

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact §§ 2.2-3704, 2.2-3706, 2.2-3711, 2.2-3714, 19.2-174.1, and 19.2-368.3 of*
 3 *the Code of Virginia and to amend the Code of Virginia by adding a section numbered 2.2-3706.1,*
 4 *relating to the Virginia Freedom of Information Act; law-enforcement criminal incident information;*
 5 *criminal investigative files.*

6 [H 2004]

7 Approved

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

9 **1. That §§ 2.2-3704, 2.2-3706, 2.2-3711, 2.2-3714, 19.2-174.1, and 19.2-368.3 of the Code of Virginia**
 10 **are amended and reenacted and that the Code of Virginia is amended by adding a section**
 11 **numbered 2.2-3706.1 as follows:**

12 **§ 2.2-3704. Public records to be open to inspection; procedure for requesting records and**
 13 **responding to request; charges; transfer of records for storage, etc.**

14 A. Except as otherwise specifically provided by law, all public records shall be open to citizens of
 15 the Commonwealth, representatives of newspapers and magazines with circulation in the Commonwealth,
 16 and representatives of radio and television stations broadcasting in or into the Commonwealth during the
 17 regular office hours of the custodian of such records. Access to such records shall be provided by the
 18 custodian in accordance with this chapter by inspection or by providing copies of the requested records,
 19 at the option of the requester. The custodian may require the requester to provide his name and legal
 20 address. The custodian of such records shall take all necessary precautions for their preservation and
 21 safekeeping.

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

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

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

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

37 4. It is not practically possible to provide the requested records or to determine whether they are
 38 available within the five-work-day period. Such response shall specify the conditions that make a
 39 response impossible. If the response is made within five working days, the public body shall have an
 40 additional seven work days *or, in the case of a request for criminal investigative files pursuant to*
 41 *§ 2.2-3706.1, 60 work days* in which to provide one of the four preceding responses.

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

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

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

53 F. A public body may make reasonable charges not to exceed its actual cost incurred in accessing,
 54 duplicating, supplying, or searching for the requested records. No public body shall impose any
 55 extraneous, intermediary, or surplus fees or expenses to recoup the general costs associated with creating
 56 or maintaining records or transacting the general business of the public body. Any duplicating fee

57 charged by a public body shall not exceed the actual cost of duplication. The public body may also
 58 make a reasonable charge for the cost incurred in supplying records produced from a geographic
 59 information system at the request of anyone other than the owner of the land that is the subject of the
 60 request. However, such charges shall not exceed the actual cost to the public body in supplying such
 61 records, except that the public body may charge, on a pro rata per acre basis, for the cost of creating
 62 topographical maps developed by the public body, for such maps or portions thereof, which encompass
 63 a contiguous area greater than 50 acres. All charges for the supplying of requested records shall be
 64 estimated in advance at the request of the citizen. The period within which the public body shall
 65 respond under this section shall be tolled for the amount of time that elapses between notice of the cost
 66 estimate and the response of the requester. If the public body receives no response from the requester
 67 within 30 days of sending the cost estimate, the request shall be deemed to be withdrawn.

68 G. Public records maintained by a public body in an electronic data processing system, computer
 69 database, or any other structured collection of data shall be made available to a requester at a reasonable
 70 cost, not to exceed the actual cost in accordance with subsection F. When electronic or other databases
 71 are combined or contain exempt and nonexempt records, the public body may provide access to the
 72 exempt records if not otherwise prohibited by law, but shall provide access to the nonexempt records as
 73 provided by this chapter.

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

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

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

93 J. In the event a public body has transferred possession of public records to any entity, including but
 94 not limited to any other public body, for storage, maintenance, or archiving, the public body initiating
 95 the transfer of such records shall remain the custodian of such records for purposes of responding to
 96 requests for public records made pursuant to this chapter and shall be responsible for retrieving and
 97 supplying such public records to the requester. In the event a public body has transferred public records
 98 for storage, maintenance, or archiving and such transferring public body is no longer in existence, any
 99 public body that is a successor to the transferring public body shall be deemed the custodian of such
 100 records. In the event no successor entity exists, the entity in possession of the public records shall be
 101 deemed the custodian of the records for purposes of compliance with this chapter, and shall retrieve and
 102 supply such records to the requester. Nothing in this subsection shall be construed to apply to records
 103 transferred to the Library of Virginia for permanent archiving pursuant to the duties imposed by the
 104 Virginia Public Records Act (§ 42.1-76 et seq.). In accordance with § 42.1-79, the Library of Virginia
 105 shall be the custodian of such permanently archived records and shall be responsible for responding to
 106 requests for such records made pursuant to this chapter.

107 **§ 2.2-3706. Disclosure of law-enforcement and criminal records; limitations.**

108 A. Records required to be released. All public bodies engaged in criminal law-enforcement activities
 109 shall provide the following records when requested in accordance with the provisions of this chapter:

110 1. ~~Criminal incident information relating to felony offenses, which shall include:~~

111 a. ~~A general description of the criminal activity reported;~~

112 b. ~~The date the alleged crime was committed;~~

113 e. ~~The general location where the alleged crime was committed;~~

114 d. ~~The identity of the investigating officer or other point of contact; and~~

115 e. ~~A general description of any injuries suffered or property damaged or stolen.~~

116 A verbal response as agreed to by the requester and the public body is sufficient to satisfy the
 117 requirements of subdivision 1.

118 Where the release of criminal incident information, however, is likely to jeopardize an ongoing
 119 investigation or prosecution or the safety of an individual, cause a suspect to flee or evade detection, or
 120 result in the destruction of evidence, such information may be withheld until the above-referenced
 121 damage is no longer likely to occur from release of the information. Nothing in subdivision 1 shall be
 122 construed to authorize the withholding of those portions of such information that are not likely to cause
 123 the above-referenced damage;

124 2. Adult arrestee photographs taken during the initial intake following the arrest and as part of the
 125 routine booking procedure, except when necessary to avoid jeopardizing an investigation in felony cases
 126 until such time as the release of the photograph will no longer jeopardize the investigation;

127 3. 2. Information relative to the identity of any individual, other than a juvenile, who is arrested and
 128 charged, and the status of the charge or arrest; and

129 4. 3. Records of completed unattended death investigations to the parent or spouse of the decedent
 130 or, if there is no living parent or spouse, to the most immediate family member of the decedent,
 131 provided the person is not a person of interest or a suspect. For the purposes of this subdivision,
 132 "unattended death" means a death determined to be a suicide, accidental or natural death where no
 133 criminal charges will be initiated, and "immediate family" means the decedent's personal representative
 134 or, if no personal representative has qualified, the decedent's next of kin in order of intestate succession
 135 as set forth in § 64.2-200.

136 B. Discretionary releases. The following records are excluded from the mandatory disclosure
 137 provisions of this chapter, but may be disclosed by the custodian, in his discretion, except where such
 138 disclosure is prohibited by law:

139 1. Criminal investigative files, defined as any documents and information, including complaints, court
 140 orders, memoranda, notes, diagrams, maps, photographs, correspondence, reports, witness statements, and
 141 evidence, relating to a criminal investigation or prosecution, ~~other than criminal incident information~~
 142 ~~subject to release in accordance with subdivision A 4 not required to be disclosed in accordance with~~
 143 ~~§ 2.2-3706.1;~~

144 2. Reports submitted in confidence to (i) state and local law-enforcement agencies, (ii) investigators
 145 authorized pursuant to Chapter 3.2 (§ 2.2-307 et seq.), and (iii) campus police departments of public
 146 institutions of higher education established pursuant to Article 3 (§ 23.1-809 et seq.) of Chapter 8 of
 147 Title 23.1;

148 3. Records of local law-enforcement agencies relating to neighborhood watch programs that include
 149 the names, addresses, and operating schedules of individual participants in the program that are provided
 150 to such agencies under a promise of anonymity;

151 4. All records of persons imprisoned in penal institutions in the Commonwealth provided such
 152 records relate to the imprisonment;

153 5. Records of law-enforcement agencies, to the extent that such records contain specific tactical
 154 plans, the disclosure of which would jeopardize the safety or security of law-enforcement personnel or
 155 the general public;

156 6. All records of adult persons under (i) investigation or supervision by a local pretrial services
 157 agency in accordance with Article 5 (§ 19.2-152.2 et seq.) of Chapter 9 of Title 19.2; (ii) investigation,
 158 probation supervision, or monitoring by a local community-based probation services agency in
 159 accordance with Article 9 (§ 9.1-173 et seq.) of Chapter 1 of Title 9.1; or (iii) investigation or
 160 supervision by state probation and parole services in accordance with Article 2 (§ 53.1-141 et seq.) of
 161 Chapter 4 of Title 53.1;

162 7. Records of a law-enforcement agency to the extent that they disclose the telephone numbers for
 163 cellular telephones, pagers, or comparable portable communication devices provided to its personnel for
 164 use in the performance of their official duties;

165 8. Those portions of any records containing information related to undercover operations or
 166 protective details that would reveal the staffing, logistics, or tactical plans of such undercover operations
 167 or protective details. Nothing in this subdivision shall operate to allow the withholding of information
 168 concerning the overall costs or expenses associated with undercover operations or protective details;

169 9. Records of (i) background investigations of applicants for law-enforcement agency employment,
 170 (ii) administrative investigations relating to allegations of wrongdoing by employees of a
 171 law-enforcement agency, and (iii) other administrative investigations conducted by law-enforcement
 172 agencies that are made confidential by law;

173 10. The identity of any victim, witness, or undercover officer, or investigative techniques or
 174 procedures. However, the identity of any victim or witness shall be withheld if disclosure is prohibited
 175 or restricted under § 19.2-11.2; and

176 11. Records of the Sex Offender and Crimes Against Minors Registry maintained by the Department
 177 of State Police pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1, including information obtained
 178 from state, local, and regional officials, except to the extent that information is required to be posted on

179 the Internet pursuant to § 9.1-913.

180 C. Prohibited releases. The identity of any individual providing information about a crime or criminal
181 activity under a promise of anonymity shall not be disclosed.

182 D. Noncriminal records. Public bodies (i) engaged in emergency medical services, (ii) engaged in fire
183 protection services, (iii) engaged in criminal law-enforcement activities, or (iv) engaged in processing
184 calls for service or other communications to an emergency 911 system or any other equivalent reporting
185 system may withhold those portions of noncriminal incident or other noncriminal investigative reports or
186 materials that contain identifying information of a personal, medical, or financial nature where the
187 release of such information would jeopardize the safety or privacy of any person. Access to personnel
188 records of persons employed by a law-enforcement agency shall be governed by the provisions of
189 subdivision B 9 of this section and subdivision 1 of § 2.2-3705.1, as applicable.

190 E. Records of any call for service or other communication to an emergency 911 system or
191 communicated with any other equivalent reporting system shall be subject to the provisions of this
192 chapter.

193 F. Conflict resolution. In the event of conflict between this section as it relates to requests made
194 under this section and other provisions of law, this section shall control.

195 **§ 2.2-3706.1. Disclosure of law-enforcement records; criminal incident information and certain**
196 **criminal investigative files; limitations.**

197 A. For purposes of this section:

198 *"Immediate family" means the decedent's personal representative or, if no personal representative*
199 *has qualified, the decedent's next of kin in order of intestate succession as set forth in § 64.2-200.*

200 *"Ongoing" refers to a case in which the prosecution has not been finally adjudicated, the*
201 *investigation continues to gather evidence for a possible future criminal case, and such case would be*
202 *jeopardized by the premature release of evidence.*

203 B. All public bodies engaged in criminal law-enforcement activities shall provide the following
204 records and information when requested in accordance with the provisions of this chapter:

205 1. Criminal incident information relating to felony offenses contained in any report, notes, electronic
206 communication, or other document, including filings through an incident-based reporting system, which
207 shall include:

208 a. A general description of the criminal activity reported;

209 b. The date and time the alleged crime was committed;

210 c. The general location where the alleged crime was committed;

211 d. The identity of the investigating officer or other point of contact;

212 e. A description of any injuries suffered or property damaged or stolen; and

213 f. Any diagrams related to the alleged crime or the location where the alleged crime was committed,
214 except that any diagrams described in subdivision 14 of § 2.2-3705.2 and information therein shall be
215 excluded from mandatory disclosure, but may be disclosed by the custodian in his discretion, except
216 where such disclosure is prohibited by law.

217 A verbal response as agreed to by the requester and the public body is sufficient to satisfy the
218 requirements of this subdivision 1; and

219 2. Criminal investigative files, defined as any documents and information, including complaints, court
220 orders, memoranda, notes, initial incident reports, filings through any incident-based reporting system,
221 diagrams, maps, photographs, correspondence, reports, witness statements, or evidence, relating to a
222 criminal investigation or proceeding that is not ongoing.

223 C. The provisions of subsection B shall not apply if the release of such information:

224 1. Would interfere with a particular ongoing criminal investigation or proceeding in a particularly
225 identifiable manner;

226 2. Would deprive a person of a right to a fair trial or an impartial adjudication;

227 3. Would constitute an unwarranted invasion of personal privacy;

228 4. Would disclose (i) the identity of a confidential source or (ii) in the case of a record compiled by
229 a law-enforcement agency in the course of a criminal investigation, information furnished only by a
230 confidential source;

231 5. Would disclose law-enforcement investigative techniques and procedures, if such disclosure could
232 reasonably be expected to risk circumvention of the law; or

233 6. Would endanger the life or physical safety of any individual.

234 Nothing in this subsection shall be construed to authorize the withholding of those portions of such
235 information that are unlikely to cause any effect listed herein.

236 D. Nothing in this section shall prohibit the disclosure of current anonymized, aggregate location
237 and demographic data collected pursuant to § 52-30.2 or similar data documenting law-enforcement
238 officer encounters with members of the public.

239 No photographic, audio, video, or other record depicting a victim or allowing for a victim to be

240 readily identified, except for transcripts of recorded interviews between a victim and law-enforcement,
 241 shall be released pursuant to subdivision B 2 to anyone except (i) the victim; (ii) members of the
 242 immediate family of the victim, if the victim is deceased; or (iii) the parent or guardian of the victim, if
 243 the victim is a minor.

244 E. In the event of a conflict between this section as it relates to requests made under this section and
 245 other provisions of law, the other provisions of law, including court sealing orders, that restrict
 246 disclosure of criminal investigative files, as defined in subsection B, shall control.

247 **§ 2.2-3711. Closed meetings authorized for certain limited purposes.**

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

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

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

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

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

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

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

277 7. Consultation with legal counsel and briefings by staff members or consultants pertaining to actual
 278 or probable litigation, where such consultation or briefing in open meeting would adversely affect the
 279 negotiating or litigating posture of the public body. For the purposes of this subdivision, "probable
 280 litigation" means litigation that has been specifically threatened or on which the public body or its legal
 281 counsel has a reasonable basis to believe will be commenced by or against a known party. Nothing in
 282 this subdivision shall be construed to permit the closure of a meeting merely because an attorney
 283 representing the public body is in attendance or is consulted on a matter.

284 8. Consultation with legal counsel employed or retained by a public body regarding specific legal
 285 matters requiring the provision of legal advice by such counsel. Nothing in this subdivision shall be
 286 construed to permit the closure of a meeting merely because an attorney representing the public body is
 287 in attendance or is consulted on a matter.

288 9. Discussion or consideration by governing boards of public institutions of higher education of
 289 matters relating to gifts, bequests and fund-raising activities, and of grants and contracts for services or
 290 work to be performed by such institution. However, the terms and conditions of any such gifts, bequests,
 291 grants, and contracts made by a foreign government, a foreign legal entity, or a foreign person and
 292 accepted by a public institution of higher education in the Commonwealth shall be subject to public
 293 disclosure upon written request to the appropriate board of visitors. For the purpose of this subdivision,
 294 (i) "foreign government" means any government other than the United States government or the
 295 government of a state or a political subdivision thereof, (ii) "foreign legal entity" means any legal entity
 296 (a) created under the laws of the United States or of any state thereof if a majority of the ownership of
 297 the stock of such legal entity is owned by foreign governments or foreign persons or if a majority of the
 298 membership of any such entity is composed of foreign persons or foreign legal entities or (b) created
 299 under the laws of a foreign government, and (iii) "foreign person" means any individual who is not a
 300 citizen or national of the United States or a trust territory or protectorate thereof.

301 10. Discussion or consideration by the boards of trustees of the Virginia Museum of Fine Arts, the
302 Virginia Museum of Natural History, the Jamestown-Yorktown Foundation, the Fort Monroe Authority,
303 and The Science Museum of Virginia of matters relating to specific gifts, bequests, and grants from
304 private sources.

305 11. Discussion or consideration of honorary degrees or special awards.

306 12. Discussion or consideration of tests, examinations, or other information used, administered, or
307 prepared by a public body and subject to the exclusion in subdivision 4 of § 2.2-3705.1.

308 13. Discussion, consideration, or review by the appropriate House or Senate committees of possible
309 disciplinary action against a member arising out of the possible inadequacy of the disclosure statement
310 filed by the member, provided the member may request in writing that the committee meeting not be
311 conducted in a closed meeting.

312 14. Discussion of strategy with respect to the negotiation of a hazardous waste siting agreement or to
313 consider the terms, conditions, and provisions of a hazardous waste siting agreement if the governing
314 body in open meeting finds that an open meeting will have an adverse effect upon the negotiating
315 position of the governing body or the establishment of the terms, conditions and provisions of the siting
316 agreement, or both. All discussions with the applicant or its representatives may be conducted in a
317 closed meeting.

318 15. Discussion by the Governor and any economic advisory board reviewing forecasts of economic
319 activity and estimating general and nongeneral fund revenues.

320 16. Discussion or consideration of medical and mental health records subject to the exclusion in
321 subdivision 1 of § 2.2-3705.5.

322 17. Deliberations of the Virginia Lottery Board in a licensing appeal action conducted pursuant to
323 subsection D of § 58.1-4007 regarding the denial or revocation of a license of a lottery sales agent; and
324 discussion, consideration or review of Virginia Lottery matters related to proprietary lottery game
325 information and studies or investigations excluded from disclosure under subdivision 6 of § 2.2-3705.3
326 and subdivision 11 of § 2.2-3705.7.

327 18. Those portions of meetings in which the State Board of Local and Regional Jails discusses or
328 discloses the identity of, or information tending to identify, any prisoner who (i) provides information
329 about crimes or criminal activities, (ii) renders assistance in preventing the escape of another prisoner or
330 in the apprehension of an escaped prisoner, or (iii) voluntarily or at the instance of a prison official
331 renders other extraordinary services, the disclosure of which is likely to jeopardize the prisoner's life or
332 safety.

333 19. Discussion of plans to protect public safety as it relates to terrorist activity or specific
334 cybersecurity threats or vulnerabilities and briefings by staff members, legal counsel, or law-enforcement
335 or emergency service officials concerning actions taken to respond to such matters or a related threat to
336 public safety; discussion of information subject to the exclusion in subdivision 2 or 14 of § 2.2-3705.2,
337 where discussion in an open meeting would jeopardize the safety of any person or the security of any
338 facility, building, structure, information technology system, or software program; or discussion of reports
339 or plans related to the security of any governmental facility, building or structure, or the safety of
340 persons using such facility, building or structure.

341 20. Discussion by the Board of the Virginia Retirement System, acting pursuant to § 51.1-124.30, or
342 of any local retirement system, acting pursuant to § 51.1-803, or by a local finance board or board of
343 trustees of a trust established by one or more local public bodies to invest funds for postemployment
344 benefits other than pensions, acting pursuant to Article 8 (§ 15.2-1544 et seq.) of Chapter 15 of Title
345 15.2, or by the board of visitors of the University of Virginia, acting pursuant to § 23.1-2210, or by the
346 Board of the Virginia College Savings Plan, acting pursuant to § 23.1-706, regarding the acquisition,
347 holding or disposition of a security or other ownership interest in an entity, where such security or
348 ownership interest is not traded on a governmentally regulated securities exchange, to the extent that
349 such discussion (i) concerns confidential analyses prepared for the board of visitors of the University of
350 Virginia, prepared by the retirement system, or a local finance board or board of trustees, or the Virginia
351 College Savings Plan or provided to the retirement system, a local finance board or board of trustees, or
352 the Virginia College Savings Plan under a promise of confidentiality, of the future value of such
353 ownership interest or the future financial performance of the entity, and (ii) would have an adverse
354 effect on the value of the investment to be acquired, held, or disposed of by the retirement system, a
355 local finance board or board of trustees, the board of visitors of the University of Virginia, or the
356 Virginia College Savings Plan. Nothing in this subdivision shall be construed to prevent the disclosure
357 of information relating to the identity of any investment held, the amount invested or the present value
358 of such investment.

359 21. Those portions of meetings in which individual child death cases are discussed by the State Child
360 Fatality Review Team established pursuant to § 32.1-283.1, those portions of meetings in which
361 individual child death cases are discussed by a regional or local child fatality review team established

362 pursuant to § 32.1-283.2, those portions of meetings in which individual death cases are discussed by
 363 family violence fatality review teams established pursuant to § 32.1-283.3, those portions of meetings in
 364 which individual adult death cases are discussed by the state Adult Fatality Review Team established
 365 pursuant to § 32.1-283.5, those portions of meetings in which individual adult death cases are discussed
 366 by a local or regional adult fatality review team established pursuant to § 32.1-283.6, those portions of
 367 meetings in which individual death cases are discussed by overdose fatality review teams established
 368 pursuant to § 32.1-283.7, those portions of meetings in which individual maternal death cases are
 369 discussed by the Maternal Mortality Review Team pursuant to § 32.1-283.8, and those portions of
 370 meetings in which individual death cases of persons with developmental disabilities are discussed by the
 371 Developmental Disabilities Mortality Review Committee established pursuant to § 37.2-314.1.

372 22. Those portions of meetings of the board of visitors of the University of Virginia or the Eastern
 373 Virginia Medical School Board of Visitors, as the case may be, and those portions of meetings of any
 374 persons to whom management responsibilities for the University of Virginia Medical Center or Eastern
 375 Virginia Medical School, as the case may be, have been delegated, in which there is discussed
 376 proprietary, business-related information pertaining to the operations of the University of Virginia
 377 Medical Center or Eastern Virginia Medical School, as the case may be, including business development
 378 or marketing strategies and activities with existing or future joint venturers, partners, or other parties
 379 with whom the University of Virginia Medical Center or Eastern Virginia Medical School, as the case
 380 may be, has formed, or forms, any arrangement for the delivery of health care, if disclosure of such
 381 information would adversely affect the competitive position of the Medical Center or Eastern Virginia
 382 Medical School, as the case may be.

383 23. Discussion or consideration by the Virginia Commonwealth University Health System Authority
 384 or the board of visitors of Virginia Commonwealth University of any of the following: the acquisition or
 385 disposition by the Authority of real property, equipment, or technology software or hardware and related
 386 goods or services, where disclosure would adversely affect the bargaining position or negotiating
 387 strategy of the Authority; matters relating to gifts or bequests to, and fund-raising activities of, the
 388 Authority; grants and contracts for services or work to be performed by the Authority; marketing or
 389 operational strategies plans of the Authority where disclosure of such strategies or plans would adversely
 390 affect the competitive position of the Authority; and members of the Authority's medical and teaching
 391 staffs and qualifications for appointments thereto.

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

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

400 26. Discussion or consideration, by the former Wireless Carrier E-911 Cost Recovery Subcommittee
 401 created pursuant to former § 56-484.15, of trade secrets submitted by CMRS providers, as defined in
 402 § 56-484.12, related to the provision of wireless E-911 service.

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

409 28. Discussion or consideration of information subject to the exclusion in subdivision 11 of
 410 § 2.2-3705.6 by a responsible public entity or an affected locality or public entity, as those terms are
 411 defined in § 33.2-1800, or any independent review panel appointed to review information and advise the
 412 responsible public entity concerning such records.

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

417 30. Discussion or consideration of grant or loan application information subject to the exclusion in
 418 subdivision 17 of § 2.2-3705.6 by the Commonwealth Health Research Board.

419 31. Discussion or consideration by the Commitment Review Committee of information subject to the
 420 exclusion in subdivision 5 of § 2.2-3705.2 relating to individuals subject to commitment as sexually
 421 violent predators under Chapter 9 (§ 37.2-900 et seq.) of Title 37.2.

422 32. Discussion or consideration of confidential proprietary information and trade secrets developed

423 and held by a local public body providing certain telecommunication services or cable television services
424 and subject to the exclusion in subdivision 18 of § 2.2-3705.6. However, the exemption provided by this
425 subdivision shall not apply to any authority created pursuant to the BVU Authority Act (§ 15.2-7200 et
426 seq.).

427 33. Discussion or consideration by a local authority created in accordance with the Virginia Wireless
428 Service Authorities Act (§ 15.2-5431.1 et seq.) of confidential proprietary information and trade secrets
429 subject to the exclusion in subdivision 19 of § 2.2-3705.6.

430 34. Discussion or consideration by the State Board of Elections or local electoral boards of voting
431 security matters made confidential pursuant to § 24.2-410.2 or 24.2-625.1.

432 35. Discussion or consideration by the Forensic Science Board or the Scientific Advisory Committee
433 created pursuant to Article 2 (§ 9.1-1109 et seq.) of Chapter 11 of Title 9.1 of criminal investigative
434 files subject to the exclusion in subdivision B 1 of § 2.2-3706.

435 36. Discussion or consideration by the Brown v. Board of Education Scholarship Committee of
436 information or confidential matters subject to the exclusion in subdivision A 3 of § 2.2-3705.4, and
437 meetings of the Committee to deliberate concerning the annual maximum scholarship award, review and
438 consider scholarship applications and requests for scholarship award renewal, and cancel, rescind, or
439 recover scholarship awards.

440 37. Discussion or consideration by the Virginia Port Authority of information subject to the exclusion
441 in subdivision 1 of § 2.2-3705.6 related to certain proprietary information gathered by or for the Virginia
442 Port Authority.

443 38. Discussion or consideration by the Board of Trustees of the Virginia Retirement System acting
444 pursuant to § 51.1-124.30, by the Investment Advisory Committee appointed pursuant to § 51.1-124.26,
445 by any local retirement system, acting pursuant to § 51.1-803, by the Board of the Virginia College
446 Savings Plan acting pursuant to § 23.1-706, or by the Virginia College Savings Plan's Investment
447 Advisory Committee appointed pursuant to § 23.1-702 of information subject to the exclusion in
448 subdivision 24 of § 2.2-3705.7.

449 39. Discussion or consideration of information subject to the exclusion in subdivision 3 of
450 § 2.2-3705.6 related to economic development.

451 40. Discussion or consideration by the Board of Education of information relating to the denial,
452 suspension, or revocation of teacher licenses subject to the exclusion in subdivision 11 of § 2.2-3705.3.

453 41. Those portions of meetings of the Virginia Military Advisory Council or any commission created
454 by executive order for the purpose of studying and making recommendations regarding preventing
455 closure or realignment of federal military and national security installations and facilities located in
456 Virginia and relocation of such facilities to Virginia, or a local or regional military affairs organization
457 appointed by a local governing body, during which there is discussion of information subject to the
458 exclusion in subdivision 8 of § 2.2-3705.2.

459 42. Discussion or consideration by the Board of Trustees of the Veterans Services Foundation of
460 information subject to the exclusion in subdivision 28 of § 2.2-3705.7 related to personally identifiable
461 information of donors.

462 43. Discussion or consideration by the Virginia Tobacco Region Revitalization Commission of
463 information subject to the exclusion in subdivision 23 of § 2.2-3705.6 related to certain information
464 contained in grant applications.

465 44. Discussion or consideration by the board of directors of the Commercial Space Flight Authority
466 of information subject to the exclusion in subdivision 24 of § 2.2-3705.6 related to rate structures or
467 charges for the use of projects of, the sale of products of, or services rendered by the Authority and
468 certain proprietary information of a private entity provided to the Authority.

469 45. Discussion or consideration of personal and proprietary information related to the resource
470 management plan program and subject to the exclusion in (i) subdivision 25 of § 2.2-3705.6 or (ii)
471 subsection E of § 10.1-104.7. This exclusion shall not apply to the discussion or consideration of records
472 that contain information that has been certified for release by the person who is the subject of the
473 information or transformed into a statistical or aggregate form that does not allow identification of the
474 person who supplied, or is the subject of, the information.

475 46. Discussion or consideration by the Board of Directors of the Virginia Alcoholic Beverage Control
476 Authority of information subject to the exclusion in subdivision 1 of § 2.2-3705.3 related to
477 investigations of applicants for licenses and permits and of licensees and permittees.

478 47. Discussion or consideration of grant, loan, or investment application records subject to the
479 exclusion in subdivision 28 of § 2.2-3705.6 for a grant, loan, or investment pursuant to Article 11
480 (§ 2.2-2351 et seq.) of Chapter 22.

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

484 49. Discussion or consideration of (i) individual sexual assault cases by a sexual assault response
 485 team established pursuant to § 15.2-1627.4, (ii) individual child abuse or neglect cases or sex offenses
 486 involving a child by a child sexual abuse response team established pursuant to § 15.2-1627.5, or (iii)
 487 individual cases involving abuse, neglect, or exploitation of adults as defined in § 63.2-1603 pursuant to
 488 §§ 15.2-1627.5 and 63.2-1605.

489 50. Discussion or consideration by the Board of the Virginia Economic Development Partnership
 490 Authority, the Joint Legislative Audit and Review Commission, or any subcommittees thereof, of the
 491 portions of the strategic plan, marketing plan, or operational plan exempt from disclosure pursuant to
 492 subdivision 33 of § 2.2-3705.7.

493 51. Those portions of meetings of the subcommittee of the Board of the Virginia Economic
 494 Development Partnership Authority established pursuant to subsection F of § 2.2-2237.3 to review and
 495 discuss information received from the Virginia Employment Commission pursuant to subdivision C 2 of
 496 § 60.2-114.

497 52. Discussion or consideration by the Commonwealth of Virginia Innovation Partnership Authority
 498 (the Authority), an advisory committee of the Authority, or any other entity designated by the Authority,
 499 of information subject to the exclusion in subdivision 35 of § 2.2-3705.7.

500 53. Deliberations of the Virginia Lottery Board in a licensing appeal action conducted pursuant to
 501 § 58.1-4105 regarding the denial or revocation of a license of a casino gaming operator and discussion,
 502 consideration, or review of matters related to investigations exempt from disclosure under subdivision 1
 503 of § 2.2-3705.3.

504 54. Deliberations of the Virginia Lottery Board in an appeal conducted pursuant to § 58.1-4007
 505 regarding the denial of, revocation of, suspension of, or refusal to renew a permit related to sports
 506 betting and any discussion, consideration, or review of matters related to investigations excluded from
 507 mandatory disclosure under subdivision 1 of § 2.2-3705.3.

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

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

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

518 E. This section shall not be construed to (i) require the disclosure of any contract between the
 519 Department of Health Professions and an impaired practitioner entered into pursuant to Chapter 25.1
 520 (§ 54.1-2515 et seq.) of Title 54.1 or (ii) require the board of directors of any authority created pursuant
 521 to the Industrial Development and Revenue Bond Act (§ 15.2-4900 et seq.), or any public body
 522 empowered to issue industrial revenue bonds by general or special law, to identify a business or industry
 523 to which subdivision A 5 applies. However, such business or industry shall be identified as a matter of
 524 public record at least 30 days prior to the actual date of the board's authorization of the sale or issuance
 525 of such bonds.

526 **§ 2.2-3714. Violations and penalties.**

527 A. In a proceeding commenced against any officer, employee, or member of a public body under
 528 § 2.2-3713 for a violation of § 2.2-3704, 2.2-3705.1 through 2.2-3705.7, 2.2-3706, 2.2-3706.1, 2.2-3707,
 529 2.2-3708.2, 2.2-3710, 2.2-3711 or 2.2-3712, the court, if it finds that a violation was willfully and
 530 knowingly made, shall impose upon such officer, employee, or member in his individual capacity,
 531 whether a writ of mandamus or injunctive relief is awarded or not, a civil penalty of not less than \$500
 532 nor more than \$2,000, which amount shall be paid into the Literary Fund. For a second or subsequent
 533 violation, such civil penalty shall be not less than \$2,000 nor more than \$5,000.

534 B. In addition to any penalties imposed pursuant to subsection A, if the court finds that any officer,
 535 employee, or member of a public body failed to provide public records to a requester in accordance with
 536 the provisions of this chapter because such officer, employee, or member altered or destroyed the
 537 requested public records with the intent to avoid the provisions of this chapter with respect to such
 538 request prior to the expiration of the applicable record retention period set by the retention regulations
 539 promulgated pursuant to the Virginia Public Records Act (§ 42.1-76 et seq.) by the State Library Board,
 540 the court may impose upon such officer, employee, or member in his individual capacity, whether or not
 541 a writ of mandamus or injunctive relief is awarded, a civil penalty of up to \$100 per record altered or
 542 destroyed, which amount shall be paid into the Literary Fund.

543 C. In addition to any penalties imposed pursuant to subsections A and B, if the court finds that a
 544 public body voted to certify a closed meeting in accordance with subsection D of § 2.2-3712 and such

545 certification was not in accordance with the requirements of clause (i) or (ii) of subsection D of
 546 § 2.2-3712, the court may impose on the public body, whether or not a writ of mandamus or injunctive
 547 relief is awarded, a civil penalty of up to \$1,000, which amount shall be paid into the Literary Fund. In
 548 determining whether a civil penalty is appropriate, the court shall consider mitigating factors, including
 549 reliance of members of the public body on (i) opinions of the Attorney General, (ii) court cases
 550 substantially supporting the rationale of the public body, and (iii) published opinions of the Freedom of
 551 Information Advisory Council.

552 **§ 19.2-174.1. Information required prior to admission to a mental health facility.**

553 Prior to any person being placed into the custody of the Commissioner for evaluation or treatment
 554 pursuant to §§ 19.2-169.2, 19.2-169.3, 19.2-169.6, 19.2-182.2, and 19.2-182.3, and Chapter 9 (§ 37.2-900
 555 et seq.) of Title 37.2, the court or special justice shall provide the Commissioner with the following, if
 556 available: (i) the commitment order, (ii) the names and addresses for the attorney for the
 557 Commonwealth, the attorney for the person and the judge holding jurisdiction over the person, (iii) a
 558 copy of the warrant or indictment, and (iv) a copy of the criminal incident information as defined in §
 559 ~~2.2-3706~~ 2.2-3706.1 or a copy of the arrest report or a summary of the facts relating to the crime. The
 560 party requesting the placement into the Commissioner's custody or, in the case of admissions pursuant to
 561 §§ 19.2-169.3 and 19.2-169.6, and Chapter 9 (§ 37.2-900 et seq.) of Title 37.2, the person having
 562 custody over the defendant or inmate shall gather the above information for submission to the court at
 563 the hearing. If the information is not available at the hearing, it shall be provided by the party
 564 requesting placement or the person having custody directly to the Commissioner within 96 hours of the
 565 person being placed into the Commissioner's custody. If the 96-hour period expires on a Saturday,
 566 Sunday or legal holiday, the 96 hours shall be extended to the next day that is not a Saturday, Sunday
 567 or legal holiday.

568 **§ 19.2-368.3. Powers and duties of Commission.**

569 The Commission shall have the following powers and duties in the administration of the provisions
 570 of this chapter:

571 1. To adopt, promulgate, amend and rescind suitable rules and regulations to carry out the provisions
 572 and purposes of this chapter, to include a distinct policy (i) for the payment of physical evidence
 573 recovery kit examinations and (ii) to require each health care provider as defined in § 8.01-581.1 that
 574 provides services under this chapter to negotiate with the Commission or its designee to establish
 575 prospective agreements relating to rates for payment of claims for such services allowed under
 576 § 19.2-368.11:1, such rates to discharge the obligation to the provider in full except where the provider
 577 is an agency of the Commonwealth and the claimant receives a third party recovery in addition to the
 578 payment from the Fund.

579 2. Notwithstanding the provisions of § §§ 2.2-3706 and 2.2-3706.1, to acquire from the attorneys for
 580 the Commonwealth, State Police, local police departments, sheriffs' departments, and the Chief Medical
 581 Examiner such investigative results, information and data as will enable the Commission to determine if,
 582 in fact, a crime was committed or attempted, and the extent, if any, to which the victim or claimant was
 583 responsible for his own injury. These data shall include prior adult arrest records and juvenile court
 584 disposition records of the offender. For such purposes and in accordance with § 16.1-305, the
 585 Commission may also acquire from the juvenile and domestic relations district courts a copy of the
 586 order of disposition relating to the crime. The use of any information received by the Commission
 587 pursuant to this subdivision shall be limited to carrying out the purposes set forth in this section, and
 588 this information shall be confidential and shall not be disseminated further. The agency from which the
 589 information is requested may submit original reports, portions thereof, summaries, or such other
 590 configurations of information as will comply with the requirements of this section.

591 3. To hear and determine all claims for awards filed with the Commission pursuant to this chapter,
 592 and to reinvestigate or reopen cases as the Commission deems necessary.

593 4. To require and direct medical examination of victims.

594 5. To hold hearings, administer oaths or affirmations, examine any person under oath or affirmation
 595 and to issue summonses requiring the attendance and giving of testimony of witnesses and require the
 596 production of any books, papers, documentary or other evidence. The powers provided in this subsection
 597 may be delegated by the Commission to any member or employee thereof.

598 6. To take or cause to be taken affidavits or depositions within or without the Commonwealth.

599 7. To render each year to the Governor and to the General Assembly a written report of its activities.
 600 This report shall include a detailed section on all unclaimed restitution collected and disbursed to the
 601 victim from the Criminal Injuries Compensation Fund pursuant to subsection I of § 19.2-305.1.

602 8. To accept from the government of the United States grants of federal moneys for disbursement
 603 under the provisions of this chapter.

604 9. To collect and disburse unclaimed restitution pursuant to subsection I of § 19.2-305.1 and develop,
 605 in consultation with circuit court clerks and the Office of the Executive Secretary of the Supreme Court

606 of Virginia, policies and procedures for the receipt, collection, and disbursement of unclaimed restitution
607 to victims of crime.

608 10. To identify and locate victims of crime for whom restitution owed to such victims has been
609 deposited into the Criminal Injuries Compensation Fund pursuant to subsection I of § 19.2-305.1.
610 Notwithstanding the provisions of § §§ 2.2-3706 *and* 2.2-3706.1, the Commission may acquire from the
611 attorneys for the Commonwealth, State Police, local police departments, and sheriffs' departments such
612 information as will enable the Commission to identify and locate such victims. The use of any
613 information received by the Commission pursuant to this subdivision shall be limited to carrying out the
614 purposes set forth in this section, and this information shall be confidential and shall not be
615 disseminated further.

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