

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact § 2.2-3705.1 of the Code of Virginia, relating to Virginia Freedom of*
 3 *Information Act; exclusions to application of chapter; public utility account numbers.*

4 [H 346]

5 Approved

6 **Be it enacted by the General Assembly of Virginia:**7 **1. That § 2.2-3705.1 of the Code of Virginia is amended and reenacted as follows:**8 **§ 2.2-3705.1. Exclusions to application of chapter; exclusions of general application to public bodies.**

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

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

19 No provision of this chapter or any provision of Chapter 38 (§ 2.2-3800 et seq.) shall be construed as
 20 denying public access to (i) contracts between a public body and its officers or employees, other than
 21 contracts settling public employee employment disputes held confidential as personnel records under
 22 § 2.2-3705.1; (ii) records of the name, position, job classification, official salary, or rate of pay of, and
 23 records of the allowances or reimbursements for expenses paid to, any officer, official, or employee of a
 24 public body; or (iii) the compensation or benefits paid by any corporation organized by the Virginia
 25 Retirement System or its officers or employees. The provisions of this subdivision, however, shall not require
 26 public access to records of the official salaries or rates of pay of public employees whose annual rate of pay is
 27 \$10,000 or less.

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

30 3. Legal memoranda and other work product compiled specifically for use in litigation or for use in an
 31 active administrative investigation concerning a matter that is properly the subject of a closed meeting under
 32 § 2.2-3711.

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

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

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

48 5. Records recorded in or compiled exclusively for use in closed meetings lawfully held pursuant to
 49 § 2.2-3711. However, no record that is otherwise open to inspection under this chapter shall be deemed
 50 exempt by virtue of the fact that it has been reviewed or discussed in a closed meeting.

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

54 7. Computer software developed by or for a state agency, public institution of higher education in the
 55 Commonwealth, or political subdivision of the Commonwealth.

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

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57 completion of such purchase, sale, or lease.

58 9. Information concerning reserves established in specific claims administered by the Department of the
59 Treasury through its Division of Risk Management as provided in Article 5 (§ 2.2-1832 et seq.) of Chapter
60 18, or by any county, city, or town; and investigative notes, correspondence and information furnished in
61 confidence with respect to an investigation of a claim or a potential claim against a public body's insurance
62 policy or self-insurance plan. However, nothing in this subdivision shall prevent the disclosure of information
63 taken from inactive reports upon expiration of the period of limitations for the filing of a civil suit.

64 10. Personal contact information furnished to a public body or any of its members for the purpose of
65 receiving electronic communications from the public body or any of its members, unless the recipient of such
66 electronic communications indicates his approval for the public body to disclose such information. However,
67 access shall not be denied to the person who is the subject of the record. As used in this subdivision,
68 "personal contact information" means the information provided to the public body or any of its members for
69 the purpose of receiving electronic communications from the public body or any of its members and includes
70 home or business (i) address, (ii) email address, or (iii) telephone number or comparable number assigned to
71 any other electronic communication device.

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

74 12. Information relating to the negotiation and award of a specific contract where competition or
75 bargaining is involved and where the release of such information would adversely affect the bargaining
76 position or negotiating strategy of the public body. Such information shall not be withheld after the public
77 body has made a decision to award or not to award the contract. In the case of procurement transactions
78 conducted pursuant to the Virginia Public Procurement Act (§ 2.2-4300 et seq.), the provisions of this
79 subdivision shall not apply, and any release of information relating to such transactions shall be governed by
80 the Virginia Public Procurement Act.

81 13. Account numbers or routing information for any credit card, debit card, or other account with a
82 financial institution *or public utility* of any person or public body. However, access shall not be denied to the
83 person who is the subject of the information. For the purposes of this subdivision, "financial institution"
84 means any organization authorized to do business under state or federal laws relating to financial institutions,
85 including, ~~without limitation,~~ banks and trust companies, savings banks, savings and loan companies or
86 associations, and credit unions, *and "public utility" means the same as that term as is defined in § 56-265.1,*
87 *but does not include any company that owns or operates facilities within the Commonwealth for the*
88 *furnishing of telephone service. As used in this subdivision, "account numbers or routing information" does*
89 *not include any telephone number of a public body.*

90 14. Names and data of any kind that directly or indirectly identify an individual as a member, supporter,
91 or volunteer of, or donor of financial or nonfinancial support to, any entity exempt from federal income tax
92 pursuant to § 501(c) of the Internal Revenue Code, except for those entities established by or for, or in
93 support of, a public body as authorized by state law, not to include a nonprofit foundation designed to support
94 an institution of higher education or other educational or cultural institution subject to Title 23.1.