating to the  
429 investigation of and findings concerning the soundness of any fiscal process shall be disclosed in a form  
430 that does not compromise internal controls. Nothing in this subdivision shall be construed to prohibit the  
431 Auditor of Public Accounts or the Joint Legislative Audit and Review Commission from reporting  
432 internal control deficiencies discovered during the course of an audit.

433 ~~13-10.~~ Information relating to the Statewide Agencies Radio System (STARS) or any other  
434 similar local or regional public safety communications system that (i) describes the design, function,  
435 programming, operation, or access control features of the overall system, components, structures,  
436 individual networks, and subsystems of the STARS or any other similar local or regional  
437 communications system or (ii) relates to radio frequencies assigned to or utilized by STARS or any other  
438 similar local or regional communications system, code plugs, circuit routing, addressing schemes, talk  
439 groups, fleet maps, encryption, or programming maintained by or utilized by STARS or any other  
440 similar local or regional public safety communications system; ~~those engineering and construction~~  
441 ~~drawings and plans that reveal critical structural components, interconnectivity, security equipment and~~  
442 ~~systems, network monitoring, network operation center, master sites, ventilation systems, fire protection~~  
443 ~~equipment, mandatory building emergency equipment, electrical systems, and other utility equipment~~  
444 ~~and systems related to STARS or any other similar local or regional public safety communications~~  
445 ~~system; and special event plans, operational plans, storm plans, or other pre-arranged programming, if~~  
446 ~~disclosure of such information would (a) reveal surveillance techniques, personnel deployments, alarm~~  
447 ~~or security systems or technologies, or operational and transportation plans or protocols or (b) jeopardize~~  
448 ~~the security of any governmental facility, building, or structure or the safety of any person.~~

449 ~~14-11.~~ Information concerning a salaried or volunteer Fire/EMS company or Fire/EMS  
450 department if disclosure of such information would reveal the telephone numbers for cellular telephones,

451 pagers, or comparable portable communication devices provided to its personnel for use in the  
452 performance of their official duties.

453 ~~15-12.~~ Information concerning the disaster recovery plans or the evacuation plans in the event of  
454 fire, explosion, natural disaster, or other catastrophic event for hospitals and nursing homes regulated by  
455 the Board of Health pursuant to Chapter 5 (§ 32.1-123 et seq.) of Title 32.1 provided to the Department  
456 of Health. Nothing in this subdivision shall be construed to ~~authorize the withholding prevent the~~  
457 disclosure of information relating to the effectiveness of executed evacuation plans after the occurrence  
458 of fire, explosion, natural disaster, or other catastrophic event.

459 ~~16-13.~~ Records received by the Department of Criminal Justice Services pursuant to §§ 9.1-184,  
460 22.1-79.4, and 22.1-279.8 or for purposes of evaluating threat assessment teams established by a public  
461 institution of higher education pursuant to § 23.1-805 or by a private nonprofit institution of higher  
462 education, to the extent such records reveal security plans, walk-through checklists, or vulnerability and  
463 threat assessment components.

464 14. Information contained in (i) engineering, architectural, or construction drawings; (ii)  
465 operational, procedural, tactical planning, or training manuals; (iii) staff meeting minutes; or (iv) other  
466 records that reveal any of the following, the disclosure of which would jeopardize the safety or security  
467 of any person; governmental facility, building, or structure or persons using such facility, building, or  
468 structure; or public or private commercial office, multifamily residential, or retail building or its  
469 occupants:

470 a. Critical structural information or the location or operation of security equipment and systems  
471 of any public building, structure, or information storage facility, including ventilation systems, fire  
472 protection equipment, mandatory building emergency equipment or systems, elevators, electrical  
473 systems, telecommunications equipment and systems, or utility equipment and systems;

474 b. Vulnerability assessments, information not lawfully available to the public regarding specific  
475 cybersecurity threats or vulnerabilities, or security plans and measures of an entity, facility, building  
476 structure, information technology system, or software program;

477 c. Surveillance techniques, personnel deployments, alarm or security systems or technologies, or  
478 operational or transportation plans or protocols; or

479 d. Interconnectivity, network monitoring, network operation centers, master sites, or systems  
480 related to the Statewide Agencies Radio System (STARS) or any other similar local or regional public  
481 safety communications system.

482 The same categories of records of any person or entity submitted to a public body for the purpose  
483 of antiterrorism response planning or cybersecurity planning or protection may be withheld from  
484 disclosure if such person or entity in writing (a) invokes the protections of this subdivision, (b) identifies  
485 with specificity the records or portions thereof for which protection is sought, and (c) states with  
486 reasonable particularity why the protection of such records from public disclosure is necessary to meet  
487 the objective of antiterrorism, cybersecurity planning or protection, or critical infrastructure information  
488 security and resilience. Such statement shall be a public record and shall be disclosed upon request.

489 Any public body receiving a request for records excluded under clauses (a) and (b) of this  
490 subdivision 14 shall notify the Secretary of Public Safety and Homeland Security or his designee of such  
491 request and the response made by the public body in accordance with § 2.2-3704.

492 Nothing in this subdivision 14 shall prevent the disclosure of records relating to (1) the structural  
493 or environmental soundness of any such facility, building, or structure or (2) an inquiry into the  
494 performance of such facility, building, or structure after it has been subjected to fire, explosion, natural  
495 disaster, or other catastrophic event.

496 As used in this subdivision, "critical infrastructure information" means the same as that term is  
497 defined in 6 U.S.C. § 131.

498 **§ 2.2-3705.3. Exclusions to application of chapter; records relating to administrative**  
499 **investigations. [LD 17100766--re: global language change ("Nothing to prevent disclosure...";**  
500 **recommended by Records Subcommittee on 9/29/16; Approved by FOIA Council 11/21/16 and LD**  
501 **1710048 (DHRM #8 stricken); recommended by Records Subcommittee on 11/18/15; Approved by**  
502 **FOIA Council 6/23/16.]**

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

507 1. (Effective until July 1, 2018) Information relating to investigations of applicants for licenses  
508 and permits, and of all licensees and permittees, made by or submitted to the Alcoholic Beverage  
509 Control Board, the Virginia Lottery, the Virginia Racing Commission, the Department of Agriculture  
510 and Consumer Services relating to investigations and applications pursuant to Article 1.1:1 (§ 18.2-  
511 340.15 et seq.) of Chapter 8 of Title 18.2, or the Private Security Services Unit of the Department of  
512 Criminal Justice Services.

513 1. (Effective July 1, 2018) Information relating to investigations of applicants for licenses and  
514 permits, and of all licensees and permittees, made by or submitted to the Virginia Alcoholic Beverage  
515 Control Authority, the Virginia Lottery, the Virginia Racing Commission, the Department of  
516 Agriculture and Consumer Services relating to investigations and applications pursuant to Article 1.1:1  
517 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2, or the Private Security Services Unit of the  
518 Department of Criminal Justice Services.

519 2. Records of active investigations being conducted by the Department of Health Professions or  
520 by any health regulatory board in the Commonwealth pursuant to § 54.1-108.

521 3. Investigator notes, and other correspondence and information, furnished in confidence with  
522 respect to an active investigation of individual employment discrimination complaints made to the  
523 Department of Human Resource Management, to such personnel of any local public body, including  
524 local school boards, as are responsible for conducting such investigations in confidence, or to any public  
525 institution of higher education. Information contained in- However, nothing in this subdivision shall  
526 prevent the disclosure of information taken from inactive reports ~~shall be disclosed~~ in a form that does  
527 not reveal the identity of charging parties, persons supplying the information, or other individuals  
528 involved in the investigation.

529 4. Records of active investigations being conducted by the Department of Medical Assistance  
530 Services pursuant to Chapter 10 (§ 32.1-323 et seq.) of Title 32.1.

531 5. Investigative notes and other correspondence and information furnished in confidence with  
532 respect to an investigation or conciliation process involving an alleged unlawful discriminatory practice  
533 under the Virginia Human Rights Act (§ 2.2-3900 et seq.) or under any local ordinance adopted in  
534 accordance with the authority specified in § 2.2-524, or adopted pursuant to § 15.2-965, or adopted prior  
535 to July 1, 1987, in accordance with applicable law, relating to local human rights or human relations  
536 commissions. ~~Information contained in~~ However, nothing in this subdivision shall prevent the  
537 distribution of information taken from inactive reports ~~shall be disclosed~~ in a form that does not reveal  
538 the identity of the parties involved or other persons supplying information.

539 6. Information relating to studies and investigations by the Virginia Lottery of (i) lottery agents,  
540 (ii) lottery vendors, (iii) lottery crimes under §§ 58.1-4014 through 58.1-4018, (iv) defects in the law or  
541 regulations that cause abuses in the administration and operation of the lottery and any evasions of such  
542 provisions, or (v) the use of the lottery as a subterfuge for organized crime and illegal gambling where  
543 such information has not been publicly released, published or copyrighted. All studies and investigations  
544 referred to under clauses (iii), (iv), and (v) shall be open to inspection and copying upon completion of  
545 the study or investigation.

546 7. Investigative notes, correspondence and information furnished in confidence, and records  
547 otherwise exempted by this chapter or any Virginia statute, provided to or produced by or for (i) the  
548 Auditor of Public Accounts; (ii) the Joint Legislative Audit and Review Commission; (iii) an appropriate  
549 authority as defined in § 2.2-3010 with respect to an allegation of wrongdoing or abuse under the Fraud  
550 and Abuse Whistle Blower Protection Act (§ 2.2-3009 et seq.); (iv) the Office of the State Inspector  
551 General with respect to an investigation initiated through the Fraud, Waste and Abuse Hotline or an  
552 investigation initiated pursuant to Chapter 3.2 (§ 2.2-307 et seq.); (v) internal auditors appointed by the  
553 head of a state agency or by any public institution of higher education; (vi) the committee or the auditor  
554 with respect to an investigation or audit conducted pursuant to § 15.2-825; or (vii) the auditors,  
555 appointed by the local governing body of any county, city, or town or a school board, who by charter,

556 ordinance, or statute have responsibility for conducting an investigation of any officer, department, or  
557 program of such body. Information contained in completed investigations shall be disclosed in a form  
558 that does not reveal the identity of the complainants or persons supplying information to investigators.  
559 Unless disclosure is excluded by this subdivision, the information disclosed shall include the agency  
560 involved, the identity of the person who is the subject of the complaint, the nature of the complaint, and  
561 the actions taken to resolve the complaint. If an investigation does not lead to corrective action, the  
562 identity of the person who is the subject of the complaint may be released only with the consent of the  
563 subject person. Local governing bodies shall adopt guidelines to govern the disclosure required by this  
564 subdivision.

565 ~~8. Information furnished in confidence to the Department of Human Resource Management with~~  
566 ~~respect to an investigation, consultation, or mediation under § 2.2-1202.1, and memoranda,~~  
567 ~~correspondence and other records resulting from any such investigation, consultation or mediation.~~  
568 ~~Information contained in inactive reports shall be disclosed in a form that does not reveal the identity of~~  
569 ~~the parties involved or other persons supplying information.~~

570 ~~9.~~ The names, addresses and telephone numbers of complainants furnished in confidence with  
571 respect to an investigation of individual zoning enforcement complaints or complaints relating to the  
572 Uniform Statewide Building Code (§ 36-97 et seq.) or the Statewide Fire Prevention Code (§ 27-94 et  
573 seq.) made to a local governing body.

574 ~~10-9.~~ Records of active investigations being conducted by the Department of Criminal Justice  
575 Services pursuant to Article 4 (§ 9.1-138 et seq.), Article 4.1 (§ 9.1-150.1 et seq.), Article 11 (§ 9.1-185  
576 et seq.), and Article 12 (§ 9.1-186 et seq.) of Chapter 1 of Title 9.1.

577 ~~11-10.~~ Information furnished to or prepared by the Board of Education pursuant to subsection D  
578 of § 22.1-253.13:3 in connection with the review or investigation of any alleged breach in security,  
579 unauthorized alteration, or improper administration of tests by local school board employees responsible  
580 for the distribution or administration of the tests. However, this section shall not prohibit the disclosure  
581 of such information to (i) a local school board or division superintendent for the purpose of permitting  
582 such board or superintendent to consider or to take personnel action with regard to an employee or (ii)

583 any requester, after the conclusion of a review or investigation, in a form that (a) does not reveal the  
584 identity of any person making a complaint or supplying information to the Board on a confidential basis  
585 and (b) does not compromise the security of any test mandated by the Board.

586 | ~~12.~~11. Information contained in (i) an application for licensure or renewal of a license for  
587 teachers and other school personnel, including transcripts or other documents submitted in support of an  
588 application, and (ii) an active investigation conducted by or for the Board of Education related to the  
589 denial, suspension, cancellation, revocation, or reinstatement of teacher and other school personnel  
590 licenses including investigator notes and other correspondence and information, furnished in confidence  
591 with respect to such investigation. However, this subdivision shall not prohibit the disclosure of such (a)  
592 application information to the applicant at his own expense or (b) investigation information to a local  
593 school board or division superintendent for the purpose of permitting such board or superintendent to  
594 consider or to take personnel action with regard to an employee. Information contained in completed  
595 investigations shall be disclosed in a form that does not reveal the identity of any complainant or person  
596 supplying information to investigators. The completed investigation information disclosed shall include  
597 information regarding the school or facility involved, the identity of the person who was the subject of  
598 the complaint, the nature of the complaint, and the actions taken to resolve the complaint. If an  
599 investigation fails to support a complaint or does not lead to corrective action, the identity of the person  
600 who was the subject of the complaint may be released only with the consent of the subject person. No  
601 personally identifiable information regarding a current or former student shall be released except as  
602 permitted by state or federal law.

603 | ~~13.~~12. Information provided in confidence and related to an investigation by the Attorney  
604 General under Article 1 (§ 3.2-4200 et seq.) or Article 3 (§ 3.2-4204 et seq.) of Chapter 42 of Title 3.2,  
605 Article 10 (§ 18.2-246.6 et seq.) of Chapter 6 or Chapter 13 (§ 18.2-512 et seq.) of Title 18.2, or Article  
606 1 (§ 58.1-1000) of Chapter 10 of Title 58.1. However, information related to an investigation that has  
607 been inactive for more than six months shall, upon request, be disclosed provided such disclosure is not  
608 otherwise prohibited by law and does not reveal the identity of charging parties, complainants, persons  
609 supplying information, witnesses, or other individuals involved in the investigation.

610 § 2.2-3705.4. Exclusions to application of chapter; educational records and certain records  
611 of educational institutions. [LD 17100766--re: global language change ("Nothing to prevent  
612 disclosure..."; recommended by Records Subcommittee on 9/29/16; Approved by FOIA Council  
613 11/21/16 and LD 1710033 (VCSP #6); recommended by Records Subcommittee on 9/14/15;  
614 Approved by FOIA Council 6/23/16.]

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

619 1. Scholastic records containing information concerning identifiable individuals, except that such  
620 access shall not be denied to the person who is the subject thereof, or the parent or legal guardian of the  
621 student. However, no student shall have access to (i) financial records of a parent or guardian or (ii)  
622 records of instructional, supervisory, and administrative personnel and educational personnel ancillary  
623 thereto, that are in the sole possession of the maker thereof and that are not accessible or revealed to any  
624 other person except a substitute.

625 The parent or legal guardian of a student may prohibit, by written request, the release of any  
626 individual information regarding that student until the student reaches the age of 18 years. For scholastic  
627 records of students under the age of 18 years, the right of access may be asserted only by his legal  
628 guardian or parent, including a noncustodial parent, unless such parent's parental rights have been  
629 terminated or a court of competent jurisdiction has restricted or denied such access. For scholastic  
630 records of students who are emancipated or attending a state-supported institution of higher education,  
631 the right of access may be asserted by the student.

632 Any person who is the subject of any scholastic record and who is 18 years of age or older may  
633 waive, in writing, the protections afforded by this subdivision. If the protections are so waived, such  
634 records shall be disclosed.



635 2. Confidential letters and statements of recommendation placed in the records of educational  
636 agencies or institutions respecting (i) admission to any educational agency or institution, (ii) an  
637 application for employment or promotion, or (iii) receipt of an honor or honorary recognition.

638 3. Information held by the Brown v. Board of Education Scholarship Awards Committee that  
639 would reveal personally identifiable information, including scholarship applications, personal financial  
640 information, and confidential correspondence and letters of recommendation.

641 4. Information of a proprietary nature produced or collected by or for faculty or staff of public  
642 institutions of higher education, other than the institutions' financial or administrative records, in the  
643 conduct of or as a result of study or research on medical, scientific, technical or scholarly issues,  
644 whether sponsored by the institution alone or in conjunction with a governmental body or a private  
645 concern, where such information has not been publicly released, published, copyrighted or patented.

646 5. Information held by the University of Virginia or the University of Virginia Medical Center or  
647 Eastern Virginia Medical School, as the case may be, that contain proprietary, business-related  
648 information pertaining to the operations of the University of Virginia Medical Center or Eastern Virginia  
649 Medical School, as the case may be, including business development or marketing strategies and  
650 activities with existing or future joint venturers, partners, or other parties with whom the University of  
651 Virginia Medical Center or Eastern Virginia Medical School, as the case may be, has formed, or forms,  
652 any arrangement for the delivery of health care, if disclosure of such information would be harmful to  
653 the competitive position of the University of Virginia Medical Center or Eastern Virginia Medical  
654 School, as the case may be.

655 6. Personal information, as defined in § 2.2-3801, provided to the Board of the Virginia College  
656 Savings Plan or its employees by or on behalf of individuals who have requested information about,  
657 applied for, or entered into prepaid tuition contracts or savings trust account agreements pursuant to  
658 Chapter 7 (§ 23.1-700 et seq.) of Title 23.1, including personal information related to (i) qualified  
659 beneficiaries as that term is defined in § 23.1-700, (ii) designated survivors, or (iii) authorized  
660 individuals. However, Nothing in this subdivision shall be construed to prevent disclosure or publication  
661 of information in a statistical or other form that does not identify individuals or provide personal

662 information ~~shall be disclosed and may be published by the Board~~. Individuals shall be provided access  
663 to their own personal information.

664 For purposes of this subdivision:

665 "Authorized individual" means an individual who may be named by the account owner to receive  
666 information regarding the account but who does not have any control or authority over the account.

667 "Designated survivor" means the person who will assume account ownership in the event of the  
668 account owner's death.

669 7. Information maintained in connection with fundraising activities by or for a public institution  
670 of higher education that would reveal (i) personal fundraising strategies relating to identifiable donors or  
671 prospective donors or (ii) wealth assessments; estate, financial, or tax planning information; health-  
672 related information; employment, familial, or marital status information; electronic mail addresses,  
673 facsimile or telephone numbers; birth dates or social security numbers of identifiable donors or  
674 prospective donors. Nothing in this subdivision, however, shall be construed to ~~authorize the~~  
675 ~~withholding prevent the disclosure~~ of information relating to the amount, date, purpose, and terms of the  
676 pledge or donation, or the identity of the donor unless the donor has requested anonymity in connection  
677 with or as a condition of making a pledge or donation. The exclusion provided by this subdivision shall  
678 not apply to protect from disclosure (i) the identities of sponsors providing grants to or contracting with  
679 the institution for the performance of research services or other work or (ii) the terms and conditions of  
680 such grants or contracts.

681 8. Information held by a threat assessment team established by a local school board pursuant to §  
682 22.1-79.4 or by a public institution of higher education pursuant to § 23.1-805 relating to the assessment  
683 or intervention with a specific individual. However, in the event an individual who has been under  
684 assessment commits an act, or is prosecuted for the commission of an act that has caused the death of, or  
685 caused serious bodily injury, including any felony sexual assault, to another person, such information of  
686 the threat assessment team concerning the individual under assessment shall be made available as  
687 provided by this chapter, with the exception of any criminal history records obtained pursuant to § 19.2-  
688 389 or 19.2-389.1, health records obtained pursuant to § 32.1-127.1:03, or scholastic records as defined

689 in § 22.1-289. The public body providing such information shall remove personally identifying  
690 information of any person who provided information to the threat assessment team under a promise of  
691 confidentiality.

692 § 2.2-3705.5. Exclusions to application of chapter; health and social services records. [LD  
693 17100766--re: global language change ("Nothing to prevent disclosure..."; recommended by  
694 Records Subcommittee on 9/29/16; Approved by FOIA Council 11/21/16 and LD 1710067 (DHP  
695 consolidation and DSS fix; recommended by Records Subcommittee on 9/14/16; Approved by  
696 FOIA Council 9/19/16.]

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

701 1. Health records, except that such records may be personally reviewed by the individual who is  
702 the subject of such records, as provided in subsection F of § 32.1-127.1:03.

703 Where the person who is the subject of health records is confined in a state or local correctional  
704 facility, the administrator or chief medical officer of such facility may assert such confined person's right  
705 of access to the health records if the administrator or chief medical officer has reasonable cause to  
706 believe that such confined person has an infectious disease or other medical condition from which other  
707 persons so confined need to be protected. Health records shall only be reviewed and shall not be copied  
708 by such administrator or chief medical officer. The information in the health records of a person so  
709 confined shall continue to be confidential and shall not be disclosed by the administrator or chief  
710 medical officer of the facility to any person except the subject or except as provided by law.

711 Where the person who is the subject of health records is under the age of 18, his right of access  
712 may be asserted only by his guardian or his parent, including a noncustodial parent, unless such parent's  
713 parental rights have been terminated, a court of competent jurisdiction has restricted or denied such  
714 access, or a parent has been denied access to the health record in accordance with § 20-124.6. In  
715 instances where the person who is the subject thereof is an emancipated minor, a student in a public

716 institution of higher education, or is a minor who has consented to his own treatment as authorized by §  
717 16.1-338 or 54.1-2969, the right of access may be asserted by the subject person.

718 For the purposes of this chapter, statistical summaries of incidents and statistical data concerning  
719 abuse of individuals receiving services compiled by the Commissioner of Behavioral Health and  
720 Developmental Services shall be disclosed. No such summaries or data shall include any information  
721 that identifies specific individuals receiving services.

722 2. Applications for admission to examinations or for licensure and scoring records maintained by  
723 the Department of Health Professions or any board in that department on individual licensees or  
724 applicants. ~~However, such material may be made available during normal working hours for copying, at~~  
725 ~~the requester's expense, by the individual who is the subject thereof, in the offices of the Department of~~  
726 ~~Health Professions or in the offices of any health regulatory board, whichever may possess the material;~~  
727 information required to be provided to the Department of Health Professions by certain licensees  
728 pursuant to § 54.1-2506.1; information held by the Health Practitioners' Monitoring Program Committee  
729 within the Department of Health Professions that identifies any practitioner who may be, or who is  
730 actually, impaired to the extent that disclosure is prohibited by § 54.1-2517; and information relating to  
731 the prescribing and dispensing of covered substances to recipients and any abstracts from such  
732 information that are in the possession of the Prescription Monitoring Program (Program) pursuant to  
733 Chapter 25.2 (§ 54.1-2519 et seq.) of Title 54.1 and any material relating to the operation or security of  
734 the Program.

735 3. Reports, documentary evidence, and other information as specified in §§ 51.5-122, and 51.5-  
736 141, ~~and 63.2-104~~ Chapter 1 (§ 63.2-100 et seq.) of Title 63.2 and information and statistical registries  
737 required to be kept confidential pursuant to Chapter 1 (§ 63.2-100 et seq.) of Title 63.2.

738 4. Investigative notes; proprietary information not published, copyrighted or patented;  
739 information obtained from employee personnel records; personally identifiable information regarding  
740 residents, clients or other recipients of services; other correspondence and information furnished in  
741 confidence to the Department of Social Services in connection with an active investigation of an  
742 applicant or licensee pursuant to Chapters 17 (§ 63.2-1700 et seq.) and 18 (§ 63.2-1800 et seq.) of Title

743 63.2; and information furnished to the Office of the Attorney General in connection with an  
744 investigation or litigation pursuant to Article 19.1 (§ 8.01-216.1 et seq.) of Chapter 3 of Title 8.01 and  
745 Chapter 9 (§ 32.1-310 et seq.) of Title 32.1. ~~Information- However, nothing in this subdivision shall~~  
746 ~~prevent the disclosure of information~~ from the records of completed investigations ~~shall be disclosed~~ in  
747 a form that does not reveal the identity of complainants, persons supplying information, or other  
748 individuals involved in the investigation.

749 5. Information collected for the designation and verification of trauma centers and other specialty  
750 care centers within the Statewide Emergency Medical Services System and Services pursuant to Article  
751 2.1 (§ 32.1-111.1 et seq.) of Chapter 4 of Title 32.1.

752 6. Reports and court documents relating to involuntary admission required to be kept confidential  
753 pursuant to § 37.2-818.

754 7. ~~Data formerly required to be submitted to the Commissioner of Health relating to the~~  
755 ~~establishment of new or the expansion of existing clinical health services, acquisition of major medical~~  
756 ~~equipment, or certain projects requiring capital expenditures pursuant to former § 32.1-102.3:4.~~  
757 ~~[Obsolete]~~

758 8. ~~Information required to be provided to the Department of Health Professions by certain~~  
759 ~~licensees pursuant to § 54.1-2506.1.~~

760 9. ~~Information~~ acquired (i) during a review of any child death conducted by the State Child  
761 Fatality Review team established pursuant to § 32.1-283.1 or by a local or regional child fatality review  
762 team to the extent that such information is made confidential by § 32.1-283.2; (ii) during a review of any  
763 death conducted by a family violence fatality review team to the extent that such information is made  
764 confidential by § 32.1-283.3; or (iii) during a review of any adult death conducted by the Adult Fatality  
765 Review Team to the extent made confidential by § 32.1-283.5 or by a local or regional adult fatality  
766 review team to the extent that such information is made confidential by § 32.1-283.6.

767 10. ~~8.~~ Patient level data collected by the Board of Health and not yet processed, verified, and  
768 released, pursuant to § 32.1-276.9, to the Board by the nonprofit organization with which the  
769 Commissioner of Health has contracted pursuant to § 32.1-276.4.

770 ~~11. Information held by the Health Practitioners' Monitoring Program Committee within the~~  
771 ~~Department of Health Professions that may identify any practitioner who may be, or who is actually,~~  
772 ~~impaired and disclosure of such information is prohibited by § 54.1-2517.~~

773 ~~12-9.~~ Information relating to a grant application, or accompanying a grant application, submitted  
774 to the Commonwealth Neurotrauma Initiative Advisory Board pursuant to Article 12 (§ 51.5-178 et seq.)  
775 of Chapter 14 of Title 51.5 that would (i) reveal (a) medical or mental health records or other data  
776 identifying individual patients or (b) proprietary business or research-related information produced or  
777 collected by the applicant in the conduct of or as a result of study or research on medical, rehabilitative,  
778 scientific, technical, or scholarly issues, when such information has not been publicly released,  
779 published, copyrighted, or patented, and (ii) be harmful to the competitive position of the applicant.

780 ~~13-10.~~ Any information copied, recorded, or received by the Commissioner of Health in the  
781 course of an examination, investigation, or review of a managed care health insurance plan licensee  
782 pursuant to §§ 32.1-137.4 and 32.1-137.5, including books, records, files, accounts, papers, documents,  
783 and any or all computer or other recordings.

784 ~~14. Information and statistical registries required to be kept confidential pursuant to §§ 63.2-102~~  
785 ~~and 63.2-104.~~

786 ~~15. Information relating to the prescribing and dispensing of covered substances to recipients and~~  
787 ~~any abstracts from such information that are in the possession of the Prescription Monitoring Program~~  
788 ~~pursuant to Chapter 25.2 (§ 54.1-2519 et seq.) of Title 54.1 and any material relating to the operation or~~  
789 ~~security of the Program.~~

790 ~~16-11.~~ Records of the Virginia Birth-Related Neurological Injury Compensation Program  
791 required to be kept confidential pursuant to § 38.2-5002.2.

792 ~~17-12.~~ Information held by the State Health Commissioner relating to the health of any person  
793 subject to an order of quarantine or an order of isolation pursuant to Article 3.02 (§ 32.1-48.05 et seq.)  
794 of Chapter 2 of Title 32.1. However, nothing in this subdivision shall be construed to ~~authorize the~~  
795 ~~withholding prevent the disclosure~~ of statistical summaries, abstracts, or other information in aggregate  
796 form.

797 ~~18-13.~~ The names and addresses or other contact information of persons receiving transportation  
798 services from a state or local public body or its designee under Title II of the Americans with  
799 Disabilities Act, (42 U.S.C. § 12131 et seq.) or funded by Temporary Assistance for Needy Families  
800 (TANF) created under § 63.2-600.

801 ~~19-14.~~ Information held by certain health care committees and entities that may be withheld  
802 from discovery as privileged communications pursuant to § 8.01-581.17.

803 **§ 2.2-3705.6. Exclusions to application of chapter; proprietary records and trade secrets.**

804 **[\[LD 1710035 \(Part of Public safety consolidation, new #29\); Records Subcommittee referred to full](#)**  
805 **[FOIA Council without recommendation 8/18/16; Approved by FOIA Council 10/17/16.\]](#)**

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

810 1. Proprietary information gathered by or for the Virginia Port Authority as provided in § 62.1-  
811 132.4 or 62.1-134.1.

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

814 3. Proprietary information, voluntarily provided by private business pursuant to a promise of  
815 confidentiality from a public body, used by the public body for business, trade, and tourism development  
816 or retention; and memoranda, working papers, or other information related to businesses that are  
817 considering locating or expanding in Virginia, prepared by a public body, where competition or  
818 bargaining is involved and where disclosure of such information would adversely affect the financial  
819 interest of the public body.

820 4. Information that was filed as confidential under the Toxic Substances Information Act (§ 32.1-  
821 239 et seq.), as such Act existed prior to July 1, 1992.

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

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

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

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

836 9. Proprietary, commercial or financial information, balance sheets, trade secrets, and revenue  
837 and cost projections provided by a private transportation business to the Virginia Department of  
838 Transportation and the Department of Rail and Public Transportation for the purpose of conducting  
839 transportation studies needed to obtain grants or other financial assistance under the Transportation  
840 Equity Act for the 21st Century (P.L. 105-178) for transportation projects if disclosure of such  
841 information is exempt under the federal Freedom of Information Act or the federal Interstate Commerce  
842 Act or other laws administered by the Surface Transportation Board or the Federal Railroad  
843 Administration with respect to data provided in confidence to the Surface Transportation Board and the  
844 Federal Railroad Administration. However, the exclusion provided by this subdivision shall not apply to  
845 any wholly owned subsidiary of a public body.

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



850 11. a. Memoranda, staff evaluations, or other information prepared by the responsible public  
851 entity, its staff, outside advisors, or consultants exclusively for the evaluation and negotiation of  
852 proposals filed under the Public-Private Transportation Act of 1995 (§ 33.2-1800 et seq.) or the Public-  
853 Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.) where (i) if such  
854 information was made public prior to or after the execution of an interim or a comprehensive agreement,  
855 § 33.2-1820 or 56-575.17 notwithstanding, the financial interest or bargaining position of the public  
856 entity would be adversely affected and (ii) the basis for the determination required in clause (i) is  
857 documented in writing by the responsible public entity; and

858 b. Information provided by a private entity to a responsible public entity, affected jurisdiction, or  
859 affected local jurisdiction pursuant to the provisions of the Public-Private Transportation Act of 1995 (§  
860 33.2-1800 et seq.) or the Public-Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1  
861 et seq.) if disclosure of such information would reveal (i) trade secrets of the private entity as defined in  
862 the Uniform Trade Secrets Act (§ 59.1-336 et seq.); (ii) financial information of the private entity,  
863 including balance sheets and financial statements, that are not generally available to the public through  
864 regulatory disclosure or otherwise; or (iii) other information submitted by the private entity where if  
865 such information was made public prior to the execution of an interim agreement or a comprehensive  
866 agreement, the financial interest or bargaining position of the public or private entity would be adversely  
867 affected. In order for the information specified in clauses (i), (ii), and (iii) to be excluded from the  
868 provisions of this chapter, the private entity shall make a written request to the responsible public entity:

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

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

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

873 The responsible public entity shall determine whether the requested exclusion from disclosure is  
874 necessary to protect the trade secrets or financial information of the private entity. To protect other  
875 information submitted by the private entity from disclosure, the responsible public entity shall determine  
876 whether public disclosure prior to the execution of an interim agreement or a comprehensive agreement

877 would adversely affect the financial interest or bargaining position of the public or private entity. The  
878 responsible public entity shall make a written determination of the nature and scope of the protection to  
879 be afforded by the responsible public entity under this subdivision. Once a written determination is made  
880 by the responsible public entity, the information afforded protection under this subdivision shall  
881 continue to be protected from disclosure when in the possession of any affected jurisdiction or affected  
882 local jurisdiction.

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

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

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

900 13. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), or  
901 confidential proprietary information that is not generally available to the public through regulatory  
902 disclosure or otherwise, provided by a (i) bidder or applicant for a franchise or (ii) franchisee under  
903 Chapter 21 (§ 15.2-2100 et seq.) of Title 15.2 to the applicable franchising authority pursuant to a

904 promise of confidentiality from the franchising authority, to the extent the information relates to the  
905 bidder's, applicant's, or franchisee's financial capacity or provision of new services, adoption of new  
906 technologies or implementation of improvements, where such new services, technologies, or  
907 improvements have not been implemented by the franchisee on a nonexperimental scale in the franchise  
908 area, and where, if such information were made public, the competitive advantage or financial interests  
909 of the franchisee would be adversely affected.

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

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

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

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

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

926 17. Information relating to a grant or loan application, or accompanying a grant or loan  
927 application, to the Innovation and Entrepreneurship Investment Authority pursuant to Article 3 (§ 2.2-  
928 2233.1 et seq.) of Chapter 22 of Title 2.2 or to the Commonwealth Health Research Board pursuant to  
929 Chapter 5.3 (§ 32.1-162.23 et seq.) of Title 32.1 if disclosure of such information would (i) reveal  
930 proprietary business or research-related information produced or collected by the applicant in the

931 conduct of or as a result of study or research on medical, rehabilitative, scientific, technical,  
932 technological, or scholarly issues, when such information has not been publicly released, published,  
933 copyrighted, or patented, and (ii) be harmful to the competitive position of the applicant.

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

938 In order for confidential proprietary information or trade secrets to be excluded from the  
939 provisions of this chapter, the locality in writing shall (a) invoke the protections of this subdivision, (b)  
940 identify with specificity the information for which protection is sought, and (c) state the reasons why  
941 protection is necessary. However, the exemption provided by this subdivision shall not apply to any  
942 authority created pursuant to the BVU Authority Act (§ 15.2-7200 et seq.).

943 19. Confidential proprietary information and trade secrets developed by or for a local authority  
944 created in accordance with the Virginia Wireless Service Authorities Act (§ 15.2-5431.1 et seq.) to  
945 provide qualifying communications services as authorized by Article 5.1 (§ 56-484.7:1 et seq.) of  
946 Chapter 15 of Title 56, where disclosure of such information would be harmful to the competitive  
947 position of the authority, except that information required to be maintained in accordance with § 15.2-  
948 2160 shall be released.

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

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

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

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

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

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

972 c. Stating the reasons why protection is necessary.

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

977 23. Information relating to a grant application, or accompanying a grant application, submitted to  
978 the Tobacco Region Revitalization Commission that would (i) reveal (a) trade secrets as defined in the  
979 Uniform Trade Secrets Act (§ 59.1-336 et seq.), (b) financial information of a grant applicant that is not  
980 a public body, including balance sheets and financial statements, that are not generally available to the  
981 public through regulatory disclosure or otherwise, or (c) research-related information produced or  
982 collected by the applicant in the conduct of or as a result of study or research on medical, rehabilitative,  
983 scientific, technical, technological, or scholarly issues, when such information has not been publicly  
984 released, published, copyrighted, or patented, and (ii) be harmful to the competitive position of the

985 applicant; and memoranda, staff evaluations, or other information prepared by the Commission or its  
986 staff exclusively for the evaluation of grant applications. The exclusion provided by this subdivision  
987 shall apply to grants that are consistent with the powers of and in furtherance of the performance of the  
988 duties of the Commission pursuant to § 3.2-3103.

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

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

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

995 c. Stating the reasons why protection is necessary.

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

1000 24. a. Information held by the Commercial Space Flight Authority relating to rate structures or  
1001 charges for the use of projects of, the sale of products of, or services rendered by the Authority if  
1002 disclosure of such information would adversely affect the financial interest or bargaining position of the  
1003 Authority or a private entity providing the information to the Authority; or

1004 b. Information provided by a private entity to the Commercial Space Flight Authority if  
1005 disclosure of such information would (i) reveal (a) trade secrets of the private entity as defined in the  
1006 Uniform Trade Secrets Act (§ 59.1-336 et seq.); (b) financial information of the private entity, including  
1007 balance sheets and financial statements, that are not generally available to the public through regulatory  
1008 disclosure or otherwise; or (c) other information submitted by the private entity and (ii) adversely affect  
1009 the financial interest or bargaining position of the Authority or private entity.

1010 In order for the information specified in clauses (a), (b), and (c) of subdivision 24 b to be  
1011 excluded from the provisions of this chapter, the private entity shall make a written request to the  
1012 Authority:

1013 (1) Invoking such exclusion upon submission of the data or other materials for which protection  
1014 from disclosure is sought;

1015 (2) Identifying with specificity the data or other materials for which protection is sought; and

1016 (3) Stating the reasons why protection is necessary.

1017 The Authority shall determine whether the requested exclusion from disclosure is necessary to  
1018 protect the trade secrets or financial information of the private entity. To protect other information  
1019 submitted by the private entity from disclosure, the Authority shall determine whether public disclosure  
1020 would adversely affect the financial interest or bargaining position of the Authority or private entity. The  
1021 Authority shall make a written determination of the nature and scope of the protection to be afforded by  
1022 it under this subdivision.

1023 25. Information of a proprietary nature furnished by an agricultural landowner or operator to the  
1024 Department of Conservation and Recreation, the Department of Environmental Quality, the Department  
1025 of Agriculture and Consumer Services, or any political subdivision, agency, or board of the  
1026 Commonwealth pursuant to §§ 10.1-104.7, 10.1-104.8, and 10.1-104.9, other than when required as part  
1027 of a state or federal regulatory enforcement action.

1028 26. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), provided to  
1029 the Department of Environmental Quality pursuant to the provisions of § 10.1-1458. In order for such  
1030 trade secrets to be excluded from the provisions of this chapter, the submitting party shall (i) invoke this  
1031 exclusion upon submission of the data or materials for which protection from disclosure is sought, (ii)  
1032 identify the data or materials for which protection is sought, and (iii) state the reasons why protection is  
1033 necessary.

1034 27. Information of a proprietary nature furnished by a licensed public-use airport to the  
1035 Department of Aviation for funding from programs administered by the Department of Aviation or the

1036 Virginia Aviation Board, where if such information was made public, the financial interest of the public-  
1037 use airport would be adversely affected.

1038 In order for the information specified in this subdivision to be excluded from the provisions of  
1039 this chapter, the public-use airport shall make a written request to the Department of Aviation:

1040 a. Invoking such exclusion upon submission of the data or other materials for which protection  
1041 from disclosure is sought;

1042 b. Identifying with specificity the data or other materials for which protection is sought; and

1043 c. Stating the reasons why protection is necessary.

1044 28. Records submitted as a grant or loan application, or accompanying a grant or loan  
1045 application, for an award from the Virginia Research Investment Fund pursuant to Article 8 (§ 23.1-  
1046 3130 et seq.) of Chapter 31 of Title 23.1, to the extent that such records contain proprietary business or  
1047 research-related information produced or collected by the applicant in the conduct of or as a result of  
1048 study or research on medical, rehabilitative, scientific, technical, technological, or scholarly issues, when  
1049 such information has not been publicly released, published, copyrighted, or patented, if the disclosure of  
1050 such information would be harmful to the competitive position of the applicant.

1051 29. Information contained in engineering and construction drawings and plans submitted for the  
1052 sole purpose of complying with the Building Code in obtaining a building permit if disclosure of such  
1053 information would identify specific trade secrets or other information that would be harmful to the  
1054 competitive position of the owner or lessee. However, such information shall be exempt only until the  
1055 building is completed. Information relating to the safety or environmental soundness of any building  
1056 shall not be exempt from disclosure.

1057 **§ 2.2-3705.7. Exclusions to application of chapter; records of specific public bodies and**  
1058 **certain other limited exclusions.** [LD 17100766--re: global language change ("Nothing to prevent  
1059 disclosure..."; recommended by Records Subcommittee on 9/29/16; Approved by FOIA Council  
1060 11/21/16.]

1061 The following information contained in a public record is excluded from the mandatory  
1062 disclosure provisions of this chapter but may be disclosed by the custodian in his discretion, except



1063 where such disclosure is prohibited by law. Redaction of information excluded under this section from a  
1064 public record shall be conducted in accordance with § 2.2-3704.01.

1065 1. State income, business, and estate tax returns, personal property tax returns, and confidential  
1066 records held pursuant to § 58.1-3.

1067 2. Working papers ~~and correspondence~~ of the Office of the Governor; the Lieutenant Governor;  
1068 or the Attorney General; the members of the General Assembly, the Division of Legislative Services, or  
1069 the Clerks of the House of Delegates ~~and or~~ the Senate of Virginia; the mayor or chief executive officer  
1070 of any political subdivision of the Commonwealth; or the president or other chief executive officer of  
1071 any public institution of higher education in Virginia. However, no information that is otherwise open to  
1072 inspection under this chapter shall be deemed excluded by virtue of the fact that it has been attached to  
1073 or incorporated within any working paper ~~or correspondence~~. Further, information publicly available or  
1074 not otherwise subject to an exclusion under this chapter or other provision of law that has been  
1075 aggregated, combined, or changed in format without substantive analysis or revision shall not be deemed  
1076 working papers. Nothing in this subdivision shall be construed to authorize the withholding of any  
1077 resumes or applications submitted by persons who are appointed by the Governor pursuant to § 2.2-106  
1078 or 2.2-107.

1079 As used in this subdivision:

1080 "Members of the General Assembly" means each member of the Senate of Virginia and the  
1081 House of Delegates and their legislative aides when working on behalf of such member.

1082 "Office of the Governor" means the Governor; ~~his~~ the Governor's chief of staff, counsel, director  
1083 of policy, and Cabinet Secretaries, and the Assistant to the Governor for Intergovernmental Affairs; and  
1084 those individuals to whom the Governor has delegated his authority pursuant to § 2.2-104.

1085 "Working papers" means those records, including correspondence, prepared by or for ~~an above-~~  
1086 named a public official identified in this subdivision for his personal or deliberative use. [LD 17100603;  
1087 recommended by Records Subcommittee on 8/18/15 (without new language on lines 1073-1076);  
1088 Approved by FOIA Council 10/17/16 as shown in this draft (LeM).]

1089 3. Information contained in library records that can be used to identify both (i) any library patron  
1090 who has borrowed material from a library and (ii) the material such patron borrowed.

1091 4. Contract cost estimates prepared for the confidential use of the Department of Transportation  
1092 in awarding contracts for construction or the purchase of goods or services, and records and automated  
1093 systems prepared for the Department's Bid Analysis and Monitoring Program.

1094 5. Lists of registered owners of bonds issued by a political subdivision of the Commonwealth,  
1095 whether the lists are maintained by the political subdivision itself or by a single fiduciary designated by  
1096 the political subdivision.

1097 6. Information furnished by a member of the General Assembly to a meeting of a standing  
1098 committee, special committee, or subcommittee of his house established solely for the purpose of  
1099 reviewing members' annual disclosure statements and supporting materials filed under § 30-110 or of  
1100 formulating advisory opinions to members on standards of conduct, or both.

1101 7. Customer account information of a public utility affiliated with a political subdivision of the  
1102 Commonwealth, including the customer's name and service address, but excluding the amount of utility  
1103 service provided and the amount of money charged or paid for such utility service. [\[LD 15101103;](#)  
1104 [recommended by Records Subcommittee on 8/25/14; Approved by FOIA Council 6/23/16.\]](#)

1105 8. Personal information, as defined in § 2.2-3801, (i) filed with the Virginia Housing  
1106 Development Authority concerning individuals who have applied for or received loans or other housing  
1107 assistance or who have applied for occupancy of or have occupied housing financed, owned or otherwise  
1108 assisted by the Virginia Housing Development Authority; (ii) concerning persons participating in or  
1109 persons on the waiting list for federally funded rent-assistance programs; (iii) filed with any local  
1110 redevelopment and housing authority created pursuant to § 36-4 concerning persons participating in or  
1111 persons on the waiting list for housing assistance programs funded by local governments or by any such  
1112 authority; or (iv) filed with any local redevelopment and housing authority created pursuant to § 36-4 or  
1113 any other local government agency concerning persons who have applied for occupancy or who have  
1114 occupied affordable dwelling units established pursuant to § 15.2-2304 or 15.2-2305. However, access  
1115 to one's own information shall not be denied.

1116 9. Information regarding the siting of hazardous waste facilities, except as provided in § 10.1-  
1117 1441, if disclosure of such information would have a detrimental effect upon the negotiating position of  
1118 a governing body or on the establishment of the terms, conditions, and provisions of the siting  
1119 agreement.

1120 10. Information on the site-specific location of rare, threatened, endangered, or otherwise  
1121 imperiled plant and animal species, natural communities, caves, and significant historic and  
1122 archaeological sites if, in the opinion of the public body that has the responsibility for such information,  
1123 disclosure of the information would jeopardize the continued existence or the integrity of the resource.  
1124 This exclusion shall not apply to requests from the owner of the land upon which the resource is located.

1125 11. Memoranda, graphics, video or audio tapes, production models, data, and information of a  
1126 proprietary nature produced by or for or collected by or for the Virginia Lottery relating to matters of a  
1127 specific lottery game design, development, production, operation, ticket price, prize structure, manner of  
1128 selecting the winning ticket, manner of payment of prizes to holders of winning tickets, frequency of  
1129 drawings or selections of winning tickets, odds of winning, advertising, or marketing, where such  
1130 information not been publicly released, published, copyrighted, or patented. Whether released,  
1131 published, or copyrighted, all game-related information shall be subject to public disclosure under this  
1132 chapter upon the first day of sales for the specific lottery game to which it pertains.

1133 12. Information held by the Virginia Retirement System, acting pursuant to § 51.1-124.30, or a  
1134 local retirement system, acting pursuant to § 51.1-803, or by a local finance board or board of trustees of  
1135 a trust established by one or more local public bodies to invest funds for post-retirement benefits other  
1136 than pensions, acting pursuant to Article 8 (§ 15.2-1544 et seq.) of Chapter 15 of Title 15.2, or by the  
1137 Rector and Visitors of the University of Virginia, acting pursuant to § 23.1-2210, or by the Virginia  
1138 College Savings Plan, acting pursuant to § 23.1-704, relating to the acquisition, holding, or disposition  
1139 of a security or other ownership interest in an entity, where such security or ownership interest is not  
1140 traded on a governmentally regulated securities exchange, if disclosure of such information would (i)  
1141 reveal confidential analyses prepared for the Rector and Visitors of the University of Virginia, prepared  
1142 by the retirement system, a local finance board or board of trustees, or the Virginia College Savings

1143 Plan, or provided to the retirement system, [a local finance board or board of trustees](#), or the Virginia  
1144 College Savings Plan under a promise of confidentiality of the future value of such ownership interest or  
1145 the future financial performance of the entity and (ii) have an adverse effect on the value of the  
1146 investment to be acquired, held, or disposed of by the retirement system, [a local finance board or board  
1147 of trustees](#), the Rector and Visitors of the University of Virginia, or the Virginia College Savings Plan.  
1148 Nothing in this subdivision shall be construed to ~~authorize the withholding prevent the disclosure~~ of  
1149 information relating to the identity of any investment held, the amount invested, or the present value of  
1150 such investment. [\[LD 16101008; recommended by Records Subcommittee on 7/21/15; Approved by  
1151 FOIA Council 6/23/16.\]](#)

1152 13. ~~Names and addresses of subscribers to Virginia Wildlife magazine, published by the  
1153 Department of Game and Inland Fisheries, provided the individual subscriber has requested in writing  
1154 that the Department not release such information.~~ [\[LD 15101104; recommended by Records  
1155 Subcommittee on 11/5/14; Approved by FOIA Council 6/23/16.\]](#)

1156 14. Financial, medical, rehabilitative, and other personal information concerning applicants for  
1157 or recipients of loan funds submitted to or maintained by the Assistive Technology Loan Fund Authority  
1158 under Chapter 11 (§ 51.5-53 et seq.) of Title 51.5.

1159 ~~15.~~ 14. Information held by the Virginia Commonwealth University Health System Authority  
1160 pertaining to any of the following: an individual's qualifications for or continued membership on its  
1161 medical or teaching staffs; proprietary information gathered by or in the possession of the Authority  
1162 from third parties pursuant to a promise of confidentiality; contract cost estimates prepared for  
1163 confidential use in awarding contracts for construction or the purchase of goods or services; information  
1164 of a proprietary nature produced or collected by or for the Authority or members of its medical or  
1165 teaching staffs; financial statements not publicly available that may be filed with the Authority from  
1166 third parties; the identity, accounts, or account status of any customer of the Authority; consulting or  
1167 other reports paid for by the Authority to assist the Authority in connection with its strategic planning  
1168 and goals; the determination of marketing and operational strategies where disclosure of such strategies  
1169 would be harmful to the competitive position of the Authority; and information of a proprietary nature

1170 produced or collected by or for employees of the Authority, other than the Authority's financial or  
1171 administrative records, in the conduct of or as a result of study or research on medical, scientific,  
1172 technical, or scholarly issues, whether sponsored by the Authority alone or in conjunction with a  
1173 governmental body or a private concern, when such information has not been publicly released,  
1174 published, copyrighted, or patented. This exclusion shall also apply when such information is in the  
1175 possession of Virginia Commonwealth University.

1176 ~~16-15.~~ Information held by the Department of Environmental Quality, the State Water Control  
1177 Board, the State Air Pollution Control Board, or the Virginia Waste Management Board relating to (i)  
1178 active federal environmental enforcement actions that are considered confidential under federal law and  
1179 (ii) enforcement strategies, including proposed sanctions for enforcement actions. Upon request, such  
1180 information shall be disclosed after a proposed sanction resulting from the investigation has been  
1181 proposed to the director of the agency. This subdivision shall not be construed to ~~authorize the~~  
1182 ~~withholding prevent the disclosure~~ of information related to inspection reports, notices of violation, and  
1183 documents detailing the nature of any environmental contamination that may have occurred or similar  
1184 documents.

1185 ~~17-16.~~ Information related to the operation of toll facilities that identifies an individual, vehicle,  
1186 or travel itinerary, including vehicle identification data or vehicle enforcement system information;  
1187 video or photographic images; Social Security or other identification numbers appearing on driver's  
1188 licenses; credit card or bank account data; home addresses; phone numbers; or records of the date or  
1189 time of toll facility use.

1190 ~~18-17.~~ Information held by the Virginia Lottery pertaining to (i) the social security number, tax  
1191 identification number, state sales tax number, home address and telephone number, personal and lottery  
1192 banking account and transit numbers of a retailer, and financial information regarding the nonlottery  
1193 operations of specific retail locations and (ii) individual lottery winners, except that a winner's name,  
1194 hometown, and amount won shall be disclosed.

1195 | [19-18](#). Information held by the Board for Branch Pilots relating to the chemical or drug testing  
1196 | of a person regulated by the Board, where such person has tested negative or has not been the subject of  
1197 | a disciplinary action by the Board for a positive test result.

1198 | [20-19](#). Information pertaining to the planning, scheduling, and performance of examinations of  
1199 | holder records pursuant to the Uniform Disposition of Unclaimed Property Act (§ 55-210.1 et seq.)  
1200 | prepared by or for the State Treasurer or his agents or employees or persons employed to perform an  
1201 | audit or examination of holder records.

1202 | [21-20](#). Information held by the Virginia Department of Emergency Management or a local  
1203 | governing body relating to citizen emergency response teams established pursuant to an ordinance of a  
1204 | local governing body that reveal the name, address, including e-mail address, telephone or pager  
1205 | numbers, or operating schedule of an individual participant in the program.

1206 | [22-21](#). Information held by state or local park and recreation departments and local and regional  
1207 | park authorities concerning identifiable individuals under the age of 18 years. However, nothing in this  
1208 | subdivision shall operate to ~~authorize the withholding~~ [prevent the disclosure](#) of information defined as  
1209 | directory information under regulations implementing the Family Educational Rights and Privacy Act,  
1210 | 20 U.S.C. § 1232g, unless the public body has undertaken the parental notification and opt-out  
1211 | requirements provided by such regulations. Access shall not be denied to the parent, including a  
1212 | noncustodial parent, or guardian of such person, unless the parent's parental rights have been terminated  
1213 | or a court of competent jurisdiction has restricted or denied such access. For such information of persons  
1214 | who are emancipated, the right of access may be asserted by the subject thereof. Any parent or  
1215 | emancipated person who is the subject of the information may waive, in writing, the protections  
1216 | afforded by this subdivision. If the protections are so waived, the public body shall open such  
1217 | information for inspection and copying.

1218 | [23-22](#). Information submitted for inclusion in the Statewide Alert Network administered by the  
1219 | Department of Emergency Management that reveal names, physical addresses, email addresses,  
1220 | computer or internet protocol information, telephone numbers, pager numbers, other wireless or portable  
1221 | communications device information, or operating schedules of individuals or agencies, where the release

1222 of such information would compromise the security of the Statewide Alert Network or individuals  
1223 participating in the Statewide Alert Network.

1224 ~~24-23.~~ Information held by the Judicial Inquiry and Review Commission made confidential by §  
1225 17.1-913.

1226 ~~25-24.~~ Information held by the Virginia Retirement System acting pursuant to § 51.1-124.30, a  
1227 local retirement system acting pursuant to § 51.1-803 (hereinafter collectively referred to as the  
1228 retirement system), or the Virginia College Savings Plan, acting pursuant to § 23.1-704 relating to:

1229 a. Internal deliberations of or decisions by the retirement system or the Virginia College Savings  
1230 Plan on the pursuit of particular investment strategies, or the selection or termination of investment  
1231 managers, prior to the execution of such investment strategies or the selection or termination of such  
1232 managers, if disclosure of such information would have an adverse impact on the financial interest of the  
1233 retirement system or the Virginia College Savings Plan; and

1234 b. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), provided by a  
1235 private entity to the retirement system or the Virginia College Savings Plan if disclosure of such records  
1236 would have an adverse impact on the financial interest of the retirement system or the Virginia College  
1237 Savings Plan.

1238 For the records specified in subdivision b to be excluded from the provisions of this chapter, the  
1239 entity shall make a written request to the retirement system or the Virginia College Savings Plan:

1240 (1) Invoking such exclusion prior to or upon submission of the data or other materials for which  
1241 protection from disclosure is sought;

1242 (2) Identifying with specificity the data or other materials for which protection is sought; and

1243 (3) Stating the reasons why protection is necessary.

1244 The retirement system or the Virginia College Savings Plan shall determine whether the  
1245 requested exclusion from disclosure meets the requirements set forth in subdivision b.

1246 Nothing in this subdivision shall be construed to ~~authorize the withholding~~ prevent the disclosure  
1247 of the identity or amount of any investment held or the present value and performance of all asset classes  
1248 and subclasses.

1249 ~~26-25.~~ Information held by the Department of Corrections made confidential by § 53.1-233.

1250 ~~27-26.~~ Information maintained by the Department of the Treasury or participants in the Local  
1251 Government Investment Pool (§ 2.2-4600 et seq.) and required to be provided by such participants to the  
1252 Department to establish accounts in accordance with § 2.2-4602.

1253 ~~28-27.~~ Personal information, as defined in § 2.2-3801, contained in the Veterans Care Center  
1254 Resident Trust Funds concerning residents or patients of the Department of Veterans Services Care  
1255 Centers, except that access shall not be denied to the person who is the subject of the information.

1256 ~~29-28.~~ Information maintained in connection with fundraising activities by the Veterans Services  
1257 Foundation pursuant to § 2.2-2716 that reveal the address, electronic mail address, facsimile or  
1258 telephone number, social security number or other identification number appearing on a driver's license,  
1259 or credit card or bank account data of identifiable donors, except that access shall not be denied to the  
1260 person who is the subject of the information. Nothing in this subdivision, however, shall be construed to  
1261 ~~authorize the withholding~~ prevent the disclosure of information relating to the amount, date, purpose, and  
1262 terms of the pledge or donation or the identity of the donor, unless the donor has requested anonymity in  
1263 connection with or as a condition of making a pledge or donation. The exclusion provided by this  
1264 subdivision shall not apply to protect from disclosure (i) the identities of sponsors providing grants to or  
1265 contracting with the foundation for the performance of services or other work or (ii) the terms and  
1266 conditions of such grants or contracts.

1267 ~~30. Names, physical addresses, telephone numbers, and email addresses contained in~~  
1268 ~~correspondence between an individual and a member of the governing body, school board, or other~~  
1269 ~~public body of the locality in which the individual is a resident, unless the correspondence relates to the~~  
1270 ~~transaction of public business. However, no information that is otherwise open to inspection under this~~  
1271 ~~chapter shall be deemed exempt by virtue of the fact that it has been attached to or incorporated within~~  
1272 ~~any such correspondence.~~ [LD 15101105; recommended by Records Subcommittee on 8/25/14;  
1273 Approved by FOIA Council 11/21/16.]

1274 ~~31-29.~~ Information prepared for and utilized by the Commonwealth's Attorneys' Services  
1275 Council in the training of state prosecutors or law-enforcement personnel, where such information is not



1276 otherwise available to the public and the disclosure of such information would reveal confidential  
1277 strategies, methods, or procedures to be employed in law-enforcement activities or materials created for  
1278 the investigation and prosecution of a criminal case.

1279 ~~32.~~ 30. Information provided to the Department of Aviation by other entities of the  
1280 Commonwealth in connection with the operation of aircraft where the information would not be subject  
1281 to disclosure by the entity providing the information. The entity providing the information to the  
1282 Department of Aviation shall identify the specific information to be protected and the applicable  
1283 provision of this chapter that excludes the information from mandatory disclosure.

1284 ~~33.~~ 31. Information created or maintained by or on the behalf of the judicial performance  
1285 evaluation program related to an evaluation of any individual justice or judge made confidential by §  
1286 17.1-100.

1287 ~~34. (Effective July 1, 2018) Information held by the Virginia Alcoholic Beverage Control~~  
1288 ~~Authority that contains (i) information of a proprietary nature gathered by or in the possession of the~~  
1289 ~~Authority from a private entity pursuant to a promise of confidentiality; (ii) trade secrets, as defined in~~  
1290 ~~the Uniform Trade Secrets Act (§ 59.1-336 et seq.), of any private entity; (iii) financial information of a~~  
1291 ~~private entity, including balance sheets and financial statements, that are not generally available to the~~  
1292 ~~public through regulatory disclosure or otherwise; (iv) contract cost estimates prepared for the (a)~~  
1293 ~~confidential use in awarding contracts for construction or (b) purchase of goods or services; or (v) the~~  
1294 ~~determination of marketing and operational strategies where disclosure of such strategies would be~~  
1295 ~~harmful to the competitive position of the Authority.~~

1296 ~~In order for the information identified in clauses (i), (ii), or (iii) to be excluded from the~~  
1297 ~~provisions of this chapter, the private entity shall make a written request to the Authority:~~

1298 ~~a. Invoking such exclusion upon submission of the data or other materials for which protection~~  
1299 ~~from disclosure is sought;~~

1300 ~~b. Identifying with specificity the data or other materials for which protection is sought; and~~

1301 ~~c. Stating the reasons why protection is necessary.~~

~~The Authority shall determine whether the requested exclusion from disclosure is necessary to protect such information of the private entity. The Authority shall make a written determination of the nature and scope of the protection to be afforded by it under this subdivision. [LD 17101306; recommended by Records Subcommittee on 11/18/15; Approved by FOIA Council 11/21/16.]~~

~~35-32.~~ Information reflecting the substance of meetings in which individual sexual assault cases are discussed by any sexual assault team established pursuant to § 15.2-1627.4. The findings of the team may be disclosed or published in statistical or other aggregated form that does not disclose the identity of specific individuals.

**§ 2.2-3705.8. Limitation on record exclusions.**

~~A. Neither any provision of this chapter nor any provision of Chapter 38 (§ 2.2-3800 et seq.) of this title shall be construed as denying public access to (i) contracts between a public body and its officers or employees, other than contracts settling public employee employment disputes held confidential as personnel records under § 2.2-3705.1; (ii) records of the position, job classification, official salary or rate of pay of, and records of the allowances or reimbursements for expenses paid to any officer, official or employee of a public body; or (iii) the compensation or benefits paid by any corporation organized by the Virginia Retirement System or its officers or employees.~~

~~The provisions of this subsection, however, shall not require public access to records of the official salaries or rates of pay of public employees whose annual rate of pay is \$10,000 or less. [LD 15100326; recommended by Records Subcommittee on 8/25/14; Approved by FOIA Council 11/21/16.]~~

~~B.~~ Nothing in this chapter shall be construed as denying public access to the nonexempt portions of a report of a consultant hired by or at the request of a local public body or the mayor or chief executive or administrative officer of such public body if (i) the contents of such report have been distributed or disclosed to members of the local public body or (ii) the local public body has scheduled any action on a matter that is the subject of the consultant's report.

**§ 2.2-3711. Closed meetings authorized for certain limited purposes.**

A. Public bodies may hold closed meetings only for the following purposes:

1329 1. Discussion, consideration, or interviews of prospective candidates for employment;  
1330 assignment, appointment, promotion, performance, demotion, salaries, disciplining, or resignation of  
1331 specific public officers, appointees, or employees of any public body; and evaluation of performance of  
1332 departments or schools of public institutions of higher education where such evaluation will necessarily  
1333 involve discussion of the performance of specific individuals. Any teacher shall be permitted to be  
1334 present during a closed meeting in which there is a discussion or consideration of a disciplinary matter  
1335 that involves the teacher and some student and the student involved in the matter is present, provided the  
1336 teacher makes a written request to be present to the presiding officer of the appropriate board. Nothing  
1337 in this subdivision, however, shall be construed to authorize a closed meeting by a local governing body  
1338 or an elected school board to discuss compensation matters that affect the membership of such body or  
1339 board collectively.

1340 2. Discussion or consideration of admission or disciplinary matters or any other matters that  
1341 would involve the disclosure of information contained in a scholastic record concerning any student of  
1342 any Virginia public institution of higher education or any state school system. However, any such  
1343 student, legal counsel and, if the student is a minor, the student's parents or legal guardians shall be  
1344 permitted to be present during the taking of testimony or presentation of evidence at a closed meeting, if  
1345 such student, parents, or guardians so request in writing and such request is submitted to the presiding  
1346 officer of the appropriate board.

1347 3. Discussion or consideration of the acquisition of real property for a public purpose, or of the  
1348 disposition of publicly held real property, where discussion in an open meeting would adversely affect  
1349 the bargaining position or negotiating strategy of the public body.

1350 4. The protection of the privacy of individuals in personal matters not related to public business.

1351 5. Discussion concerning a prospective business or industry or the expansion of an existing  
1352 business or industry where no previous announcement has been made of the business' or industry's  
1353 interest in locating or expanding its facilities in the community.

1354 6. Discussion or consideration of the investment of public funds where competition or bargaining  
1355 is involved, where, if made public initially, the financial interest of the governmental unit would be  
1356 adversely affected.

1357 7. Consultation with legal counsel and briefings by staff members or consultants pertaining to  
1358 actual or probable litigation, where such consultation or briefing in open meeting would adversely affect  
1359 the negotiating or litigating posture of the public body; and consultation with legal counsel employed or  
1360 retained by a public body regarding specific legal matters requiring the provision of legal advice by such  
1361 counsel. For the purposes of this subdivision, "probable litigation" means litigation that has been  
1362 specifically threatened or on which the public body or its legal counsel has a reasonable basis to believe  
1363 will be commenced by or against a known party. Nothing in this subdivision shall be construed to permit  
1364 the closure of a meeting merely because an attorney representing the public body is in attendance or is  
1365 consulted on a matter.

1366 8. In the case of boards of visitors of public institutions of higher education, discussion or  
1367 consideration of matters relating to gifts, bequests and fund-raising activities, and grants and contracts  
1368 for services or work to be performed by such institution. However, the terms and conditions of any such  
1369 gifts, bequests, grants, and contracts made by a foreign government, a foreign legal entity, or a foreign  
1370 person and accepted by a public institution of higher education in Virginia shall be subject to public  
1371 disclosure upon written request to the appropriate board of visitors. For the purpose of this subdivision,  
1372 (i) "foreign government" means any government other than the United States government or the  
1373 government of a state or a political subdivision thereof; (ii) "foreign legal entity" means any legal entity  
1374 created under the laws of the United States or of any state thereof if a majority of the ownership of the  
1375 stock of such legal entity is owned by foreign governments or foreign persons or if a majority of the  
1376 membership of any such entity is composed of foreign persons or foreign legal entities, or any legal  
1377 entity created under the laws of a foreign government; and (iii) "foreign person" means any individual  
1378 who is not a citizen or national of the United States or a trust territory or protectorate thereof.

1379 9. In the case of the boards of trustees of the Virginia Museum of Fine Arts, the Virginia  
1380 Museum of Natural History, the Jamestown-Yorktown Foundation, and The Science Museum of  
1381 Virginia, discussion or consideration of matters relating to specific gifts, bequests, and grants.

1382 10. Discussion or consideration of honorary degrees or special awards.

1383 11. Discussion or consideration of tests, examinations, or other information excluded from this  
1384 chapter pursuant to subdivision 4 of § 2.2-3705.1.

1385 12. Discussion, consideration, or review by the appropriate House or Senate committees of  
1386 possible disciplinary action against a member arising out of the possible inadequacy of the disclosure  
1387 statement filed by the member, provided the member may request in writing that the committee meeting  
1388 not be conducted in a closed meeting.

1389 13. Discussion of strategy with respect to the negotiation of a hazardous waste siting agreement  
1390 or to consider the terms, conditions, and provisions of a hazardous waste siting agreement if the  
1391 governing body in open meeting finds that an open meeting will have an adverse effect upon the  
1392 negotiating position of the governing body or the establishment of the terms, conditions and provisions  
1393 of the siting agreement, or both. All discussions with the applicant or its representatives may be  
1394 conducted in a closed meeting.

1395 14. Discussion by the Governor and any economic advisory board reviewing forecasts of  
1396 economic activity and estimating general and nongeneral fund revenues.

1397 15. Discussion or consideration of medical and mental health records excluded from this chapter  
1398 pursuant to subdivision 1 of § 2.2-3705.5.

1399 16. Deliberations of the Virginia Lottery Board in a licensing appeal action conducted pursuant  
1400 to subsection D of § 58.1-4007 regarding the denial or revocation of a license of a lottery sales agent;  
1401 and discussion, consideration or review of Virginia Lottery matters related to proprietary lottery game  
1402 information and studies or investigations exempted from disclosure under subdivision 6 of § 2.2-3705.3  
1403 and subdivision 11 of § 2.2-3705.7.

1404 17. Those portions of meetings by local government crime commissions where the identity of, or  
1405 information tending to identify, individuals providing information about crimes or criminal activities  
1406 under a promise of anonymity is discussed or disclosed.

1407 18. Those portions of meetings in which the Board of Corrections discusses or discloses the  
1408 identity of, or information tending to identify, any prisoner who (i) provides information about crimes or  
1409 criminal activities, (ii) renders assistance in preventing the escape of another prisoner or in the  
1410 apprehension of an escaped prisoner, or (iii) voluntarily or at the instance of a prison official renders  
1411 other extraordinary services, the disclosure of which is likely to jeopardize the prisoner's life or safety.

1412 19. Discussion of plans to protect public safety as it relates to terrorist activity or specific  
1413 cybersecurity threats or vulnerabilities and briefings by staff members, legal counsel, or law-  
1414 enforcement or emergency service officials concerning actions taken to respond to such matters or a  
1415 related threat to public safety; discussion of information excluded from this chapter pursuant to  
1416 subdivision ~~3 or 4~~ 2 or 14 of § 2.2-3705.2, where discussion in an open meeting would jeopardize the  
1417 safety of any person or the security of any facility, building, structure, information technology system,  
1418 or software program; or discussion of reports or plans related to the security of any governmental  
1419 facility, building or structure, or the safety of persons using such facility, building or structure.

1420 ~~20. (Effective until October 1, 2016) Discussion by the Board of the Virginia Retirement System,~~  
1421 ~~acting pursuant to § 51.1-124.30, or of any local retirement system, acting pursuant to § 51.1-803, or~~  
1422 ~~of the Rector and Visitors of the University of Virginia, acting pursuant to § 23-76.1, or by the Board of~~  
1423 ~~the Virginia College Savings Plan, acting pursuant to § 23-38.80, regarding the acquisition, holding or~~  
1424 ~~disposition of a security or other ownership interest in an entity, where such security or ownership~~  
1425 ~~interest is not traded on a governmentally regulated securities exchange, to the extent that such~~  
1426 ~~discussion (i) concerns confidential analyses prepared for the Rector and Visitors of the University of~~  
1427 ~~Virginia, prepared by the retirement system or by the Virginia College Savings Plan or provided to the~~  
1428 ~~retirement system or the Virginia College Savings Plan under a promise of confidentiality, of the future~~  
1429 ~~value of such ownership interest or the future financial performance of the entity, and (ii) would have an~~  
1430 ~~adverse effect on the value of the investment to be acquired, held or disposed of by the retirement~~

1431 ~~system, the Rector and Visitors of the University of Virginia, or the Virginia College Savings Plan.~~  
1432 ~~Nothing in this subdivision shall be construed to prevent the disclosure of information relating to the~~  
1433 ~~identity of any investment held, the amount invested or the present value of such investment.~~

1434 20. (Effective October 1, 2016) Discussion by the Board of the Virginia Retirement System,  
1435 acting pursuant to § 51.1-124.30, or of any local retirement system, acting pursuant to § 51.1-803, or by  
1436 a local finance board or board of trustees of a trust established by one or more local public bodies to  
1437 invest funds for postemployment benefits other than pensions, acting pursuant to Article 8 (§ 15.2-1544  
1438 et seq.) of Chapter 15 of Title 15.2, or ~~of~~ by the Rector and Visitors of the University of Virginia, acting  
1439 pursuant to § 23.1-2210, or by the Board of the Virginia College Savings Plan, acting pursuant to § 23.1-  
1440 706, regarding the acquisition, holding or disposition of a security or other ownership interest in an  
1441 entity, where such security or ownership interest is not traded on a governmentally regulated securities  
1442 exchange, to the extent that such discussion (i) concerns confidential analyses prepared for the Rector  
1443 and Visitors of the University of Virginia, prepared by the retirement system, or a local finance board or  
1444 board of trustees, or ~~by~~ the Virginia College Savings Plan or provided to the retirement system, a local  
1445 finance board or board of trustees, or the Virginia College Savings Plan under a promise of  
1446 confidentiality, of the future value of such ownership interest or the future financial performance of the  
1447 entity, and (ii) would have an adverse effect on the value of the investment to be acquired, held or  
1448 disposed of by the retirement system, a local finance board or board of trustees, the Rector and Visitors  
1449 of the University of Virginia, or the Virginia College Savings Plan. Nothing in this subdivision shall be  
1450 construed to prevent the disclosure of information relating to the identity of any investment held, the  
1451 amount invested or the present value of such investment. [LD 16101008; recommended by Records  
1452 Subcommittee on 7/21/15; Approved by FOIA Council 6/23/16.]

1453 21. Those portions of meetings in which individual child death cases are discussed by the State  
1454 Child Fatality Review team established pursuant to § 32.1-283.1, those portions of meetings in which  
1455 individual child death cases are discussed by a regional or local child fatality review team established  
1456 pursuant to § 32.1-283.2, those portions of meetings in which individual death cases are discussed by  
1457 family violence fatality review teams established pursuant to § 32.1-283.3, those portions of meetings in

1458 which individual adult death cases are discussed by the state Adult Fatality Review Team established  
1459 pursuant to § 32.1-283.5, and those portions of meetings in which individual adult death cases are  
1460 discussed by a local or regional adult fatality review team established pursuant to § 32.1-283.6.

1461 22. Those portions of meetings of the University of Virginia Board of Visitors or the Eastern  
1462 Virginia Medical School Board of Visitors, as the case may be, and those portions of meetings of any  
1463 persons to whom management responsibilities for the University of Virginia Medical Center or Eastern  
1464 Virginia Medical School, as the case may be, have been delegated, in which there is discussed  
1465 proprietary, business-related information pertaining to the operations of the University of Virginia  
1466 Medical Center or Eastern Virginia Medical School, as the case may be, including business development  
1467 or marketing strategies and activities with existing or future joint venturers, partners, or other parties  
1468 with whom the University of Virginia Medical Center or Eastern Virginia Medical School, as the case  
1469 may be, has formed, or forms, any arrangement for the delivery of health care, if disclosure of such  
1470 information would adversely affect the competitive position of the Medical Center or Eastern Virginia  
1471 Medical School, as the case may be.

1472 23. In the case of the Virginia Commonwealth University Health System Authority, discussion  
1473 or consideration of any of the following: the acquisition or disposition of real or personal property where  
1474 disclosure would adversely affect the bargaining position or negotiating strategy of the Authority;  
1475 operational plans that could affect the value of such property, real or personal, owned or desirable for  
1476 ownership by the Authority; matters relating to gifts, bequests and fund-raising activities; grants and  
1477 contracts for services or work to be performed by the Authority; marketing or operational strategies  
1478 where disclosure of such strategies would adversely affect the competitive position of the Authority;  
1479 members of its medical and teaching staffs and qualifications for appointments thereto; and  
1480 qualifications or evaluations of other employees. This exclusion shall also apply when the foregoing  
1481 discussions occur at a meeting of the Virginia Commonwealth University Board of Visitors.

1482 24. Those portions of the meetings of the Health Practitioners' Monitoring Program Committee  
1483 within the Department of Health Professions to the extent such discussions identify any practitioner who  
1484 may be, or who actually is, impaired pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of Title 54.1.



1485 25. Meetings or portions of meetings of the Board of the Virginia College Savings Plan wherein  
1486 personal information, as defined in § 2.2-3801, which has been provided to the Board or its employees  
1487 by or on behalf of individuals who have requested information about, applied for, or entered into prepaid  
1488 tuition contracts or savings trust account agreements pursuant to Chapter 7 (§ 23.1-700 et seq.) of Title  
1489 23.1 is discussed.

1490 26. Discussion or consideration, by the Wireless Carrier E-911 Cost Recovery Subcommittee  
1491 created pursuant to § 56-484.15, of trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-  
1492 336 et seq.), submitted by CMRS providers as defined in § 56-484.12, related to the provision of  
1493 wireless E-911 service.

1494 27. Those portions of disciplinary proceedings by any regulatory board within the Department of  
1495 Professional and Occupational Regulation, Department of Health Professions, or the Board of  
1496 Accountancy conducted pursuant to § 2.2-4019 or 2.2-4020 during which the board deliberates to reach  
1497 a decision or meetings of health regulatory boards or conference committees of such boards to consider  
1498 settlement proposals in pending disciplinary actions or modifications to previously issued board orders  
1499 as requested by either of the parties.

1500 28. Discussion or consideration of information excluded from this chapter pursuant to  
1501 subdivision 11 of § 2.2-3705.6 by a responsible public entity or an affected locality or public entity, as  
1502 those terms are defined in § 33.2-1800, or any independent review panel appointed to review  
1503 information and advise the responsible public entity concerning such records.

1504 29. Discussion of the award of a public contract involving the expenditure of public funds,  
1505 including interviews of bidders or offerors, and discussion of the terms or scope of such contract, where  
1506 discussion in an open session would adversely affect the bargaining position or negotiating strategy of  
1507 the public body.

1508 30. Discussion or consideration of grant or loan application information excluded from this  
1509 chapter pursuant to subdivision 17 of § 2.2-3705.6 by (i) the Commonwealth Health Research Board or  
1510 (ii) the Innovation and Entrepreneurship Investment Authority or the Research and Technology

1511 Investment Advisory Committee appointed to advise the Innovation and Entrepreneurship Investment  
1512 Authority.

1513 31. Discussion or consideration by the Commitment Review Committee of information excluded  
1514 from this chapter pursuant to subdivision ~~8~~ 5 of § 2.2-3705.2 relating to individuals subject to  
1515 commitment as sexually violent predators under Chapter 9 (§ 37.2-900 et seq.) of Title 37.2.

1516 32. [Expired.]

1517 33. Discussion or consideration of confidential proprietary information and trade secrets  
1518 excluded from this chapter pursuant to subdivision 18 of § 2.2-3705.6. However, the exemption  
1519 provided by this subdivision shall not apply to any authority created pursuant to the BVU Authority Act  
1520 (§ 15.2-7200 et seq.).

1521 34. Discussion or consideration by a local authority created in accordance with the Virginia  
1522 Wireless Service Authorities Act (§ 15.2-5431.1 et seq.) of confidential proprietary information and  
1523 trade secrets excluded from this chapter pursuant to subdivision 19 of § 2.2-3705.6.

1524 35. Discussion or consideration by the State Board of Elections or local electoral boards of  
1525 voting security matters made confidential pursuant to § 24.2-625.1.

1526 36. Discussion or consideration by the Forensic Science Board or the Scientific Advisory  
1527 Committee created pursuant to Article 2 (§ 9.1-1109 et seq.) of Chapter 11 of Title 9.1 of records  
1528 excluded from this chapter pursuant to subdivision A 2 a of § 2.2-3706.

1529 37. Discussion or consideration by the Brown v. Board of Education Scholarship Program  
1530 Awards Committee of information or confidential matters excluded from this chapter pursuant to  
1531 subdivision 3 of § 2.2-3705.4, and meetings of the Committee to deliberate concerning the annual  
1532 maximum scholarship award, review and consider scholarship applications and requests for scholarship  
1533 award renewal, and cancel, rescind, or recover scholarship awards.

1534 38. Discussion or consideration by the Virginia Port Authority of information excluded from this  
1535 chapter pursuant to subdivision 1 of § 2.2-3705.6.

1536 39. Discussion or consideration by the Board of Trustees of the Virginia Retirement System  
1537 acting pursuant to § 51.1-124.30, by the Investment Advisory Committee appointed pursuant to § 51.1-

1538 124.26, by any local retirement system, acting pursuant to § 51.1-803, by the Board of the Virginia  
1539 College Savings Plan acting pursuant to § 23.1-706, or by the Virginia College Savings Plan's  
1540 Investment Advisory Committee appointed pursuant to § 23.1-702 of information excluded from this  
1541 chapter pursuant to subdivision ~~25~~ 24 of § 2.2-3705.7.

1542 40. Discussion or consideration of information excluded from this chapter pursuant to  
1543 subdivision 3 of § 2.2-3705.6.

1544 41. Discussion or consideration by the Board of Education of information relating to the denial,  
1545 suspension, or revocation of teacher licenses excluded from this chapter pursuant to subdivision ~~12~~ 11 of  
1546 § 2.2-3705.3.

1547 42. Those portions of meetings of the Virginia Military Advisory Council or any commission  
1548 created by executive order for the purpose of studying and making recommendations regarding  
1549 preventing closure or realignment of federal military and national security installations and facilities  
1550 located in Virginia and relocation of such facilities to Virginia, or a local or regional military affairs  
1551 organization appointed by a local governing body, during which there is discussion of information  
1552 excluded from this chapter pursuant to subdivision ~~11~~ 8 of § 2.2-3705.2.

1553 43. Discussion or consideration by the Board of Trustees of the Veterans Services Foundation of  
1554 information excluded from this chapter pursuant to subdivision ~~29~~ 28 of § 2.2-3705.7.

1555 44. Discussion or consideration by the Virginia Tobacco Region Revitalization Commission of  
1556 information excluded from this chapter pursuant to subdivision 23 of § 2.2-3705.6.

1557 45. Discussion or consideration by the board of directors of the Commercial Space Flight  
1558 Authority of information excluded from this chapter pursuant to subdivision 24 of § 2.2-3705.6.

1559 46. Discussion or consideration of personal and proprietary information that are excluded from  
1560 the provisions of this chapter pursuant to (i) subdivision 25 of § 2.2-3705.6 or (ii) subsection E of §  
1561 10.1-104.7. This exclusion shall not apply to the discussion or consideration of records that contain  
1562 information that has been certified for release by the person who is the subject of the information or  
1563 transformed into a statistical or aggregate form that does not allow identification of the person who  
1564 supplied, or is the subject of, the information.

1565 47. (Effective July 1, 2018) Discussion or consideration by the Board of Directors of the Virginia  
1566 Alcoholic Beverage Control Authority of information excluded from this chapter pursuant to subdivision  
1567 1 of § 2.2-3705.3 ~~or subdivision 34 of § 2.2-3705.7.~~

1568 48. Discussion or consideration of grant or loan application records excluded from this chapter  
1569 pursuant to subdivision 28 of § 2.2-3705.6 related to the submission of an application for an award from  
1570 the Virginia Research Investment Fund pursuant to Article 8 (§ 23.1-3130 et seq.) of Chapter 31 of Title  
1571 23.1.

1572 49. Discussion or development of grant proposals by a regional council established pursuant to  
1573 Article 26 (§ 2.2-2484 et seq.) of Chapter 24 to be submitted for consideration to the Virginia Growth  
1574 and Opportunity Board.

1575 B. No resolution, ordinance, rule, contract, regulation or motion adopted, passed or agreed to in a  
1576 closed meeting shall become effective unless the public body, following the meeting, reconvenes in  
1577 open meeting and takes a vote of the membership on such resolution, ordinance, rule, contract,  
1578 regulation, or motion that shall have its substance reasonably identified in the open meeting.

1579 C. Public officers improperly selected due to the failure of the public body to comply with the  
1580 other provisions of this section shall be de facto officers and, as such, their official actions are valid until  
1581 they obtain notice of the legal defect in their election.

1582 D. Nothing in this section shall be construed to prevent the holding of conferences between two  
1583 or more public bodies, or their representatives, but these conferences shall be subject to the same  
1584 procedures for holding closed meetings as are applicable to any other public body.

1585 E. This section shall not be construed to (i) require the disclosure of any contract between the  
1586 Department of Health Professions and an impaired practitioner entered into pursuant to Chapter 25.1 (§  
1587 54.1-2515 et seq.) of Title 54.1 or (ii) require the board of directors of any authority created pursuant to  
1588 the Industrial Development and Revenue Bond Act (§ 15.2-4900 et seq.), or any public body empowered  
1589 to issue industrial revenue bonds by general or special law, to identify a business or industry to which  
1590 subdivision A 5 applies. However, such business or industry shall be identified as a matter of public

1591 record at least 30 days prior to the actual date of the board's authorization of the sale or issuance of such  
1592 bonds.

1593 **§ 2.2-3714. Violations and penalties.**

1594 In a proceeding commenced against any officer, employee, or member of a public body under §  
1595 2.2-3713 for a violation of § 2.2-3704, 2.2-3705.1 through ~~2.2-3705.8~~ [2.2-3705.7](#), 2.2-3706, 2.2-3707,  
1596 2.2-3708, 2.2-3708.1, 2.2-3710, 2.2-3711 or 2.2-3712, the court, if it finds that a violation was willfully  
1597 and knowingly made, shall impose upon such officer, employee, or member in his individual capacity,  
1598 whether a writ of mandamus or injunctive relief is awarded or not, a civil penalty of not less than \$500  
1599 nor more than \$2,000, which amount shall be paid into the State Literary Fund. For a second or  
1600 subsequent violation, such civil penalty shall be not less than \$2,000 nor more than \$5,000.

1601 **§ 2.2-3806. Rights of data subjects.**

1602 A. Any agency maintaining personal information shall:

1603 1. Inform an individual who is asked to supply personal information about himself whether he is  
1604 legally required, or may refuse, to supply the information requested, and also of any specific  
1605 consequences that are known to the agency of providing or not providing the information.

1606 2. Give notice to a data subject of the possible dissemination of part or all of this information to  
1607 another agency, nongovernmental organization or system not having regular access authority, and  
1608 indicate the use for which it is intended, and the specific consequences for the individual, which are  
1609 known to the agency, of providing or not providing the information. However documented permission  
1610 for dissemination in the hands of the other agency or organization shall satisfy the requirement of this  
1611 subdivision. The notice may be given on applications or other data collection forms prepared by data  
1612 subjects.

1613 3. Upon request and proper identification of any data subject, or of his authorized agent, grant  
1614 the data subject or agent the right to inspect, in a form comprehensible to him:

1615 a. All personal information about that data subject except as provided in subdivision 1 of § 2.2-  
1616 3705.1, subdivision 1 of § 2.2-3705.4, and subdivision 1 of § 2.2-3705.5.

1617 b. The nature of the sources of the information.

1618 c. The names of recipients, other than those with regular access authority, of personal  
1619 information about the data subject including the identity of all persons and organizations involved and  
1620 their relationship to the system when not having regular access authority, except that if the recipient has  
1621 obtained the information as part of an ongoing criminal investigation such that disclosure of the  
1622 investigation would jeopardize law-enforcement action, then no disclosure of such access shall be made  
1623 to the data subject.

1624 4. Comply with the following minimum conditions of disclosure to data subjects:

1625 a. An agency shall make disclosures to data subjects required under this chapter, during normal  
1626 business hours, in accordance with the procedures set forth in subsections B and C of § 2.2-3704 for  
1627 responding to requests under the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) or within a  
1628 time period as may be mutually agreed upon by the agency and the data subject.

1629 b. The disclosures to data subjects required under this chapter shall be made (i) in person, if he  
1630 appears in person and furnishes proper identification, or (ii) by mail, if he has made a written request,  
1631 with proper identification. Copies of the documents containing the personal information sought by a data  
1632 subject shall be furnished to him or his representative at reasonable charges for document search and  
1633 duplication in accordance with subsection F of § 2.2-3704.

1634 c. The data subject shall be permitted to be accompanied by a person of his choosing, who shall  
1635 furnish reasonable identification. An agency may require the data subject to furnish a written statement  
1636 granting the agency permission to discuss the individual's file in such person's presence.

1637 5. If the data subject gives notice that he wishes to challenge, correct, or explain information  
1638 about him in the information system, the following minimum procedures shall be followed:

1639 a. The agency maintaining the information system shall investigate, and record the current status  
1640 of that personal information.

1641 b. If, after such investigation, the information is found to be incomplete, inaccurate, not  
1642 pertinent, not timely, or not necessary to be retained, it shall be promptly corrected or purged.

1643 c. If the investigation does not resolve the dispute, the data subject may file a statement of not  
1644 more than 200 words setting forth his position.

1645 d. Whenever a statement of dispute is filed, the agency maintaining the information system shall  
1646 supply any previous recipient with a copy of the statement and, in any subsequent dissemination or use  
1647 of the information in question, clearly note that it is disputed and supply the statement of the data subject  
1648 along with the information.

1649 e. The agency maintaining the information system shall clearly and conspicuously disclose to the  
1650 data subject his rights to make such a request.

1651 f. Following any correction or purging of personal information the agency shall furnish to past  
1652 recipients notification that the item has been purged or corrected whose receipt shall be acknowledged.

1653 B. Nothing in this chapter shall be construed to require an agency to disseminate any  
1654 recommendation or letter of reference from or to a third party that is a part of the personnel file of any  
1655 data subject nor to disseminate any test or examination used, administered or prepared by any public  
1656 body for purposes of evaluation of (i) any student or any student's performance, (ii) any seeker's  
1657 qualifications or aptitude for employment, retention, or promotion, or (iii) qualifications for any license  
1658 or certificate issued by any public body.

1659 As used in this subsection, "test or examination" includes (i) any scoring key for any such test or  
1660 examination and (ii) any other document that would jeopardize the security of the test or examination.  
1661 Nothing contained in this subsection shall prohibit the release of test scores or results as provided by  
1662 law, or to limit access to individual records as provided by law; however, the subject of the employment  
1663 tests shall be entitled to review and inspect all documents relative to his performance on those  
1664 employment tests.

1665 When, in the reasonable opinion of the public body, any such test or examination no longer has  
1666 any potential for future use, and the security of future tests or examinations will not be jeopardized, the  
1667 test or examination shall be made available to the public. Minimum competency tests administered to  
1668 public school children shall be made available to the public contemporaneously with statewide release of  
1669 the scores of those taking such tests, but in no event shall such tests be made available to the public later  
1670 than six months after the administration of such tests.

1671 C. Neither any provision of this chapter nor any provision of the Freedom of Information Act (§  
1672 2.2-3700 et seq.) shall be construed to deny public access to records of the position, job classification,  
1673 official salary or rate of pay of, and to records of the allowances or reimbursements for expenses paid to  
1674 any public officer, official or employee at any level of state, local or regional government in the  
1675 Commonwealth. The provisions of this subsection shall not apply to records of the official salaries or  
1676 rates of pay of public employees whose annual rate of pay is \$10,000 or less.

1677 D. Nothing in this section or in this chapter shall be construed to require an agency to  
1678 disseminate information derived from tax returns ~~in violation of §§ 2.2-3705.7 and prohibited from~~  
1679 release pursuant to § 58.1-3.

1680 **§ 22.1-253.13:3. Standard 3. Accreditation, other standards, assessments, and releases from**  
1681 **state regulations.**

1682 A. The Board of Education shall promulgate regulations establishing standards for accreditation  
1683 pursuant to the Administrative Process Act (§ 2.2-4000 et seq.), which shall include, but not be limited  
1684 to, student outcome measures, requirements and guidelines for instructional programs and for the  
1685 integration of educational technology into such instructional programs, administrative and instructional  
1686 staffing levels and positions, including staff positions for supporting educational technology, student  
1687 services, auxiliary education programs such as library and media services, requirements for graduation  
1688 from high school, community relations, and the philosophy, goals, and objectives of public education in  
1689 Virginia.

1690 The Board of Education shall promulgate regulations establishing standards for accreditation of  
1691 public virtual schools under the authority of the local school board that enroll students full time.

1692 The Board shall review annually the accreditation status of all schools in the Commonwealth.  
1693 The Board shall review the accreditation status of a school once every three years if the school has been  
1694 fully accredited for three consecutive years. Upon such triennial review, the Board shall review the  
1695 accreditation status of the school for each individual year within that triennial review period. If the  
1696 Board finds that the school would have been accredited every year of that triennial review period the  
1697 Board shall accredit the school for another three years. The Board may review the accreditation status of



1698 any other school once every two years or once every three years, provided that any school that receives a  
1699 multiyear accreditation status other than full accreditation shall be covered by a Board-approved  
1700 multiyear corrective action plan for the duration of the period of accreditation. Such multiyear corrective  
1701 action plan shall include annual written progress updates to the Board. A multiyear accreditation status  
1702 shall not relieve any school or division of annual reporting requirements.

1703 Each local school board shall maintain schools that are fully accredited pursuant to the standards  
1704 for accreditation as prescribed by the Board of Education. Each local school board shall report the  
1705 accreditation status of all schools in the local school division annually in public session. Within the time  
1706 specified by the Board of Education, each school board shall submit corrective action plans for any  
1707 schools within its school division that have been designated as not meeting the standards as approved by  
1708 the Board.

1709 When the Board of Education determines through the school academic review process that the  
1710 failure of schools within a division to achieve full accreditation status is related to division-level failure  
1711 to implement the Standards of Quality or other division-level action or inaction, the Board may require a  
1712 division-level academic review. After the conduct of such review and within the time specified by the  
1713 Board of Education, each school board shall submit to the Board for approval a corrective action plan,  
1714 consistent with criteria established by the Board setting forth specific actions and a schedule designed to  
1715 ensure that schools within its school division achieve full accreditation status. If the Board determines  
1716 that the proposed corrective action plan is not sufficient to enable all schools within the division to  
1717 achieve full accreditation, the Board may return the plan to the local school board with directions to  
1718 submit an amended plan pursuant to Board guidance. Such corrective action plans shall be part of the  
1719 relevant school division's comprehensive plan pursuant to § 22.1-253.13:6.

1720 With such funds as are appropriated or otherwise received for this purpose, the Board shall adopt  
1721 and implement an academic review process, to be conducted by the Department of Education, to assist  
1722 schools that are accredited with warning. The Department shall forward a report of each academic  
1723 review to the relevant local school board, and such school board shall report the results of such academic  
1724 review and the required annual progress reports in public session. The local school board shall

1725 implement any actions identified through the academic review and utilize them for improvement  
1726 planning.

1727           B. The Superintendent of Public Instruction shall develop and the Board of Education shall  
1728 approve criteria for determining and recognizing educational performance in the Commonwealth's  
1729 public school divisions and schools. Such criteria, when approved, shall become an integral part of the  
1730 accreditation process and shall include student outcome measurements. The Superintendent of Public  
1731 Instruction shall annually report to the Board on the accreditation status of all school divisions and  
1732 schools. Such report shall include an analysis of the strengths and weaknesses of public education  
1733 programs in the various school divisions in Virginia and recommendations to the General Assembly for  
1734 further enhancing student learning uniformly across the Commonwealth. In recognizing educational  
1735 performance in the school divisions, the Board shall include consideration of special school division  
1736 accomplishments, such as numbers of dual enrollments and students in Advanced Placement and  
1737 International Baccalaureate courses, and participation in academic year Governor's Schools.

1738           The Superintendent of Public Instruction shall assist local school boards in the implementation of  
1739 action plans for increasing educational performance in those school divisions and schools that are  
1740 identified as not meeting the approved criteria. The Superintendent of Public Instruction shall monitor  
1741 the implementation of and report to the Board of Education on the effectiveness of the corrective actions  
1742 taken to improve the educational performance in such school divisions and schools.

1743           C. With such funds as are available for this purpose, the Board of Education shall prescribe  
1744 assessment methods to determine the level of achievement of the Standards of Learning objectives by all  
1745 students. Such assessments shall evaluate knowledge, application of knowledge, critical thinking, and  
1746 skills related to the Standards of Learning being assessed. The Board shall, with the assistance of  
1747 independent testing experts, conduct a regular analysis and validation process for these assessments. The  
1748 Department of Education shall make available to school divisions Standards of Learning assessments  
1749 typically administered by the middle and high schools by December 1 of the school year in which such  
1750 assessments are to be administered or when newly developed assessments are available, whichever is  
1751 later.

1752 The Board shall also provide the option of industry certification and state licensure examinations  
1753 as a student-selected credit.

1754 The Board of Education shall make publicly available such assessments in a timely manner and  
1755 as soon as practicable following the administration of such tests, so long as the release of such  
1756 assessments does not compromise test security or deplete the bank of assessment questions necessary to  
1757 construct subsequent tests, or limit the ability to test students on demand and provide immediate results  
1758 in the web-based assessment system.

1759 The Board shall include in the student outcome measures that are required by the Standards for  
1760 Accreditation end-of-course or end-of-grade assessments for various grade levels and classes, including  
1761 the completion of the alternative assessments implemented by each local school board, in accordance  
1762 with the Standards of Learning. These assessments shall include end-of-course or end-of-grade tests for  
1763 English, mathematics, science, and history and social science and may be integrated to include multiple  
1764 subject areas.

1765 The Board shall prescribe alternative methods of Standards of Learning assessment  
1766 administration for children with disabilities, as that term is defined in § 22.1-213, who meet criteria  
1767 established by the Board to demonstrate achievement of the Standards of Learning. An eligible student's  
1768 Individual Education Program team shall make the final determination as to whether an alternative  
1769 method of administration is appropriate for the student.

1770 The Standards of Learning assessments administered to students in grades three through eight  
1771 shall not exceed (a) reading and mathematics in grades three and four; (b) reading, mathematics, and  
1772 science in grade five; (c) reading and mathematics in grades six and seven; (d) reading, writing, and  
1773 mathematics in grade eight; (e) science after the student receives instruction in the grade six science, life  
1774 science, and physical science Standards of Learning and before the student completes grade eight; and  
1775 (f) Virginia Studies and Civics and Economics once each at the grade levels deemed appropriate by each  
1776 local school board.

1777 Each school board shall annually certify that it has provided instruction and administered an  
1778 alternative assessment, consistent with Board guidelines, to students in grades three through eight in

1779 each Standards of Learning subject area in which a Standards of Learning assessment was not  
1780 administered during the school year. Such guidelines shall (1) incorporate options for age-appropriate,  
1781 authentic performance assessments and portfolios with rubrics and other methodologies designed to  
1782 ensure that students are making adequate academic progress in the subject area and that the Standards of  
1783 Learning content is being taught; (2) permit and encourage integrated assessments that include multiple  
1784 subject areas; and (3) emphasize collaboration between teachers to administer and substantiate the  
1785 assessments and the professional development of teachers to enable them to make the best use of  
1786 alternative assessments.

1787         Local school divisions shall provide targeted mathematics remediation and intervention to  
1788 students in grades six through eight who show computational deficiencies as demonstrated by their  
1789 individual performance on any diagnostic test or grade-level Standards of Learning mathematics test that  
1790 measures non-calculator computational skills.

1791         The Department of Education shall award recovery credit to any student in grades three through  
1792 eight who fails a Standards of Learning assessment in English reading or mathematics, receives  
1793 remediation, and subsequently retakes and passes such an assessment, including any such student who  
1794 subsequently retakes such an assessment on an expedited basis.

1795         In addition, to assess the educational progress of students, the Board of Education shall (A)  
1796 develop appropriate assessments, which may include criterion-referenced tests and other assessment  
1797 instruments that may be used by classroom teachers; (B) select appropriate industry certification and  
1798 state licensure examinations; and (C) prescribe and provide measures, which may include nationally  
1799 normed tests to be used to identify students who score in the bottom quartile at selected grade levels. An  
1800 annual justification that includes evidence that the student meets the participation criteria defined by the  
1801 Virginia Department of Education shall be provided for each student considered for the Virginia Grade  
1802 Level Alternative. Each Individual Education Program team shall review such justification and make the  
1803 final determination as to whether or not the Virginia Grade Level Alternative is appropriate for the  
1804 student. The superintendent and the school board chairman shall certify to the Board of Education, as a  
1805 part of certifying compliance with the Standards of Quality, that there is a justification in the Individual

1806 Education Program for every student who takes the Virginia Grade Level Alternative. Compliance with  
1807 this requirement shall be monitored as a part of the special education monitoring process conducted by  
1808 the Department of Education. The Board shall report to the Governor and General Assembly in its  
1809 annual reports pursuant to § 22.1-18 any school division that is not in compliance with this requirement.

1810 The Standards of Learning requirements, including all related assessments, shall be waived for  
1811 any student awarded a scholarship under the Brown v. Board of Education Scholarship Program,  
1812 pursuant to § 30-231.2, who is enrolled in a preparation program for a high school equivalency  
1813 examination approved by the Board of Education or in an adult basic education program or an adult  
1814 secondary education program to obtain the high school diploma or a high school equivalency certificate.

1815 The Department of Education shall develop processes for informing school divisions of changes  
1816 in the Standards of Learning.

1817 The Board of Education may adopt special provisions related to the administration and use of  
1818 any Standards of Learning test or tests in a content area as applied to accreditation ratings for any period  
1819 during which the Standards of Learning content or assessments in that area are being revised and phased  
1820 in. Prior to statewide administration of such tests, the Board of Education shall provide notice to local  
1821 school boards regarding such special provisions.

1822 The Board of Education shall not include in its calculation of the passage rate of a Standards of  
1823 Learning assessment for the purposes of state accountability any student whose parent has decided to not  
1824 have his child take such Standards of Learning assessment, unless such exclusions would result in the  
1825 school's not meeting any required state or federal participation rate.

1826 D. The Board of Education may pursue all available civil remedies pursuant to § 22.1-19.1 or  
1827 administrative action pursuant to § 22.1-292.1 for breaches in test security and unauthorized alteration of  
1828 test materials or test results.

1829 The Board may initiate or cause to be initiated a review or investigation of any alleged breach in  
1830 security, unauthorized alteration, or improper administration of tests, including the exclusion of students  
1831 from testing who are required to be assessed, by local school board employees responsible for the  
1832 distribution or administration of the tests.

1833           Records and other information furnished to or prepared by the Board during the conduct of a  
1834 review or investigation may be withheld pursuant to subdivision ~~11~~ 10 of § 2.2-3705.3. However, this  
1835 section shall not prohibit the disclosure of records to (i) a local school board or division superintendent  
1836 for the purpose of permitting such board or superintendent to consider or to take personnel action with  
1837 regard to an employee or (ii) any requester, after the conclusion of a review or investigation, in a form  
1838 that (a) does not reveal the identity of any person making a complaint or supplying information to the  
1839 Board on a confidential basis and (b) does not compromise the security of any test mandated by the  
1840 Board. Any local school board or division superintendent receiving such records or other information  
1841 shall, upon taking personnel action against a relevant employee, place copies of such records or  
1842 information relating to the specific employee in such person's personnel file.

1843           Notwithstanding any other provision of state law, no test or examination authorized by this  
1844 section, including the Standards of Learning assessments, shall be released or required to be released as  
1845 minimum competency tests, if, in the judgment of the Board, such release would breach the security of  
1846 such test or examination or deplete the bank of questions necessary to construct future secure tests.

1847           E. With such funds as may be appropriated, the Board of Education may provide, through an  
1848 agreement with vendors having the technical capacity and expertise to provide computerized tests and  
1849 assessments, and test construction, analysis, and security, for (i) web-based computerized tests and  
1850 assessments, including computer-adaptive Standards of Learning assessments, for the evaluation of  
1851 student progress during and after remediation and (ii) the development of a remediation item bank  
1852 directly related to the Standards of Learning.

1853           F. To assess the educational progress of students as individuals and as groups, each local school  
1854 board shall require the use of Standards of Learning assessments, alternative assessments, and other  
1855 relevant data, such as industry certification and state licensure examinations, to evaluate student  
1856 progress and to determine educational performance. Each local school shall require the administration of  
1857 appropriate assessments to students, which may include criterion-referenced tests and teacher-made tests  
1858 and shall include the Standards of Learning assessments, the local school board's alternative  
1859 assessments, and the National Assessment of Educational Progress state-by-state assessment. Each

1860 school board shall analyze and report annually, in compliance with any criteria that may be established  
1861 by the Board of Education, the results from the Stanford Achievement Test Series, Ninth Edition  
1862 (Stanford Nine) assessment, if administered, industry certification examinations, and the Standards of  
1863 Learning Assessments to the public.

1864 The Board of Education shall not require administration of the Stanford Achievement Test  
1865 Series, Ninth Edition (Stanford Nine) assessment, except as may be selected to facilitate compliance  
1866 with the requirements for home instruction pursuant to § 22.1-254.1.

1867 The Board shall include requirements for the reporting of the Standards of Learning assessment  
1868 scores and averages for each year, regardless of accreditation frequency, as part of the Board's  
1869 requirements relating to the School Performance Report Card. Such scores shall be disaggregated for  
1870 each school by student subgroups on the Virginia assessment program as appropriate and shall be  
1871 reported to the public within three months of their receipt. These reports (i) shall be posted on the  
1872 portion of the Department of Education's website relating to the School Performance Report Card, in a  
1873 format and in a manner that allows year-to-year comparisons, and (ii) may include the National  
1874 Assessment of Educational Progress state-by-state assessment.

1875 G. Each local school division superintendent shall regularly review the division's submission of  
1876 data and reports required by state and federal law and regulations to ensure that all information is  
1877 accurate and submitted in a timely fashion. The Superintendent of Public Instruction shall provide a list  
1878 of the required reports and data to division superintendents annually. The status of compliance with this  
1879 requirement shall be included in the Board of Education's annual report to the Governor and the General  
1880 Assembly as required by § 22.1-18.

1881 H. Any school board may request the Board of Education for release from state regulations or, on  
1882 behalf of one or more of its schools, for approval of an Individual School Accreditation Plan for the  
1883 evaluation of the performance of one or more of its schools as authorized for certain other schools by the  
1884 Standards of Accreditation pursuant to 8VAC20-131-280 C of the Virginia Administrative Code.  
1885 Waivers of regulatory requirements may be granted by the Board of Education based on submission of a  
1886 request from the division superintendent and chairman of the local school board. The Board of

1887 Education may grant, for a period up to five years, a waiver of regulatory requirements that are not (i)  
1888 mandated by state or federal law or (ii) designed to promote health or safety. The school board shall  
1889 provide in its waiver request a description of how the releases from state regulations are designed to  
1890 increase the quality of instruction and improve the achievement of students in the affected school or  
1891 schools. The Department of Education shall provide (a) guidance to any local school division that  
1892 requests releases from state regulations and (b) information about opportunities to form partnerships  
1893 with other agencies or entities to any local school division in which the school or schools granted  
1894 releases from state regulations have demonstrated improvement in the quality of instruction and the  
1895 achievement of students.

1896 The Board of Education may also grant local school boards waivers of specific requirements in §  
1897 22.1-253.13:2, based on submission of a request from the division superintendent and chairman of the  
1898 local school board, permitting the local school board to assign instructional personnel to the schools with  
1899 the greatest needs, so long as the school division employs a sufficient number of personnel divisionwide  
1900 to meet the total number required by § 22.1-253.13:2 and all pupil/teacher ratios and class size  
1901 maximums set forth in subsection C of § 22.1-253.13:2 are met. The school board shall provide in its  
1902 request a description of how the waivers from specific Standards of Quality staffing standards are  
1903 designed to increase the quality of instruction and improve the achievement of students in the affected  
1904 school or schools. The waivers may be renewed in up to five-year increments, or revoked, based on  
1905 student achievement results in the affected school or schools.

1906 **§ 22.1-279.8. School safety audits and school crisis, emergency management, and medical**  
1907 **emergency response plans required.**

1908 A. For the purposes of this section, unless the context requires otherwise:

1909 "School crisis, emergency management, and medical emergency response plan" means the  
1910 essential procedures, operations, and assignments required to prevent, manage, and respond to a critical  
1911 event or emergency, including natural disasters involving fire, flood, tornadoes, or other severe weather;  
1912 loss or disruption of power, water, communications or shelter; bus or other accidents; medical  
1913 emergencies, including cardiac arrest and other life-threatening medical emergencies; student or staff



1914 member deaths; explosions; bomb threats; gun, knife or other weapons threats; spills or exposures to  
1915 hazardous substances; the presence of unauthorized persons or trespassers; the loss, disappearance or  
1916 kidnapping of a student; hostage situations; violence on school property or at school activities; incidents  
1917 involving acts of terrorism; and other incidents posing a serious threat of harm to students, personnel, or  
1918 facilities. The plan shall include a provision that the Department of Criminal Justice Services and the  
1919 Virginia Criminal Injuries Compensation Fund shall be contacted immediately to deploy assistance in  
1920 the event of an emergency as defined in the emergency response plan when there are victims as defined  
1921 in § 19.2-11.01. The Department of Criminal Justice Services and the Virginia Criminal Injuries  
1922 Compensation Fund shall be the lead coordinating agencies for those individuals determined to be  
1923 victims, and the plan shall also contain current contact information for both agencies.

1924 "School safety audit" means a written assessment of the safety conditions in each public school  
1925 to (i) identify and, if necessary, develop solutions for physical safety concerns, including building  
1926 security issues and (ii) identify and evaluate any patterns of student safety concerns occurring on school  
1927 property or at school-sponsored events. Solutions and responses shall include recommendations for  
1928 structural adjustments, changes in school safety procedures, and revisions to the school board's standards  
1929 for student conduct.

1930 B. The Virginia Center for School and Campus Safety, in consultation with the Department of  
1931 Education, shall develop a list of items to be reviewed and evaluated in the school safety audits required  
1932 by this section. Such items shall include those incidents reported to school authorities pursuant to § 22.1-  
1933 279.3:1 and shall include a school inspection walk-through using a standardized checklist provided by  
1934 the Virginia Center for School and Campus Safety, which shall incorporate crime prevention through  
1935 environmental design principles.

1936 The Virginia Center for School and Campus Safety shall prescribe a standardized report format  
1937 for school safety audits, additional reporting criteria, and procedures for report submission, which may  
1938 include instructions for electronic submission.

1939 Each local school board shall require all schools under its supervisory control to annually  
1940 conduct school safety audits as defined in this section and consistent with such list.

1941 The results of such school safety audits shall be made public within 90 days of completion. The  
1942 local school board shall retain authority to withhold or limit the release of any security plans, walk-  
1943 through checklists, and specific vulnerability assessment components as provided in subdivision 7.4 of §  
1944 2.2-3705.2. The completed walk-through checklist shall be made available upon request to the chief  
1945 law-enforcement officer of the locality or his designee. Each school shall maintain a copy of the school  
1946 safety audit, which may exclude such security plans, walk-through checklists, and vulnerability  
1947 assessment components, within the office of the school principal and shall make a copy of such report  
1948 available for review upon written request.

1949 Each school shall submit a copy of its school safety audit to the relevant school division  
1950 superintendent. The division superintendent shall collate and submit all such school safety audits, in the  
1951 prescribed format and manner of submission, to the Virginia Center for School and Campus Safety and  
1952 shall make available upon request to the chief law-enforcement officer of the locality the results of such  
1953 audits.

1954 C. The division superintendent shall establish a school safety audit committee to include, if  
1955 available, representatives of parents, teachers, local law-enforcement, emergency services agencies,  
1956 local community services boards, and judicial and public safety personnel. The school safety audit  
1957 committee shall review the completed school safety audits and submit any plans, as needed, for  
1958 improving school safety to the division superintendent for submission to the local school board.

1959 D. Each school board shall ensure that every school that it supervises shall develop a written  
1960 school crisis, emergency management, and medical emergency response plan, consistent with the  
1961 definition provided in this section, and shall provide copies of such plans to the chief law-enforcement  
1962 officer, the fire chief, the chief of the emergency medical services agency, and the emergency  
1963 management official of the locality. Each school division shall designate an emergency manager. The  
1964 Department of Education and the Virginia Center for School and Campus Safety shall provide technical  
1965 assistance to the school divisions of the Commonwealth in the development of the school crisis,  
1966 emergency management, and medical emergency response plans that describe the components of a  
1967 medical emergency response plan developed in coordination with local emergency medical services

1968 providers, the training of school personnel and students to respond to a life-threatening emergency, and  
1969 the equipment required for this emergency response. The local school board shall annually review the  
1970 written school crisis, emergency management, and medical emergency response plans. The local school  
1971 board shall have the authority to withhold or limit the review of any security plans and specific  
1972 vulnerability assessment components as provided in subdivision ~~7.4~~ of § 2.2-3705.2. The local school  
1973 division superintendent shall certify this review in writing to the Virginia Center for School and Campus  
1974 Safety no later than August 31 of each year.

1975           Upon consultation with local school boards, division superintendents, the Virginia Center for  
1976 School and Campus Safety, and the Coordinator of Emergency Management, the Board of Education  
1977 shall develop, and may revise as it deems necessary, a model school crisis, emergency management, and  
1978 medical emergency response plan for the purpose of assisting the public schools in Virginia in  
1979 developing viable, effective crisis, emergency management, and medical emergency response plans.  
1980 Such model shall set forth recommended effective procedures and means by which parents can contact  
1981 the relevant school or school division regarding the location and safety of their school children and by  
1982 which school officials may contact parents, with parental approval, during a critical event or emergency.

1983           **§ 23.1-2425. Confidential and public information.**

1984           A. The Authority is subject to the provisions of the Freedom of Information Act (§ 2.2-3700 et  
1985 seq.), including the exclusions set forth in subdivision ~~15.14~~ of § 2.2-3705.7 and subdivision A 23 of §  
1986 2.2-3711.

1987           B. For purposes of the Freedom of Information Act (§ 2.2-3700 et seq.), meetings of the board  
1988 are not considered meetings of the board of visitors of the University. Meetings of the board may be  
1989 conducted through telephonic or video means as provided in § 2.2-3708.

1990           **§ 32.1-48.08. Declaration of quarantine.**

1991           A. The State Health Commissioner may declare a quarantine of any person or persons or any  
1992 affected area after he finds that the quarantine is the necessary means to contain a communicable disease  
1993 of public health threat as defined in § 32.1-48.06 to which such person or persons or the people of an  
1994 affected area have been or may have been exposed and thus may become infected.

1995 B. The State Health Commissioner shall record his findings and any information on which he has  
1996 relied in making the finding required for quarantine pursuant to subsection A. The State Health  
1997 Commissioner's record of findings concerning any communicable disease of public health threat shall be  
1998 confidential and shall not be disclosed in accordance with subdivision ~~17.12~~ of § 2.2-3705.5.

1999 C. The State Health Commissioner may order the quarantined person or persons to remain in  
2000 their residences, to remain in another place where they are present, or to report to a place or places  
2001 designated by the State Health Commissioner for the duration of their quarantine. An electronic device  
2002 may be used to enforce any such quarantine. The Commissioner's order of quarantine shall be for a  
2003 duration consistent with the known incubation period for such disease or, if the incubation period is  
2004 unknown, for a period anticipated as being consistent with the incubation period for other similar  
2005 infectious agents.

2006 **§ 32.1-48.011. Isolation may be ordered under certain exceptional circumstances;**  
2007 **Commissioner authorized to require hospitalization or other health care.**

2008 A. Whenever the State Health Commissioner makes a determination of exceptional  
2009 circumstances pursuant to § 32.1-48.05 and that the isolation procedures set forth in Article 3.01 (§ 32.1-  
2010 48.01 et seq.) of this chapter are insufficient control measures to contain a communicable disease of  
2011 public health threat, the isolation procedures herein may be invoked.

2012 B. The State Health Commissioner may order the isolation of a person or persons upon a finding  
2013 that (i) such person or persons are infected with or may reasonably be suspected to be infected with a  
2014 communicable disease of public health threat and (ii) isolation is necessary to protect the public health,  
2015 to ensure such isolated person or persons receive appropriate medical treatment, and to protect health  
2016 care providers and others who may come into contact with such infected person or persons.

2017 C. The State Health Commissioner shall record his findings and any information on which he has  
2018 relied in making the finding required for isolation pursuant to this section. The State Health  
2019 Commissioner's record of findings concerning any communicable disease of public health threat that is  
2020 involved in an order of isolation shall be confidential and shall not be disclosed in accordance with  
2021 subdivision ~~17.12~~ of § 2.2-3705.5.

2022 D. The Commissioner may order the isolated person or persons to remain in their places of  
2023 residence, to remain in another place where they are present, or to report to a place or facility designated  
2024 by the Commissioner for the duration of their isolation. An electronic device may be used to enforce any  
2025 such isolation. The Commissioner's order of isolation shall be for a duration consistent with the known  
2026 course of such communicable disease of public health threat or, if the course of the disease is unknown  
2027 or uncertain, for a period consistent with the probable course of the communicable disease of public  
2028 health threat.

2029 E. To the extent that persons subject to an order of isolation pursuant to this article require  
2030 hospitalization or other health care services, the State Health Commissioner shall be authorized to  
2031 require that such services be provided.

2032 F. The State Health Commissioner shall also have the authority to monitor the medical condition  
2033 of any person or persons subject to an order of isolation pursuant to this article through regular visits by  
2034 public health nurses or such other means as the Commissioner shall determine to be necessary.

2035 **§ 32.1-48.015. Authorization to disclose health records.**

2036 A. The provisions of this article are hereby declared to be necessary to prevent serious harm and  
2037 serious threats to the health and safety of individuals and the public in Virginia for purposes of  
2038 authorizing the State Health Commissioner or his designee to examine and review any health records of  
2039 any person or persons subject to any order of quarantine or order of isolation pursuant to this article and  
2040 the regulations of the Department of Health and Human Services promulgated in compliance with the  
2041 Health Insurance Portability and Accountability Act of 1996, as amended. The State Health  
2042 Commissioner shall authorize any designee in writing to so examine and review any health records of  
2043 any person or persons subject to any order of quarantine or order of isolation pursuant to this article.

2044 B. Pursuant to the regulations concerning patient privacy promulgated by the federal Department  
2045 of Health and Human Services, covered entities may disclose protected health information to the State  
2046 Health Commissioner or his designee without obtaining consent or authorization for such disclosure  
2047 from the person who is the subject of the records. Such protected health information shall be used to  
2048 facilitate the health care of any person or persons who are subject to an order of quarantine or an order

2049 of isolation. The State Health Commissioner or his designee shall only redisclose such protected health  
2050 information in compliance with the aforementioned federal regulations. Further, the protected health  
2051 information disclosed to the State Health Commissioner or his designee shall be held confidential and  
2052 shall not be disclosed pursuant to the provisions of subdivision ~~47~~ 12 of § 2.2-3705.5.

2053 C. Pursuant to subsection G of § 32.1-116.3, any person requesting or requiring any employee of  
2054 a public safety agency as defined in subsection J of § 32.1-45.2 to arrest, transfer, or otherwise exercise  
2055 custodial supervision over an individual known to the requesting person (i) to be infected with any  
2056 communicable disease or (ii) to be subject to an order of quarantine or an order of isolation pursuant to  
2057 Article 3.02 (§ 32.1-48.05 et seq.) of Chapter 2 shall inform such employee of a public safety agency of  
2058 the potential risk of exposure to a communicable disease.

2059 **§ 32.1-283.1. State Child Fatality Review Team; membership; access to and maintenance of**  
2060 **records; confidentiality; etc.**

2061 A. There is hereby created the State Child Fatality Review Team, referred to in this section as  
2062 "the Team," which shall develop and implement procedures to ensure that child deaths occurring in  
2063 Virginia are analyzed in a systematic way. The Team shall review (i) violent and unnatural child deaths,  
2064 (ii) sudden child deaths occurring within the first 18 months of life, and (iii) those fatalities for which  
2065 the cause or manner of death was not determined with reasonable medical certainty. No child death  
2066 review shall be initiated by the Team until conclusion of any law-enforcement investigation or criminal  
2067 prosecution. The Team shall (i) develop and revise as necessary operating procedures for the review of  
2068 child deaths, including identification of cases to be reviewed and procedures for coordination among the  
2069 agencies and professionals involved, (ii) improve the identification, data collection, and record keeping  
2070 of the causes of child death, (iii) recommend components for prevention and education programs, (iv)  
2071 recommend training to improve the investigation of child deaths, and (v) provide technical assistance,  
2072 upon request, to any local child fatality teams that may be established. The operating procedures for the  
2073 review of child deaths shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq.)  
2074 pursuant to subdivision B 17 of § 2.2-4002.

2075 B. The 16-member Team shall be chaired by the Chief Medical Examiner and shall be composed  
2076 of the following persons or their designees: the Commissioner of Behavioral Health and Developmental  
2077 Services; the Director of Child Protective Services within the Department of Social Services; the  
2078 Superintendent of Public Instruction; the State Registrar of Vital Records; and the Director of the  
2079 Department of Criminal Justice Services. In addition, one representative from each of the following  
2080 entities shall be appointed by the Governor to serve for a term of three years: local law-enforcement  
2081 agencies, local fire departments, local departments of social services, the Medical Society of Virginia,  
2082 the Virginia College of Emergency Physicians, the Virginia Pediatric Society, local emergency medical  
2083 services personnel, attorneys for the Commonwealth, and community services boards.

2084 C. Upon the request of the Chief Medical Examiner in his capacity as chair of the Team, made  
2085 after the conclusion of any law-enforcement investigation or prosecution, information and records  
2086 regarding a child whose death is being reviewed by the Team may be inspected and copied by the Chief  
2087 Medical Examiner or his designee, including, but not limited to, any report of the circumstances of the  
2088 event maintained by any state or local law-enforcement agency or medical examiner, and information or  
2089 records maintained on such child by any school, social services agency or court. Information, records, or  
2090 reports maintained by any attorney for the Commonwealth shall be made available for inspection and  
2091 copying by the Chief Medical Examiner pursuant to procedures which shall be developed by the Chief  
2092 Medical Examiner and the Commonwealth's Attorneys' Services Council established by § 2.2-2617. Any  
2093 presentence report prepared pursuant to § 19.2-299 for any person convicted of a crime that led to the  
2094 death of the child shall be made available for inspection and copying by the Office of the Chief Medical  
2095 Examiner pursuant to procedures which shall be developed by the Chief Medical Examiner. In addition,  
2096 the Office of the Chief Medical Examiner may inspect and copy from any Virginia health care provider,  
2097 on behalf of the Team, (i) without obtaining consent, the health and mental health records of the child  
2098 and those perinatal medical records of the child's mother that related to such child and (ii) upon  
2099 obtaining consent from each adult regarding his personal records, or from a parent regarding the records  
2100 of a minor child, the health and mental health records of the child's family. All such information and  
2101 records shall be confidential and shall be excluded from the Virginia Freedom of Information Act (§ 2.2-

2102 | 3700 et seq.) pursuant to subdivision [9.7](#) of § 2.2-3705.5. Upon the conclusion of the child death review,  
2103 all information and records concerning the child and the child's family shall be shredded or otherwise  
2104 destroyed by the Office of the Chief Medical Examiner in order to ensure confidentiality. Such  
2105 information or records shall not be subject to subpoena or discovery or be admissible in any criminal or  
2106 civil proceeding. If available from other sources, however, such information and records shall not be  
2107 immune from subpoena, discovery, or introduction into evidence when obtained through such other  
2108 sources solely because the information and records were presented to the Team during a child death  
2109 review. Further, the findings of the Team may be disclosed or published in statistical or other form  
2110 which shall not identify individuals. The portions of meetings in which individual child death cases are  
2111 discussed by the Team shall be closed pursuant to subdivision A 21 of § 2.2-3711. In addition to the  
2112 requirements of § 2.2-3712, all team members, persons attending closed team meetings, and persons  
2113 presenting information and records on specific child deaths to the Team during closed meetings shall  
2114 execute a sworn statement to honor the confidentiality of the information, records, discussions, and  
2115 opinions disclosed during any closed meeting to review a specific child death. Violations of this  
2116 subsection are punishable as a Class 3 misdemeanor.

2117 D. Upon notification of a child death, any state or local government agency maintaining records  
2118 on such child or such child's family which are periodically purged shall retain such records for the  
2119 longer of 12 months or until such time as the State Child Fatality Review Team has completed its child  
2120 death review of the specific case.

2121 E. The Team shall compile annual data which shall be made available to the Governor and the  
2122 General Assembly as requested. These statistical data compilations shall not contain any personally  
2123 identifying information and shall be public records.

2124 **§ 32.1-283.2. Local and regional child fatality review teams established; membership;**  
2125 **authority; confidentiality; immunity.**

2126 A. Upon the initiative of any local or regional law-enforcement agency, fire department,  
2127 department of social services, emergency medical services agency, attorney for the Commonwealth's  
2128 office, or community services board, local or regional child fatality teams may be established for the



2129 purpose of conducting contemporaneous reviews of local child deaths in order to develop interventions  
2130 and strategies for prevention specific to the locality or region. Each team shall establish rules and  
2131 procedures to govern the review process. Agencies may share information but shall be bound by  
2132 confidentiality and execute a sworn statement to honor the confidentiality of the information they share.  
2133 Violations are punishable as a Class 3 misdemeanor. The State Child Fatality Review Team shall  
2134 provide technical assistance and direction as provided for in subsection A of § 32.1-283.1.

2135 B. Local and regional teams may be composed of the following persons from the localities  
2136 represented on a particular board or their designees: a medical examiner appointed pursuant to § 32.1-  
2137 282, a local social services official in charge of child protective services, a director of the relevant local  
2138 or district health department, a chief law-enforcement officer, a local fire marshal, a local emergency  
2139 medical services agency chief, the attorney for the Commonwealth, an executive director of the local  
2140 community services board or other local mental health agency, and such additional persons, not to  
2141 exceed four, as may be appointed to serve by the chairperson of the local or regional team. The  
2142 chairperson shall be elected from among the designated membership. The additional members appointed  
2143 by the chairperson may include, but are not restricted to, representatives of local human services  
2144 agencies; local public education agencies; local pediatricians, psychiatrists and psychologists; and local  
2145 child advocacy organizations.

2146 C. Each team shall establish local rules and procedures to govern the review process prior to  
2147 conducting the first child fatality review. The review of a death shall be delayed until any criminal  
2148 investigations connected with the death are completed or the Commonwealth consents to the  
2149 commencement of such review prior to the completion of the criminal investigation.

2150 D. All information and records obtained or created regarding the review of a fatality shall be  
2151 confidential and shall be excluded from the Virginia Freedom of Information Act (§ 2.2-3700 et seq.)  
2152 pursuant to subdivision [9.7](#) of § 2.2-3705.5. All such information and records shall be used by the team  
2153 only in the exercise of its proper purpose and function and shall not be disclosed. Such information or  
2154 records shall not be subject to subpoena, subpoena duces tecum, or discovery or be admissible in any  
2155 criminal or civil proceeding. If available from other sources, however, such information and records

2156 shall not be immune from subpoena, subpoena duces tecum, discovery or introduction into evidence  
2157 when obtained through such other sources solely because the information and records were presented to  
2158 the team during a fatality review. No person who participated in the reviews nor any member of the  
2159 team shall be required to make any statement as to what transpired during the review or what  
2160 information was collected during the review. Upon the conclusion of the fatality review, all information  
2161 and records concerning the victim and the family shall be returned to the originating agency or  
2162 destroyed. However, the findings of the team may be disclosed or published in statistical or other form  
2163 which shall not identify individuals. The portions of meetings in which individual cases are discussed by  
2164 the team shall be closed pursuant to subdivision A 21 of § 2.2-3711. All team members, persons  
2165 attending closed team meetings, and persons presenting information and records on specific fatalities to  
2166 the team during closed meetings shall execute a sworn statement to honor the confidentiality of the  
2167 information, records, discussions, and opinions disclosed during any closed meeting to review a specific  
2168 death. Violations of this subsection are punishable as a Class 3 misdemeanor.

2169 E. Members of teams, as well as their agents and employees, shall be immune from civil liability  
2170 for any act or omission made in connection with participation in a child fatality review team review,  
2171 unless such act or omission was the result of gross negligence or willful misconduct. Any organization,  
2172 institution, or person furnishing information, data, testimony, reports or records to review teams as part  
2173 of such review, shall be immune from civil liability for any act or omission in furnishing such  
2174 information, unless such act or omission was the result of gross negligence or willful misconduct.

2175 **§ 32.1-283.3. Family violence fatality review teams established; model protocol and data**  
2176 **management; membership; authority; confidentiality, etc.**

2177 A. The Office of the Chief Medical Examiner shall develop a model protocol for the  
2178 development and implementation of local family violence fatality review teams (teams) and such model  
2179 protocol shall include relevant procedures for conducting reviews of fatal family violence incidents. A  
2180 "fatal family violence incident" means any fatality that occurred or that is suspected of having occurred  
2181 in the context of abuse between family members or intimate partners. The Office of the Chief Medical

2182 Examiner shall provide technical assistance to the local teams and serve as a clearinghouse for  
2183 information.

2184 B. Subject to available funding, the Office of the Chief Medical Examiner shall provide ongoing  
2185 surveillance of fatal family violence occurrences and promulgate an annual report based on accumulated  
2186 data.

2187 C. Any county or city, or combination of counties, cities, or counties and cities, may establish a  
2188 family violence fatality review team to examine fatal family violence incidents and to create a body of  
2189 information to help prevent future family violence fatalities. The team shall have the authority to review  
2190 the facts and circumstances of all fatal family violence incidents that occur within its designated  
2191 geographic area.

2192 D. Membership in the team may include, but shall not be limited to, health care professionals,  
2193 representatives from the local bar, attorneys for the Commonwealth, judges, law-enforcement officials,  
2194 criminologists, medical examiners appointed pursuant to § 32.1-282, other experts in forensic medicine  
2195 and pathology, family violence victim advocates, health department professionals, probation and parole  
2196 professionals, adult and child protective services professionals, and representatives of family violence  
2197 local coordinating councils.

2198 E. Each team shall establish local rules and procedures to govern the review process prior to the  
2199 first fatal family violence incident review conducted. The review of a death shall be delayed until any  
2200 criminal investigations or prosecutions connected with the death are completed.

2201 F. All information and records obtained or created regarding the review of a fatality shall be  
2202 confidential and shall be excluded from the Virginia Freedom of Information Act (§ 2.2-3700 et seq.)  
2203 pursuant to subdivision [9.7](#) of § 2.2-3705.5. All such information and records shall be used by the team  
2204 only in the exercise of its proper purpose and function and shall not be disclosed. Such information or  
2205 records shall not be subject to subpoena, subpoena duces tecum or discovery or be admissible in any  
2206 criminal or civil proceeding. If available from other sources, however, such information and records  
2207 shall not be immune from subpoena, subpoena duces tecum, discovery or introduction into evidence  
2208 when obtained through such other sources solely because the information and records were presented to

2209 the team during a fatality review. No person who participated in the review nor any member of the team  
2210 shall be required to make any statement as to what transpired during the review or what information was  
2211 collected during the review. Upon the conclusion of the fatality review, all information and records  
2212 concerning the victim and the family shall be returned to the originating agency or destroyed. However,  
2213 the findings of the team may be disclosed or published in statistical or other form which shall not  
2214 identify individuals. The portions of meetings in which individual cases are discussed by the team shall  
2215 be closed pursuant to subdivision A 21 of § 2.2-3711. All team members, persons attending closed team  
2216 meetings, and persons presenting information and records on specific fatalities to the team during closed  
2217 meetings shall execute a sworn statement to honor the confidentiality of the information, records,  
2218 discussions, and opinions disclosed during any closed meeting to review a specific death. Violations of  
2219 this subsection are punishable as a Class 3 misdemeanor.

2220 G. Members of teams, as well as their agents and employees, shall be immune from civil liability  
2221 for any act or omission made in connection with participation in a family violence fatality review, unless  
2222 such act or omission was the result of gross negligence or willful misconduct. Any organization,  
2223 institution, or person furnishing information, data, testimony, reports or records to review teams as part  
2224 of such review, shall be immune from civil liability for any act or omission in furnishing such  
2225 information, unless such act or omission was the result of gross negligence or willful misconduct.

2226 **§ 32.1-283.5. Adult Fatality Review Team; duties; membership; confidentiality; penalties;**  
2227 **report; etc.**

2228 A. There is hereby created the Adult Fatality Review Team, referred to in this section as "the  
2229 Team," which shall develop and implement procedures to ensure that adult deaths occurring in the  
2230 Commonwealth are analyzed in a systematic way. The Team shall review the death of any person age 60  
2231 years or older, or any adult age 18 years or older who is incapacitated, who resides in the  
2232 Commonwealth, or who does not reside in the Commonwealth but who is temporarily in the  
2233 Commonwealth and who is in need of temporary or emergency protective services (i) who was the  
2234 subject of an adult protective services or law-enforcement investigation; (ii) whose death was due to  
2235 abuse, neglect, or exploitation or acts suggesting abuse, neglect, or exploitation; or (iii) whose death

2236 came under the jurisdiction of or was investigated by the Office of the Chief Medical Examiner pursuant  
2237 to § 32.1-283. The Team shall not initiate an adult death review until the conclusion of any law-  
2238 enforcement investigation or criminal prosecution. The operating procedures for the review of adult  
2239 deaths shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq.) pursuant to subdivision  
2240 B 17 of § 2.2-4002.

2241 B. The 16-member team shall consist of the following persons or their designees: the Chief  
2242 Medical Examiner, the Commissioner of Behavioral Health and Developmental Services, the  
2243 Commissioner for Aging and Rehabilitative Services, the Director of the Office of Licensure and  
2244 Certification of the Department of Health, and the State Long-Term Care Ombudsman. In addition, the  
2245 Governor shall appoint one representative from each of the following entities: a licensed funeral services  
2246 provider, the Medical Society of Virginia, and local departments of social services, emergency medical  
2247 services, attorneys for the Commonwealth, law-enforcement agencies, nurses specializing in geriatric  
2248 care, psychiatrists specializing in geriatric care, and long-term care providers. The Team further shall  
2249 include two members appointed by the Governor who are advocates for elderly or disabled populations  
2250 in Virginia. The Chief Medical Examiner shall serve as chair of the Team.

2251 After the initial staggering of terms, members appointed by the Governor shall be appointed for a  
2252 term of four years. Appointments to fill vacancies, other than by expiration of a term, shall be for the  
2253 unexpired terms. Vacancies shall be filled in the same manner as the original appointments. All  
2254 members may be reappointed. The Chief Medical Examiner and other ex officio members of the Team  
2255 shall serve terms coincident with their terms of office.

2256 C. Upon the request of the chair of the Team, made after the conclusion of any law-enforcement  
2257 investigation or prosecution, information and records regarding an adult whose death is being reviewed  
2258 by the Team shall be inspected and copied by the chair or his designee, including but not limited to any  
2259 report of the circumstances of the event maintained by any state or local law-enforcement agency or the  
2260 Office of the Chief Medical Examiner and information or records on the adult maintained by any facility  
2261 that provided services to the adult, by any social services agency, or by any court. Information, records,  
2262 or reports maintained by any attorney for the Commonwealth shall be made available for inspection and

2263 copying by the chair or his designee pursuant to procedures that shall be developed by the Chief Medical  
2264 Examiner and the Commonwealth Attorneys Services Council established by § 2.2-2617. In addition, a  
2265 health care provider shall provide the Team, upon request, with access to the health and mental health  
2266 records of (i) the adult whose death is subject to review, without authorization; (ii) any adult relative of  
2267 the deceased, with authorization; and (iii) any minor child of the deceased, with the authorization of the  
2268 minor's parent or guardian. The chair of the Team also may copy and inspect the presentence report,  
2269 prepared pursuant to § 19.2-299, of any person convicted of a crime that led to the death of the adult  
2270 who is the subject of review by the Team.

2271 D. All information obtained or generated by the Team regarding a review shall be confidential  
2272 and excluded from the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) pursuant to subdivision  
2273 [9.7](#) of § 2.2-3705.5. Such information shall not be subject to subpoena or discovery or be admissible in  
2274 any civil or criminal proceeding. If available from other sources, however, such information and records  
2275 shall not be immune from subpoena, discovery, or introduction into evidence when obtained through  
2276 such other sources solely because the information and records were presented to the Team during an  
2277 adult death review. The Team shall compile all information collected during a review. The findings of  
2278 the Team may be disclosed or published in statistical or other form, but shall not identify any  
2279 individuals. The portions of meetings in which individual adult death cases are discussed by the Team  
2280 shall be closed pursuant to subdivision A 21 of § 2.2-3711.

2281 E. All Team members and other persons attending closed Team meetings, including any persons  
2282 presenting information or records on specific fatalities, shall execute a sworn statement to honor the  
2283 confidentiality of the information, records, discussions, and opinions disclosed during meetings at which  
2284 the Team reviews a specific death. No Team member or other person who participates in a review shall  
2285 be required to make any statement regarding the review or any information collected during the review.  
2286 Upon conclusion of a review, all information and records concerning the victim and the family shall be  
2287 shredded or otherwise destroyed in order to ensure confidentiality. Violations of this subsection are  
2288 punishable as a Class 3 misdemeanor.

2289 F. Upon notification of an adult death, any state or local government agency or facility that  
2290 provided services to the adult or maintained records on the adult or the adult's family shall retain the  
2291 records for the longer of 12 months or until such time as the Team has completed its review of the case.

2292 G. The Team shall compile an annual report by October 1 of each year that shall be made  
2293 available to the Governor and the General Assembly. The annual report shall include any policy,  
2294 regulatory, or budgetary recommendations developed by the Team. Any statistical compilations  
2295 prepared by the Team shall be public record and shall not contain any personally identifying  
2296 information.

2297 **§ 32.1-283.6. Local and regional adult fatality review teams established; membership;**  
2298 **authority; confidentiality; immunity.**

2299 A. Upon the initiative of any local or regional law-enforcement agency, department of social  
2300 services, emergency medical services agency, attorney for the Commonwealth's office, community  
2301 services board, or official with the Adult Protective Services Unit established pursuant to § 51.5-148,  
2302 local or regional adult fatality review teams may be established for the purpose of conducting  
2303 contemporaneous reviews of local adult deaths in order to develop interventions and strategies for  
2304 prevention specific to the locality or region. For the purposes of this section, the team may review the  
2305 death of any person age 60 years or older, or any adult age 18 years or older who is incapacitated, who  
2306 resides in the Commonwealth and who is in need of temporary or emergency protective services (i) who  
2307 was the subject of an adult protective services or law-enforcement investigation; (ii) whose death was  
2308 due to abuse, neglect, or exploitation or acts suggesting abuse, neglect, or exploitation; or (iii) whose  
2309 death came under the jurisdiction of or was investigated by the Office of the Chief Medical Examiner as  
2310 occurring in any suspicious, unusual, or unnatural manner, pursuant to § 32.1-283. Each team shall  
2311 establish rules and procedures to govern the review process. Agencies may share information but shall  
2312 be bound by confidentiality and execute a sworn statement to honor the confidentiality of the  
2313 information they share. A violation of this subsection is punishable as a Class 3 misdemeanor. The  
2314 Office of the Chief Medical Examiner shall develop a model protocol for the development and

2315 implementation of local or regional adult fatality review teams and such model protocol shall include  
2316 relevant procedures for conducting reviews of adult fatalities.

2317 B. Local and regional teams may be composed of the following persons from the localities  
2318 represented on a particular board or their designees: a medical examiner appointed pursuant to § 32.1-  
2319 282, a local adult protective services official, a local social services official, a director of the relevant  
2320 local or district health department, an executive director of the local area agency on aging or other  
2321 department representing the interests of the elderly or disabled, a chief law-enforcement officer, the  
2322 attorney for the Commonwealth, an executive director of the local community services board or other  
2323 local mental health agency, a local judge, and such additional persons as may be appointed to serve by  
2324 the chair of the local or regional team. The chair shall be elected from among the designated  
2325 membership. The additional members appointed by the chair may include, but are not restricted to,  
2326 representatives of local human services agencies, local health care professionals specializing in geriatric  
2327 care or care of incapacitated adults, local emergency medical services personnel, local long-term care  
2328 providers, representatives of local advocacy or service organizations for elderly or disabled populations,  
2329 experts in forensic medicine and pathology, local funeral services providers, local centers for  
2330 independent living, local long-term care ombudsmen, and representatives of the local bar.

2331 C. Each local or regional team shall establish operating procedures to govern the review process  
2332 prior to conducting the first adult fatality review. The review of a death shall be delayed until any  
2333 criminal investigations connected with the death are completed or the Commonwealth consents to the  
2334 commencement of such review prior to the completion of the criminal investigation.

2335 D. All information and records obtained or created regarding a review of a fatality shall be  
2336 confidential and shall be excluded from the Virginia Freedom of Information Act (§ 2.2-3700 et seq.)  
2337 pursuant to subdivision 9.7 of § 2.2-3705.5. All such information and records shall be used by the team  
2338 only in the exercise of its proper purpose and function and shall not be disclosed. Such information and  
2339 records shall not be subject to subpoena, subpoena duces tecum, discovery, or introduction into evidence  
2340 when obtained through such other sources solely because the information and records were presented to  
2341 the team during the fatality review. No person who participated in the review and no member of the



2342 team shall be required to make any statement as to what transpired during the review or what  
2343 information was collected during the review. Upon the conclusion of the fatality review, all information  
2344 and records concerning the victim and family shall be returned to the originating agency or destroyed.  
2345 However, the findings of the team may be disclosed or published in statistical or other form that does  
2346 not identify any individuals. The portions of meetings in which individual cases are discussed by the  
2347 team shall be closed pursuant to subdivision A 21 of § 2.2-3711. All team members, persons attending  
2348 closed team meetings, and persons presenting information and records on specific fatalities to the team  
2349 during closed meetings shall execute a sworn statement to honor the confidentiality of the information,  
2350 records, discussions, and opinions disclosed during any closed meeting to review a specific death. A  
2351 violation of this subsection is punishable as a Class 3 misdemeanor.

2352 E. Members of teams, as well as their agents and employees, shall be immune from civil liability  
2353 for any act or omission made in connection with participation in an adult fatality review team review,  
2354 unless such act or omission was the result of gross negligence or willful misconduct. Any organization,  
2355 institution, or person furnishing information, data, testimony, reports, or records to review teams as part  
2356 of such review shall be immune from civil liability for any act or omission in furnishing such  
2357 information, unless such act or omission was the result of gross negligence or willful misconduct.

2358 **§ 44-146.18. Department of Emergency Services continued as Department of Emergency**  
2359 **Management; administration and operational control; coordinator and other personnel; powers**  
2360 **and duties.**

2361 A. The State Office of Emergency Services is continued and shall hereafter be known as the  
2362 Department of Emergency Management. Wherever the words "State Department of Emergency  
2363 Services" are used in any law of the Commonwealth, they shall mean the Department of Emergency  
2364 Management. During a declared emergency this Department shall revert to the operational control of the  
2365 Governor. The Department shall have a coordinator who shall be appointed by and serve at the pleasure  
2366 of the Governor and also serve as State Emergency Planning Director. The Department shall employ the  
2367 professional, technical, secretarial, and clerical employees necessary for the performance of its  
2368 functions.

2369 B. The Department of Emergency Management shall in the administration of emergency services  
2370 and disaster preparedness programs:

2371 1. In coordination with political subdivisions and state agencies, ensure that the Commonwealth  
2372 has up-to-date assessments and preparedness plans to prevent, respond to and recover from all disasters  
2373 including acts of terrorism;

2374 2. Conduct a statewide emergency management assessment in cooperation with political  
2375 subdivisions, private industry and other public and private entities deemed vital to preparedness, public  
2376 safety and security. The assessment shall include a review of emergency response plans, which include  
2377 the variety of hazards, natural and man-made. The assessment shall be updated annually;

2378 3. Submit to the Governor and to the General Assembly, no later than the first day of each  
2379 regular session of the General Assembly, an annual executive summary and report on the status of  
2380 emergency management response plans throughout the Commonwealth and other measures taken or  
2381 recommended to prevent, respond to and recover from disasters, including acts of terrorism. This report  
2382 shall be made available to the Division of Legislative Automated Systems for the processing of  
2383 legislative documents and reports. Information submitted in accordance with the procedures set forth in  
2384 subdivision [4.14](#) of § 2.2-3705.2 shall not be disclosed unless:

2385 a. It is requested by law-enforcement authorities in furtherance of an official investigation or the  
2386 prosecution of a criminal act;

2387 b. The agency holding the record is served with a proper judicial order; or

2388 c. The agency holding the record has obtained written consent to release the information from the  
2389 Department of Emergency Management;

2390 4. Promulgate plans and programs that are conducive to adequate disaster mitigation  
2391 preparedness, response and recovery programs;

2392 5. Prepare and maintain a State Emergency Operations Plan for disaster response and recovery  
2393 operations that assigns primary and support responsibilities for basic emergency services functions to  
2394 state agencies, organizations and personnel as appropriate;

- 2395           6. Coordinate and administer disaster mitigation, preparedness, response and recovery plans and  
2396 programs with the proponent federal, state and local government agencies and related groups;
- 2397           7. Provide guidance and assistance to state agencies and units of local government in developing  
2398 and maintaining emergency management and continuity of operations (COOP) programs, plans and  
2399 systems;
- 2400           8. Make necessary recommendations to agencies of the federal, state, or local governments on  
2401 preventive and preparedness measures designed to eliminate or reduce disasters and their impact;
- 2402           9. Determine requirements of the Commonwealth and its political subdivisions for those  
2403 necessities needed in the event of a declared emergency which are not otherwise readily available;
- 2404           10. Assist state agencies and political subdivisions in establishing and operating training  
2405 programs and programs of public information and education regarding emergency services and disaster  
2406 preparedness activities;
- 2407           11. Consult with the Board of Education regarding the development and revision of a model  
2408 school crisis and emergency management plan for the purpose of assisting public schools in  
2409 establishing, operating, and maintaining emergency services and disaster preparedness activities;
- 2410           12. Consult with the State Council of Higher Education in the development and revision of a  
2411 model institutional crisis and emergency management plan for the purpose of assisting public and  
2412 private two-year and four-year institutions of higher education in establishing, operating, and  
2413 maintaining emergency services and disaster preparedness activities and, as needed, in developing an  
2414 institutional crisis and emergency management plan pursuant to § 23.1-804;
- 2415           13. Develop standards, provide guidance and encourage the maintenance of local and state  
2416 agency emergency operations plans, which shall include the requirement for a provision that the  
2417 Department of Criminal Justice Services and the Virginia Criminal Injuries Compensation Fund be  
2418 contacted immediately to deploy assistance in the event of an emergency as defined in the emergency  
2419 response plan when there are victims as defined in § 19.2-11.01. The Department of Criminal Justice  
2420 Services and the Virginia Criminal Injuries Compensation Fund shall be the lead coordinating agencies

2421 for those individuals determined to be victims, and the plan shall also contain current contact  
2422 information for both agencies;

2423 14. Prepare, maintain, coordinate or implement emergency resource management plans and  
2424 programs with federal, state and local government agencies and related groups, and make such surveys  
2425 of industries, resources, and facilities within the Commonwealth, both public and private, as are  
2426 necessary to carry out the purposes of this chapter;

2427 15. Coordinate with the federal government and any public or private agency or entity in  
2428 achieving any purpose of this chapter and in implementing programs for disaster prevention, mitigation,  
2429 preparation, response, and recovery;

2430 16. Establish guidelines pursuant to § 44-146.28, and administer payments to eligible applicants  
2431 as authorized by the Governor;

2432 17. Coordinate and be responsible for the receipt, evaluation, and dissemination of emergency  
2433 services intelligence pertaining to all probable hazards affecting the Commonwealth;

2434 18. Coordinate intelligence activities relating to terrorism with the Department of State Police;  
2435 and

2436 19. Develop an emergency response plan to address the needs of individuals with household pets  
2437 and service animals in the event of a disaster and assist and coordinate with local agencies in developing  
2438 an emergency response plan for household pets and service animals.

2439 The Department of Emergency Management shall ensure that all such plans, assessments, and  
2440 programs required by this subsection include specific preparedness for, and response to, disasters  
2441 resulting from electromagnetic pulses and geomagnetic disturbances.

2442 C. The Department of Emergency Management shall during a period of impending emergency or  
2443 declared emergency be responsible for:

2444 1. The receipt, evaluation, and dissemination of intelligence pertaining to an impending or actual  
2445 disaster;

2446 2. Providing facilities from which state agencies and supporting organizations may conduct  
2447 emergency operations;

2448 3. Providing an adequate communications and warning system capable of notifying all political  
2449 subdivisions in the Commonwealth of an impending disaster within a reasonable time;

2450 4. Establishing and maintaining liaison with affected political subdivisions;

2451 5. Determining requirements for disaster relief and recovery assistance;

2452 6. Coordinating disaster response actions of federal, state and volunteer relief agencies;

2453 7. Coordinating and providing guidance and assistance to affected political subdivisions to  
2454 ensure orderly and timely response to and recovery from disaster effects.

2455 D. The Department of Emergency Management shall be provided the necessary facilities and  
2456 equipment needed to perform its normal day-to-day activities and coordinate disaster-related activities of  
2457 the various federal, state, and other agencies during a state of emergency declaration by the Governor or  
2458 following a major disaster declaration by the President.

2459 E. The Department of Emergency Management is authorized to enter into all contracts and  
2460 agreements necessary or incidental to performance of any of its duties stated in this section or otherwise  
2461 assigned to it by law, including contracts with the United States, other states, agencies and government  
2462 subdivisions of the Commonwealth, and other appropriate public and private entities.

2463 F. The Department of Emergency Management shall encourage private industries whose goods  
2464 and services are deemed vital to the public good to provide annually updated preparedness assessments  
2465 to the local coordinator of emergency management on or before April 1 of each year, to facilitate overall  
2466 Commonwealth preparedness. For the purposes of this section, "private industry" means companies,  
2467 private hospitals, and other businesses or organizations deemed by the State Coordinator of Emergency  
2468 Management to be essential to the public safety and well-being of the citizens of the Commonwealth.

2469 G. The Department of Emergency Management shall establish a Coordinator of Search and  
2470 Rescue. Powers and duties of the Coordinator shall include:

2471 1. Coordinating the search and rescue function of the Department of Emergency Management;

2472 2. Coordinating with local, state, and federal agencies involved in search and rescue;

2473 3. Coordinating the activities of search and rescue organizations involved in search and rescue;

2474 4. Maintaining a register of search and rescue certifications, training, and responses;

2475 5. Establishing a memorandum of understanding with the Virginia Search and Rescue Council  
2476 and its respective member agencies regarding search and rescue efforts;

2477 6. Providing on-scene search and rescue coordination when requested by an authorized person;

2478 7. Providing specialized search and rescue training to police, fire-rescue, EMS, emergency  
2479 managers, volunteer search and rescue responders, and others who might have a duty to respond to a  
2480 search and rescue emergency;

2481 8. Gathering and maintaining statistics on search and rescue in the Commonwealth;

2482 9. Compiling, maintaining, and making available an inventory of search and rescue resources  
2483 available in the Commonwealth;

2484 10. Periodically reviewing search and rescue cases and developing best professional practices;  
2485 and

2486 11. Providing an annual report to the Secretary of Public Safety and Homeland Security on the  
2487 current readiness of Virginia's search and rescue efforts.

2488 Nothing in this chapter shall be construed as authorizing the Department of Emergency  
2489 Management to take direct operational responsibilities from local, state, or federal law enforcement in  
2490 the course of search and rescue or missing person cases.

2491 **§ 44-146.22. Development of measures to prevent or reduce harmful consequences of**  
2492 **disasters; disclosure of information.**

2493 A. In addition to disaster prevention measures included in state, local and interjurisdictional  
2494 emergency operations plans, the Governor shall consider, on a continuing basis, hazard mitigation or  
2495 other measures that could be taken to prevent or reduce the harmful consequences of disasters. At his  
2496 direction, and pursuant to any other authority, state agencies, including, but not limited to, those charged  
2497 with responsibilities in connection with floodplain management, stream encroachment and flow  
2498 regulation, weather modification, fire prevention and control, air quality, public works, critical  
2499 infrastructure protection, land use and land-use planning, and construction standards, shall make studies  
2500 of disaster prevention. The Governor, from time to time, shall make recommendations to the General

2501 Assembly, local governments, and other appropriate public and private entities as may facilitate  
2502 measures for prevention or reduction of the harmful consequences of disasters.

2503 B. The Governor or agencies acting on his behalf may receive information, voluntarily submitted  
2504 from both public and nonpublic entities, related to the protection of the nation's critical infrastructure  
2505 sectors and components that are located in Virginia or affect the health, safety, and welfare of the  
2506 citizens of Virginia. Information submitted by any public or nonpublic entity in accordance with the  
2507 procedures set forth in subdivision [4.14](#) of § 2.2-3705.2 shall not be disclosed unless:

2508 1. It is requested by law-enforcement authorities in furtherance of an official investigation or the  
2509 prosecution of a criminal act;

2510 2. The agency holding the record is served with a proper judicial order; or

2511 3. The agency holding the record has obtained the written consent to release the information  
2512 from the entity voluntarily submitting it.

2513 **§ 54.1-2517. Health Practitioners' Monitoring Program Committee; certain meetings,**  
2514 **decisions to be excepted from the Freedom of Information Act; confidentiality of records;**  
2515 **immunity from liability.**

2516 A. The Health Practitioners' Monitoring Program Committee shall consist of nine persons  
2517 appointed by the Director to advise and assist in the operation of the Program, of whom eight shall be  
2518 licensed, certified, or registered practitioners and one shall be a citizen member. Of the members who  
2519 are licensed, certified, or registered practitioners, at least one shall be licensed to practice medicine or  
2520 osteopathy in Virginia and engaged in active clinical practice, at least one shall be a registered nurse  
2521 engaged in active practice, and all shall be knowledgeable about impairment and rehabilitation,  
2522 particularly as related to the monitoring of health care practitioners. The Committee shall have the  
2523 following powers and duties:

2524 1. To determine, in accordance with the regulations, eligibility to enter into the Program;

2525 2. To determine, in accordance with the regulations, those Program participants who are eligible  
2526 for stayed disciplinary action;

2527 3. To enter into written contracts with practitioners which may include, among other terms and  
2528 conditions, withdrawal from practice or limitations on the scope of the practice for a period of time;

2529 4. To report to the Director and the health regulatory boards as necessary on the status of  
2530 applicants for and participants in the Program;

2531 5. To report to the Director, at least annually, on the performance of the Program; and

2532 6. To assist the Director in carrying out the provisions of this chapter.

2533 B. Records of the Program, to the extent such records identify individual practitioners in the  
2534 Program, shall be privileged and confidential, and shall not be disclosed consistent with the Virginia  
2535 Freedom of Information Act (§ 2.2-3700 et seq.). Such records shall be used only in the exercise of the  
2536 proper functions as set forth in this chapter and shall not be public records nor shall such records be  
2537 subject to court order, except as provided in subdivision C 4, or be subject to discovery or introduction  
2538 as evidence in any civil, criminal, or administrative proceedings except those conducted by a health  
2539 regulatory board.

2540 C. Notwithstanding the provisions of subsection B and of subdivision ~~11.2~~ 2 of § 2.2-3705.5, the  
2541 Committee may disclose such records relative to an impaired practitioner only:

2542 1. When disclosure of the information is essential to the monitoring needs of the impaired  
2543 practitioner;

2544 2. When release of the information has been authorized in writing by the impaired practitioner;

2545 3. To a health regulatory board within the Department of Health Professions; or

2546 4. When an order by a court of competent jurisdiction has been granted, upon a showing of good  
2547 cause therefor, including the need to avert a substantial risk of death or serious bodily harm. In assessing  
2548 good cause, the court shall weigh the public interest and the need for disclosure against the injury to the  
2549 patient, to the physician-patient relationship, and to the treatment services. Upon the granting of such  
2550 order, the court, in determining the extent to which any disclosure of all or any part of any record is  
2551 necessary, shall impose appropriate protections against unauthorized disclosures.

2552 D. Pursuant to subdivision A 24 of § 2.2-3711, the proceedings of the Committee which in any  
2553 way pertain or refer to a specific practitioner who may be, or who is actually, impaired and who may be



2554 or is, by reason of such impairment, subject to disciplinary action by the relevant board shall be  
2555 excluded from the requirements of the Freedom of Information Act (§ 2.2-3700 et seq.) and may be  
2556 closed. Such proceedings shall be privileged and confidential.

2557 E. The members of the Committee shall be immune from liability resulting from the exercise of  
2558 the powers and duties of the Committee as provided in § 8.01-581.13.

2559 **§ 54.1-2523. Confidentiality of data; disclosure of information; discretionary authority of**  
2560 **Director.**

2561 A. All data, records, and reports relating to the prescribing and dispensing of covered substances  
2562 to recipients and any abstracts from such data, records, and reports that are in the possession of the  
2563 Prescription Monitoring Program pursuant to this chapter and any material relating to the operation or  
2564 security of the program shall be confidential and shall be exempt from the Virginia Freedom of  
2565 Information Act (§ 2.2-3700 et seq.) pursuant to subdivision ~~15~~ 2 of § 2.2-3705.5. Records in possession  
2566 of the Prescription Monitoring Program shall not be available for civil subpoena, nor shall such records  
2567 be disclosed, discoverable, or compelled to be produced in any civil proceeding, nor shall such records  
2568 be deemed admissible as evidence in any civil proceeding for any reason. Further, the Director shall  
2569 only have discretion to disclose any such information as provided in subsections B and C.

2570 B. Upon receiving a request for information in accordance with the Department's regulations and  
2571 in compliance with applicable federal law and regulations, the Director shall disclose the following:

2572 1. Information relevant to a specific investigation of a specific recipient or of a specific dispenser  
2573 or prescriber to an agent who has completed the Virginia State Police Drug Diversion School designated  
2574 by the superintendent of the Department of State Police or designated by the chief law-enforcement  
2575 officer of any county, city, or town or campus police department to conduct drug diversion  
2576 investigations pursuant to § 54.1-3405.

2577 2. Information relevant to an investigation or inspection of or allegation of misconduct by a  
2578 specific person licensed, certified, or registered by or an applicant for licensure, certification, or  
2579 registration by a health regulatory board; information relevant to a disciplinary proceeding before a  
2580 health regulatory board or in any subsequent trial or appeal of an action or board order to designated

2581 employees of the Department of Health Professions; or to designated persons operating the Health  
2582 Practitioners' Monitoring Program pursuant to Chapter 25.1 (§ 54.1-2515 et seq.).

2583 3. Information relevant to the proceedings of any investigatory grand jury or special grand jury  
2584 that has been properly impaneled in accordance with the provisions of Chapter 13 (§ 19.2-191 et seq.) of  
2585 Title 19.2.

2586 4. Information relevant to a specific investigation of a specific recipient, dispenser, or prescriber  
2587 to an agent of a federal law-enforcement agency with authority to conduct drug diversion investigations.

2588 5. Information relevant to a specific investigation, supervision, or monitoring of a specific  
2589 recipient for purposes of the administration of criminal justice pursuant to Chapter 1 (§ 9.1-100 et seq.)  
2590 of Title 9.1 to a probation or parole officer as described in Article 2 (§ 53.1-141 et seq.) of Chapter 4 of  
2591 Title 53.1 or a local community-based probation officer as described in § 9.1-176.1 who has completed  
2592 the Virginia State Police Drug Diversion School designated by the Director of the Department of  
2593 Corrections or his designee.

2594 C. In accordance with the Department's regulations and applicable federal law and regulations,  
2595 the Director may, in his discretion, disclose:

2596 1. Information in the possession of the program concerning a recipient who is over the age of 18  
2597 to that recipient. The information shall be mailed to the street or mailing address indicated on the  
2598 recipient request form.

2599 2. Information on a specific recipient to a prescriber, as defined in this chapter, for the purpose of  
2600 establishing the treatment history of the specific recipient when such recipient is either under care and  
2601 treatment by the prescriber or the prescriber is consulting on or initiating treatment of such recipient. In  
2602 a manner specified by the Director in regulation, notice shall be given to patients that information may  
2603 be requested by the prescriber from the Prescription Monitoring Program.

2604 3. Information on a specific recipient to a dispenser for the purpose of establishing a prescription  
2605 history to assist the dispenser in (i) determining the validity of a prescription in accordance with § 54.1-  
2606 3303 or (ii) providing clinical consultation on the care and treatment of the recipient. In a manner

2607 specified by the Director in regulation, notice shall be given to patients that information may be  
2608 requested by the dispenser from the Prescription Monitoring Program.

2609 4. Information relevant to an investigation or regulatory proceeding of a specific dispenser or  
2610 prescriber to other regulatory authorities concerned with granting, limiting or denying licenses,  
2611 certificates or registrations to practice a health profession when such regulatory authority licenses such  
2612 dispenser or prescriber or such dispenser or prescriber is seeking licensure by such other regulatory  
2613 authority.

2614 5. Information relevant to an investigation relating to a specific dispenser or prescriber who is a  
2615 participating provider in the Virginia Medicaid program or information relevant to an investigation  
2616 relating to a specific recipient who is currently eligible for and receiving or who has been eligible for  
2617 and has received medical assistance services to the Medicaid Fraud Control Unit of the Office of the  
2618 Attorney General or to designated employees of the Department of Medical Assistance Services, as  
2619 appropriate.

2620 6. Information relevant to determination of the cause of death of a specific recipient to the  
2621 designated employees of the Office of the Chief Medical Examiner.

2622 7. Information for the purpose of bona fide research or education to qualified personnel;  
2623 however, data elements that would reasonably identify a specific recipient, prescriber, or dispenser shall  
2624 be deleted or redacted from such information prior to disclosure. Further, release of the information shall  
2625 only be made pursuant to a written agreement between such qualified personnel and the Director in  
2626 order to ensure compliance with this subdivision.

2627 8. Information relating to prescriptions for covered substances issued by a specific prescriber,  
2628 which have been dispensed and reported to the Program, to that prescriber.

2629 9. Information about a specific recipient who is a member of a Virginia Medicaid managed care  
2630 program to a physician or pharmacist licensed in the Commonwealth and employed by the Virginia  
2631 Medicaid managed care program. Such information shall only be used to determine eligibility for and to  
2632 manage the care of the specific recipient in a Patient Utilization Management Safety or similar program.  
2633 Notice shall be given to recipients that information may be requested by a licensed physician or

2634 pharmacist employed by the Virginia Medicaid managed care program from the Prescription Monitoring  
2635 Program.

2636 10. (Expires July 1, 2022) Information to the Board of Medicine about prescribers who meet a  
2637 certain threshold for prescribing covered substances for the purpose of requiring relevant continuing  
2638 education. The threshold shall be determined by the Board of Medicine in consultation with the  
2639 Program.

2640 D. The Director may enter into agreements for mutual exchange of information among  
2641 prescription monitoring programs in other jurisdictions, which shall only use the information for  
2642 purposes allowed by this chapter.

2643 E. This section shall not be construed to supersede the provisions of § 54.1-3406 concerning the  
2644 divulging of confidential records relating to investigative information.

2645 F. Confidential information that has been received, maintained or developed by any board or  
2646 disclosed by the board pursuant to subsection A shall not, under any circumstances, be available for  
2647 discovery or court subpoena or introduced into evidence in any medical malpractice suit or other action  
2648 for damages arising out of the provision of or failure to provide services. However, this subsection shall  
2649 not be construed to inhibit any investigation or prosecution conducted pursuant to Article 1 (§ 18.2-247  
2650 et seq.) of Chapter 7 of Title 18.2.

2651 **2. That the provisions of § 2.2-3704, subdivisions 10 and 14 of §2.2-3705.2, subdivisions 2 and 3 of**  
2652 **§ 2.2-3705.5, and subdivision 29 of §2.2-3705.6, as amended by this act, are declaratory of existing**  
2653 **law.**

2654 #