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HOUSE BILL NO. 2502
AMENDMENT IN THE NATURE OF A SUBSTITUTE
 (Proposed by the House Committee on General Laws
 on _____)

(Patron Prior to Substitute—Delegate Wiley)

A BILL to amend and reenact §§ 2.2-2040, 2.2-3705.6, and 2.2-3705.7 of the Code of Virginia, relating to Virginia Freedom of Information Act; exclusions; Department of Workforce Development and Advancement.

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-2040, 2.2-3705.6, and 2.2-3705.7 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-2040. Records and reports.

A. Each workforce development program provider shall keep true and accurate training records containing such information as the Department may prescribe. Such records shall be open to inspection and be subject to being copied by the Department or its authorized representatives at any reasonable time and as often as may be necessary. The Department may require from any workforce development program provider any sworn or unsworn reports, with respect to persons employed by it, that the Department deems necessary for the effective administration of this chapter.

B. Notwithstanding the provisions of subsection A, the Department shall, upon written request, furnish the Virginia Economic Development Partnership Authority (the Authority) such information as it may require to facilitate the administration and enforcement by the Authority of performance agreements with businesses that have received incentive awards. Any information provided to the Authority under this subsection shall be confidential pursuant to 20 C.F.R. Part 603 and shall only be disclosed to members of the Authority who are public officials or employees of the Authority for the performance of their official duties. No public official or employee shall disclose any confidential information obtained pursuant to this subsection to nonlegislative citizen members of the Authority or to the public. Any information so provided shall be used by the Authority solely for the purpose of verifying employment and wage claims of those businesses that have received incentive awards.

C. Any information provided to the Department under this section shall be confidential pursuant to § 60.2-114 and 20 C.F.R. Part 603.

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

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

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

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

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

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

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

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

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

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

60 9. Proprietary, commercial or financial information, balance sheets, trade secrets, and revenue and cost
61 projections provided by a private transportation business to the Virginia Department of Transportation and
62 the Department of Rail and Public Transportation for the purpose of conducting transportation studies needed
63 to obtain grants or other financial assistance under the Transportation Equity Act for the 21st Century (P.L.
64 105-178) for transportation projects if disclosure of such information is exempt under the federal Freedom of
65 Information Act or the federal Interstate Commerce Act or other laws administered by the Surface
66 Transportation Board or the Federal Railroad Administration with respect to data provided in confidence to
67 the Surface Transportation Board and the Federal Railroad Administration. However, the exclusion provided
68 by this subdivision shall not apply to any wholly owned subsidiary of a public body.

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

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

80 b. Information provided by a private entity to a responsible public entity, affected jurisdiction, or affected
81 local jurisdiction pursuant to the provisions of the Public-Private Transportation Act of 1995 (§ 33.2-1800 et
82 seq.) or the Public-Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.) if
83 disclosure of such information would reveal (i) trade secrets of the private entity; (ii) financial information of
84 the private entity, including balance sheets and financial statements, that are not generally available to the
85 public through regulatory disclosure or otherwise; or (iii) other information submitted by the private entity
86 where if such information was made public prior to the execution of an interim agreement or a
87 comprehensive agreement, the financial interest or bargaining position of the public or private entity would
88 be adversely affected. In order for the information specified in clauses (i), (ii), and (iii) to be excluded from
89 the provisions of this chapter, the private entity shall make a written request to the responsible public entity:

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

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

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

94 The responsible public entity shall determine whether the requested exclusion from disclosure is
95 necessary to protect the trade secrets or financial information of the private entity. To protect other
96 information submitted by the private entity from disclosure, the responsible public entity shall determine
97 whether public disclosure prior to the execution of an interim agreement or a comprehensive agreement
98 would adversely affect the financial interest or bargaining position of the public or private entity. The
99 responsible public entity shall make a written determination of the nature and scope of the protection to be
100 afforded by the responsible public entity under this subdivision. Once a written determination is made by the
101 responsible public entity, the information afforded protection under this subdivision shall continue to be
102 protected from disclosure when in the possession of any affected jurisdiction or affected local jurisdiction.

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

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

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

120 13. Trade secrets or confidential proprietary information that is not generally available to the public

121 through regulatory disclosure or otherwise, provided by a (i) bidder or applicant for a franchise or (ii)
 122 franchisee under Chapter 21 (§ 15.2-2100 et seq.) of Title 15.2 to the applicable franchising authority
 123 pursuant to a promise of confidentiality from the franchising authority, to the extent the information relates to
 124 the bidder's, applicant's, or franchisee's financial capacity or provision of new services, adoption of new
 125 technologies or implementation of improvements, where such new services, technologies, or improvements
 126 have not been implemented by the franchisee on a nonexperimental scale in the franchise area, and where, if
 127 such information were made public, the competitive advantage or financial interests of the franchisee would
 128 be adversely affected.

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

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

136 14. Information of a proprietary or confidential nature furnished by a supplier or manufacturer of
 137 charitable gaming supplies to the Department of Agriculture and Consumer Services (i) pursuant to
 138 subsection E of § 18.2-340.34 and (ii) pursuant to regulations promulgated by the Commissioner of
 139 Agriculture and Consumer Services related to approval of electronic and mechanical equipment.

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

142 16. Trade secrets submitted by CMRS providers as defined in § 56-484.12 to the former Wireless Carrier
 143 E-911 Cost Recovery Subcommittee created pursuant to former § 56-484.15, relating to the provision of
 144 wireless E-911 service.

145 17. Information relating to a grant or loan application, or accompanying a grant or loan application, to the
 146 Commonwealth Health Research Board pursuant to Chapter 5.3 (§ 32.1-162.23 et seq.) of Title 32.1 if
 147 disclosure of such information would (i) reveal proprietary business or research-related information produced
 148 or collected by the applicant in the conduct of or as a result of study or research on medical, rehabilitative,
 149 scientific, technical, technological, or scholarly issues, when such information has not been publicly released,
 150 published, copyrighted, or patented, and (ii) be harmful to the competitive position of the applicant.

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

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

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

165 20. Trade secrets or financial information of a business, including balance sheets and financial statements,
 166 that are not generally available to the public through regulatory disclosure or otherwise, provided to the
 167 Department of Small Business and Supplier Diversity as part of an application for certification as a small,
 168 women-owned, or minority-owned business in accordance with Chapter 16.1 (§ 2.2-1603 et seq.). In order for
 169 such trade secrets or financial information to be excluded from the provisions of this chapter, the business
 170 shall (i) invoke such exclusion upon submission of the data or other materials for which protection from
 171 disclosure is sought, (ii) identify the data or other materials for which protection is sought, and (iii) state the
 172 reasons why protection is necessary.

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

175 22. Trade secrets, including, but not limited to, financial information, including balance sheets and
 176 financial statements, that are not generally available to the public through regulatory disclosure or otherwise,
 177 and revenue and cost projections supplied by a private or nongovernmental entity to the State Inspector
 178 General for the purpose of an audit, special investigation, or any study requested by the Office of the State
 179 Inspector General in accordance with law.

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

182 a. Invoking such exclusion upon submission of the data or other materials for which protection from

183 disclosure is sought;

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

185 c. Stating the reasons why protection is necessary.

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

190 23. Information relating to a grant application, or accompanying a grant application, submitted to the
191 Tobacco Region Revitalization Commission that would (i) reveal (a) trade secrets, (b) financial information
192 of a grant applicant that is not a public body, including balance sheets and financial statements, that are not
193 generally available to the public through regulatory disclosure or otherwise, or (c) research-related
194 information produced or collected by the applicant in the conduct of or as a result of study or research on
195 medical, rehabilitative, scientific, technical, technological, or scholarly issues, when such information has not
196 been publicly released, published, copyrighted, or patented, and (ii) be harmful to the competitive position of
197 the applicant; and memoranda, staff evaluations, or other information prepared by the Commission or its staff
198 exclusively for the evaluation of grant applications. The exclusion provided by this subdivision shall apply to
199 grants that are consistent with the powers of and in furtherance of the performance of the duties of the
200 Commission pursuant to § 3.2-3103.

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

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

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

206 c. Stating the reasons why protection is necessary.

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

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

215 b. Information provided by a private entity to the Commercial Space Flight Authority if disclosure of such
216 information would (i) reveal (a) trade secrets of the private entity; (b) financial information of the private
217 entity, including balance sheets and financial statements, that are not generally available to the public through
218 regulatory disclosure or otherwise; or (c) other information submitted by the private entity and (ii) adversely
219 affect the financial interest or bargaining position of the Authority or private entity.

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

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

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

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

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

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

236 26. Trade secrets provided to the Department of Environmental Quality pursuant to the provisions of §
237 10.1-1458. In order for such trade secrets to be excluded from the provisions of this chapter, the submitting
238 party shall (i) invoke this exclusion upon submission of the data or materials for which protection from
239 disclosure is sought, (ii) identify the data or materials for which protection is sought, and (iii) state the
240 reasons why protection is necessary.

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

244 adversely affected.

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

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

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

250 c. Stating the reasons why protection is necessary.

251 28. Information relating to a grant, loan, or investment application, or accompanying a grant, loan, or
252 investment application, submitted to the Commonwealth of Virginia Innovation Partnership Authority (the
253 Authority) established pursuant to Article 11 (§ 2.2-2351 et seq.) of Chapter 22, an advisory committee of the
254 Authority, or any other entity designated by the Authority to review such applications, to the extent that such
255 records would (i) reveal (a) trade secrets; (b) financial information of a party to a grant, loan, or investment
256 application that is not a public body, including balance sheets and financial statements, that are not generally
257 available to the public through regulatory disclosure or otherwise; or (c) research-related information
258 produced or collected by a party to the application in the conduct of or as a result of study or research on
259 medical, rehabilitative, scientific, technical, technological, or scholarly issues, when such information has not
260 been publicly released, published, copyrighted, or patented, and (ii) be harmful to the competitive position of
261 a party to a grant, loan, or investment application; and memoranda, staff evaluations, or other information
262 prepared by the Authority or its staff, or a reviewing entity designated by the Authority, exclusively for the
263 evaluation of grant, loan, or investment applications, including any scoring or prioritization documents
264 prepared for and forwarded to the Authority.

265 29. Proprietary information, voluntarily provided by a private business pursuant to a promise of
266 confidentiality from a public body, used by the public body for a solar services or carbon sequestration
267 agreement, where disclosure of such information would (i) reveal (a) trade secrets of the private business; (b)
268 financial information of the private business, including balance sheets and financial statements, that are not
269 generally available to the public through regulatory disclosure or otherwise; or (c) other information
270 submitted by the private business and (ii) adversely affect the financial interest or bargaining position of the
271 public body or private business.

272 In order for the information specified in clauses (i)(a), (b), and (c) to be excluded from the provisions of
273 this chapter, the private business shall make a written request to the public body:

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

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

277 c. Stating the reasons why protection is necessary.

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

284 31. Trade secrets, including, but not limited to, financial information, including balance sheets and
285 financial statements that are not generally available to the public through regulatory disclosure or otherwise,
286 and revenue and cost projections supplied by a private or nongovernmental entity to the Virginia Department
287 of Transportation for the purpose of an audit, special investigation, or any study requested by the Virginia
288 Department of Transportation in accordance with law.

289 In order for the records specified in this subdivision to be excluded from the provisions of this chapter, the
290 private or nongovernmental entity shall make a written request to the Department:

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

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

294 c. Stating the reasons why protection is necessary.

295 The Virginia Department of Transportation shall determine whether the requested exclusion from
296 disclosure is necessary to protect trade secrets or financial records of the private entity. The Virginia
297 Department of Transportation shall make a written determination of the nature and scope of the protection to
298 be afforded by it under this subdivision.

299 32. Information related to a grant application, or accompanying a grant application, submitted to the
300 Department of Housing and Community Development that would (i) reveal (a) trade secrets, (b) financial
301 information of a grant applicant that is not a public body, including balance sheets and financial statements,
302 that are not generally available to the public through regulatory disclosure or otherwise, or (c)
303 research-related information produced or collected by the applicant in the conduct of or as a result of study or
304 research on medical, rehabilitative, scientific, technical, technological, or scholarly issues, when such

305 information has not been publicly released, published, copyrighted, or patented, and (ii) be harmful to the
306 competitive position of the applicant. The exclusion provided by this subdivision shall only apply to grants
307 administered by the Department, the Director of the Department, or pursuant to § 36-139, Article 26 (§
308 2.2-2484 et seq.) of Chapter 24, or the Virginia Telecommunication Initiative as authorized by the
309 appropriations act.

310 In order for the information submitted by the applicant and specified in this subdivision to be excluded
311 from the provisions of this chapter, the applicant shall make a written request to the Department:

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

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

315 c. Stating the reasons why protection is necessary.

316 The Department shall determine whether the requested exclusion from disclosure is necessary to protect
317 the trade secrets or confidential proprietary information of the applicant. The Department shall make a
318 written determination of the nature and scope of the protection to be afforded by it under this subdivision.

319 33. Financial and proprietary records submitted with a loan application to a locality for the preservation or
320 construction of affordable housing that is related to a competitive application to be submitted to either the
321 U.S. Department of Housing and Urban Development (HUD) or the Virginia Housing Development
322 Authority (VHDA), when the release of such records would adversely affect the bargaining or competitive
323 position of the applicant. Such records shall not be withheld after they have been made public by HUD or
324 VHDA.

325 34. Information of a proprietary or confidential nature disclosed by a health carrier or pharmacy benefits
326 manager pursuant to § 38.2-3407.15:6, a wholesale distributor pursuant to § 54.1-3436.1, or a manufacturer
327 pursuant to § 54.1-3442.02.

328 35. Trade secrets, proprietary information, or financial information, including balance sheets and financial
329 statements, that are not generally available to the public through regulatory disclosure or otherwise, supplied
330 by an individual or a private or nongovernmental entity to the Fort Monroe Authority for the purpose of
331 complying with the obligations of any lease, easement, license, permit, or other agreement, whether of a
332 commercial or residential real estate nature, pertaining to the use or occupancy of any portion of Fort
333 Monroe.

334 In order for the records specified in this subdivision to be excluded from the provisions of this chapter, the
335 individual or private or nongovernmental entity shall make a written request to the Fort Monroe Authority:

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

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

339 c. Stating the reasons why protection is necessary.

340 36. *Information of a proprietary or confidential nature, including trade secrets, employee compensation*
341 *information, balance sheets and financial statements that are not available to the public through regulatory*
342 *disclosure or otherwise, and revenue and cost projections supplied by a private or nongovernmental entity to*
343 *the Department of Workforce Development and Advancement (the Department) for the purpose of*
344 *sponsoring, implementing, and operating (i) an apprenticeship program approved by the Department or (ii) a*
345 *similar lawful workforce development or public-private partnership approved by the Department that assists*
346 *the Department in fulfilling its mission and objectives and whose workforce development initiative could not*
347 *advance without such exemption, as determined by the Commissioner of the Department and the Secretary of*
348 *Labor. However, nothing in this section shall be construed to allow the withholding of the name and contact*
349 *information of a private or nongovernmental entity sponsoring, implementing, or operating the*
350 *apprenticeship program, the location of the program, the occupations offered by the program, or the terms*
351 *and conditions of a contract or agreement entered into by such private or nongovernmental entity.*

352 **§ 2.2-3705.7. Exclusions to application of chapter; records of specific public bodies and certain**
353 **other limited exclusions.**

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

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

360 2. Working papers and correspondence of the Office of the Governor, the Lieutenant Governor, or the
361 Attorney General; the members of the General Assembly, the Division of Legislative Services, or the Clerks
362 of the House of Delegates or the Senate of Virginia; the mayor or chief executive officer of any political
363 subdivision of the Commonwealth; or the president or other chief executive officer of any public institution
364 of higher education in the Commonwealth. However, no information that is otherwise open to inspection
365 under this chapter shall be deemed excluded by virtue of the fact that it has been attached to or incorporated

366 within any working paper or correspondence. Further, information publicly available or not otherwise subject
 367 to an exclusion under this chapter or other provision of law that has been aggregated, combined, or changed
 368 in format without substantive analysis or revision shall not be deemed working papers. Nothing in this
 369 subdivision shall be construed to authorize the withholding of any resumes or applications submitted by
 370 persons who are appointed by the Governor pursuant to § 2.2-106 or 2.2-107.

371 As used in this subdivision:

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

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

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

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

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

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

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

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

396 8. Personal information, as defined in § 2.2-3801, (i) filed with the Virginia Housing Development
 397 Authority concerning individuals who have applied for or received loans or other housing assistance or who
 398 have applied for occupancy of or have occupied housing financed, owned or otherwise assisted by the
 399 Virginia Housing Development Authority; (ii) concerning persons participating in or persons on the waiting
 400 list for federally funded rent-assistance programs; (iii) filed with any local redevelopment and housing
 401 authority created pursuant to § 36-4 concerning persons participating in or persons on the waiting list for
 402 housing assistance programs funded by local governments or by any such authority; or (iv) filed with any
 403 local redevelopment and housing authority created pursuant to § 36-4 or any other local government agency
 404 concerning persons who have applied for occupancy or who have occupied affordable dwelling units
 405 established pursuant to § 15.2-2304 or 15.2-2305. However, access to one's own information shall not be
 406 denied.

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

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

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

423 12. Information held by the Virginia Retirement System, acting pursuant to § 51.1-124.30, or a local
 424 retirement system, acting pursuant to § 51.1-803, or by a local finance board or board of trustees of a trust
 425 established by one or more local public bodies to invest funds for post-retirement benefits other than
 426 pensions, acting pursuant to Article 8 (§ 15.2-1544 et seq.) of Chapter 15 of Title 15.2, or by the board of

427 visitors of the University of Virginia, acting pursuant to § 23.1-2210, or by the board of visitors of The
428 College of William and Mary in Virginia, acting pursuant to § 23.1-2803, or by the Commonwealth Savers
429 Plan, acting pursuant to § 23.1-704, relating to the acquisition, holding, or disposition of a security or other
430 ownership interest in an entity, where such security or ownership interest is not traded on a governmentally
431 regulated securities exchange, if disclosure of such information would (i) reveal confidential analyses
432 prepared for the board of visitors of the University of Virginia, prepared for the board of visitors of The
433 College of William and Mary in Virginia, prepared by the retirement system, a local finance board or board
434 of trustees, or the Commonwealth Savers Plan, or provided to the retirement system, a local finance board or
435 board of trustees, or the Commonwealth Savers Plan under a promise of confidentiality of the future value of
436 such ownership interest or the future financial performance of the entity and (ii) have an adverse effect on the
437 value of the investment to be acquired, held, or disposed of by the retirement system, a local finance board or
438 board of trustees, the board of visitors of the University of Virginia, the board of visitors of The College of
439 William and Mary in Virginia, or the Commonwealth Savers Plan. Nothing in this subdivision shall be
440 construed to prevent the disclosure of information relating to the identity of any investment held, the amount
441 invested, or the present value of such investment.

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

445 14. Information held by the Virginia Commonwealth University Health System Authority pertaining to
446 any of the following: an individual's qualifications for or continued membership on its medical or teaching
447 staffs; proprietary information gathered by or in the possession of the Authority from third parties pursuant to
448 a promise of confidentiality; contract cost estimates prepared for confidential use in awarding contracts for
449 construction or the purchase of goods or services; information of a proprietary nature produced or collected
450 by or for the Authority or members of its medical or teaching staffs; financial statements not publicly
451 available that may be filed with the Authority from third parties; the identity, accounts, or account status of
452 any customer of the Authority; consulting or other reports paid for by the Authority to assist the Authority in
453 connection with its strategic planning and goals; the determination of marketing and operational strategies
454 where disclosure of such strategies would be harmful to the competitive position of the Authority; and
455 information of a proprietary nature produced or collected by or for employees of the Authority, other than the
456 Authority's financial or administrative records, in the conduct of or as a result of study or research on
457 medical, scientific, technical, or scholarly issues, whether sponsored by the Authority alone or in conjunction
458 with a governmental body or a private concern, when such information has not been publicly released,
459 published, copyrighted, or patented. This exclusion shall also apply when such information is in the
460 possession of Virginia Commonwealth University.

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

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

473 17. Information held by the Virginia Lottery pertaining to (i) the social security number, tax identification
474 number, state sales tax number, home address and telephone number, personal and lottery banking account
475 and transit numbers of a retailer, and financial information regarding the nonlottery operations of specific
476 retail locations and (ii) individual lottery winners, except that a winner's name, hometown, and amount won
477 shall be disclosed. If the value of the prize won by the winner exceeds \$10 million, the information described
478 in clause (ii) shall not be disclosed unless the winner consents in writing to such disclosure.

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

482 19. Information pertaining to the planning, scheduling, and performance of examinations of holder records
483 pursuant to the Virginia Disposition of Unclaimed Property Act (§ 55.1-2500 et seq.) prepared by or for the
484 State Treasurer or his agents or employees or persons employed to perform an audit or examination of holder
485 records.

486 20. Information held by the Virginia Department of Emergency Management or a local governing body
487 relating to citizen emergency response teams established pursuant to an ordinance of a local governing body

488 that reveal the name, address, including e-mail address, telephone or pager numbers, or operating schedule of
489 an individual participant in the program.

490 21. Information held by state or local park and recreation departments and local and regional park
491 authorities *or by the Department of Workforce Development and Advancement* concerning identifiable
492 individuals ~~under the age of~~ *younger than 18 years of age*. However, nothing in this subdivision shall operate
493 to prevent the disclosure of information defined as directory information under regulations implementing the
494 federal Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, unless the public body has
495 undertaken the parental notification and opt-out requirements provided by such regulations. Access shall not
496 be denied to the parent, including a noncustodial parent, or guardian of such person, unless the parent's
497 parental rights have been terminated or a court of competent jurisdiction has restricted or denied such access.
498 For such information of persons who are emancipated, the right of access may be asserted by the subject
499 thereof. Any parent or emancipated person who is the subject of the information may waive, in writing, the
500 protections afforded by this subdivision. If the protections are so waived, the public body shall open such
501 information for inspection and copying.

502 22. Information submitted for inclusion in the Statewide Alert Network administered by the Department
503 of Emergency Management that reveal names, physical addresses, email addresses, computer or internet
504 protocol information, telephone numbers, pager numbers, other wireless or portable communications device
505 information, or operating schedules of individuals or agencies, where the release of such information would
506 compromise the security of the Statewide Alert Network or individuals participating in the Statewide Alert
507 Network.

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

509 24. Information held by the Virginia Retirement System acting pursuant to § 51.1-124.30, a local
510 retirement system acting pursuant to § 51.1-803 (hereinafter collectively referred to as the retirement system),
511 or the Commonwealth Savers Plan, acting pursuant to § 23.1-704 relating to:

512 a. Internal deliberations of or decisions by the retirement system or the Commonwealth Savers Plan on the
513 pursuit of particular investment strategies, or the selection or termination of investment managers, prior to the
514 execution of such investment strategies or the selection or termination of such managers, if disclosure of such
515 information would have an adverse impact on the financial interest of the retirement system or the
516 Commonwealth Savers Plan; and

517 b. Trade secrets provided by a private entity to the retirement system or the Commonwealth Savers Plan if
518 disclosure of such records would have an adverse impact on the financial interest of the retirement system or
519 the Commonwealth Savers Plan.

520 For the records specified in subdivision b to be excluded from the provisions of this chapter, the entity
521 shall make a written request to the retirement system or the Commonwealth Savers Plan:

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

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

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

526 The retirement system or the Commonwealth Savers Plan shall determine whether the requested exclusion
527 from disclosure meets the requirements set forth in subdivision b.

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

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

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

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

537 28. Information maintained in connection with fundraising activities by the Veterans Services Foundation
538 pursuant to § 2.2-2716 that reveal the address, electronic mail address, facsimile or telephone number, social
539 security number or other identification number appearing on a driver's license or other document issued under
540 Chapter 3 (§ 46.2-300 et seq.) of Title 46.2 or the comparable law of another jurisdiction, or credit card or
541 bank account data of identifiable donors, except that access shall not be denied to the person who is the
542 subject of the information. Nothing in this subdivision, however, shall be construed to prevent the disclosure
543 of information relating to the amount, date, purpose, and terms of the pledge or donation or the identity of the
544 donor, unless the donor has requested anonymity in connection with or as a condition of making a pledge or
545 donation. The exclusion provided by this subdivision shall not apply to protect from disclosure (i) the
546 identities of sponsors providing grants to or contracting with the foundation for the performance of services
547 or other work or (ii) the terms and conditions of such grants or contracts.

548 29. Information prepared for and utilized by the Commonwealth's Attorneys' Services Council in the

549 training of state prosecutors or law-enforcement personnel, where such information is not otherwise available
550 to the public and the disclosure of such information would reveal confidential strategies, methods, or
551 procedures to be employed in law-enforcement activities or materials created for the investigation and
552 prosecution of a criminal case.

553 30. Information provided to the Department of Aviation by other entities of the Commonwealth in
554 connection with the operation of aircraft where the information would not be subject to disclosure by the
555 entity providing the information. The entity providing the information to the Department of Aviation shall
556 identify the specific information to be protected and the applicable provision of this chapter that excludes the
557 information from mandatory disclosure.

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

560 32. Information reflecting the substance of meetings in which (i) individual sexual assault cases are
561 discussed by any sexual assault response team established pursuant to § 15.2-1627.4, (ii) individual child
562 abuse or neglect cases or sex offenses involving a child are discussed by multidisciplinary child sexual abuse
563 response teams established pursuant to § 15.2-1627.5, (iii) individual cases of abuse, neglect, or exploitation
564 of adults as defined in § 63.2-1603 are discussed by multidisciplinary teams established pursuant to §§
565 15.2-1627.5 and 63.2-1605, or (iv) individual human trafficking cases are discussed by any human trafficking
566 response team established pursuant to § 15.2-1627.6. The findings of any such team may be disclosed or
567 published in statistical or other aggregated form that does not disclose the identity of specific individuals.

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

575 34. Information discussed in a closed session of the Physical Therapy Compact Commission or the
576 Executive Board or other committees of the Commission for purposes set forth in subsection E of §
577 54.1-3491.

578 35. Information held by the Commonwealth of Virginia Innovation Partnership Authority (the Authority),
579 an advisory committee of the Authority, or any other entity designated by the Authority, relating to (i)
580 internal deliberations of or decisions by the Authority on the pursuit of particular investment strategies prior
581 to the execution of such investment strategies and (ii) trade secrets, as defined in the Uniform Trade Secrets
582 Act (§ 59.1-336 et seq.), provided by a private entity to the Authority, if such disclosure of records pursuant
583 to clause (i) or (ii) would have an adverse impact on the financial interest of the Authority or a private entity.

584 36. Personal information provided to or obtained by the Virginia Lottery in connection with the voluntary
585 exclusion program administered pursuant to § 58.1-4015.1.

586 37. Personal information provided to or obtained by the Virginia Lottery concerning the identity of any
587 person reporting prohibited conduct pursuant to § 58.1-4043.