Virginia Freedom of Information Act, Virginia Conflict of Interest Act

and the

Virginia Public Records Act

2015-2016 Edition

Guide for Local Government Leaders

VIRGINIA MUNICIPAL LEAGUE

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Introduction

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THIS UPDATED GUIDE IS DESIGNED to help local government officials understand their responsibilities under the Virginia Freedom of Information Act (FOIA), Virginia Conflict of Interests Act (COIA) and Virginia Public Records Act.

Each of the acts requires council members and certain other elected and appointed officials to read and familiarize themselves with the three sets of laws.

This 2015-16 Virginia Municipal League publication explains all three laws in non-legal terms as much as possible. It is not written for lawyers, though we hope it will be useful for attorneys, too.

VML appreciates the contributions of Roger Wiley and Jeff Gore of the law firm Hefty & Wiley, P.C. in Richmond for writing the chapter on the Public Records Act. Contact Roger at: roger@heftywiley.com or 804/780-3143.

Updates throughout this publication, including those explaining changes in the law made by the 2015 General Assembly, were written by VML legal intern Kassie Schroth, a third-year student at the T.C. Williams School of Law at the University of Richmond.

Mark Flynn

While FOIA and COIA constitute a large part of the rules of conduct for state and local government officials, local officials might also want to consult a publication produced by VML and George Mason University on ethical conduct. *The Ethical GPS, Navigating Everyday Dilemmas* is a comprehensive guide to ethics availble for sale at VML. VML encourages city and town council members to consult it when questions arise about the propriety of a course of action.

Finally, this edition will be my last as general council of VML. I hope this publication has helped my many friends and colleagues in local government over the years and look forward to working with VML's members in years to come in my new work.

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Virginia Freedom of Information Act
Guide for Local Government Officials

Introduction

The Virginia Freedom of Information Act was enacted by the General Assembly in 1968. In the years since, the law has undergone major revisions and has been modified annually to address new situations. The 2015 version of the act is included following this section of the guide.

Local public officials are required to read and familiarize themselves with the law. § 2.2-3702(ii). This guide provides useful assistance in meeting that obligation. Many provisions of the act address state agencies and other matters that do not concern local governments. Those provisions are not discussed. This guide will help local officials become familiar with their obligations under the law.

The Freedom of Information Act Advisory Council, through its staff, provides local officials with timely information about the act that will assist in compliance. Contact information for the staff is found later in this report.

This guide has two major sections – meetings of a public body and records of a public body. The term "public body" will be used to generally describe any locally elected public body, such as city and town councils, as well as county boards and committees of all such bodies. Where a difference exists in the act's requirements for a specific type of local elected public body, the difference is noted.

Purpose of the act

FOIA generally determines how local public bodies must conduct their meetings, from city council sessions to a citizen advisory committee recommending where to locate a new sidewalk. The act also regulates the public's access to local government records.

The guiding principle of FOIA is openness. The act aims to "[ensure] the people of the Commonwealth ready access to records in the custody of public officials and free entry to meetings of public bodies wherein the business of the people is being conducted." § 2.2-3700(B). The section further declares that "the affairs of government are not intended to be conducted in an atmosphere of secrecy since at all times the public is to be the beneficiary of any action taken at any level of government." Id.

Thus, FOIA attempts to ensure that Virginia's citizens have the ability to observe how their elected public officials are conducting public business.

What's New

The General Assembly passed several revisions to FOIA in the 2015 session. Legislation amended certain records and meetings exemptions and provided clarifications on existing definitions. The relevant changes and legislation are noted in the general discussion below, along with several other important pieces of legislation related to public access.

I. Meetings.

The basic principle of FOIA is that all meetings of public bodies are open to the public. Section 2.2-3700(B) makes this clear:

All public records and meetings shall be presumed open, unless an exemption is properly invoked. The provisions of this chapter shall be liberally construed to promote an increased awareness by all persons of governmental activities and afford every opportunity to citizens to witness the operations of governments. Any exemption from public access to…meetings shall be narrowly construed and no…meeting closed to the public unless specifically made exempt pursuant to this chapter or other specific provision of law.

Nevertheless, the act contains numerous exceptions to the open meeting requirement. Some issues may be discussed in a meeting closed to the public. For instance, public bodies may hold a closed meeting if an open discussion will lead to the release of information that certain other state laws require to be kept secret. See § 2.2-3711(A)(26), (33), (34). Still, the fact that a meeting may be closed does not mean that it must be or even should be closed. Furthermore, any exceptions are to be narrowly construed.

A. Public body.

The open meeting requirements apply whenever a public body holds or participates in a meeting. The definition of "public body" is very broad. See § 2.2-3701. City and town councils and county boards of supervisors obviously are included. All committees and subcommittees are included, whether any members of the local governing body serve on the committee. Citizen committees are included if the committee is charged with either carrying out some function for the public body or advising it. Private police departments are included for the purpose of access to public records. FOIA specifically states that having citizen members does not exempt the body from the act. Id. Accordingly, a citizens' committee formed by the city or town to advise where a park or school should be located would be a public body subject to FOIA.

A committee of a council is a public body, as noted above. Whether the committee is a standing committee or an ad hoc committee, it is subject to the act. If the chair of a four-member finance committee appoints two members to negotiate a contract or to carry out some other role, that subcommittee of the finance committee is also subject to the act.

B. What is a meeting?

City and town council meetings, county board meetings and committee meetings of a public body are certainly meetings regulated by the act. Like the definition of public body, the definition of meeting is broadly construed under § 2.2-3701, intending to capture any meeting where public business is transacted or discussed. A council work session is also a meeting, as is any other "informal assemblage" of as many as three members of a public body (or a quorum, if quorum is less than three members) where public business of the locality is discussed.

FOIA typically applies to public body gatherings irrespective of the meeting's location. It doesn't matter if a meeting is held in the council chambers or at a council retreat held out of the locality.

Attendance at a VML Annual Conference or a National League of Cities meeting is sometimes a touchy subject. Because of the broad definition of public meeting, some councils and boards consider attendance at a state or national conference to be a meeting, and will comply with the notice requirements of the act (discussed below) to be on the safe side, even though there is no plan to discuss the locality's public business. This action sometimes invokes a negative response from the media or citizens who complain that they cannot attend the out of town meeting. Conversely, if the council doesn't consider attendance at a conference to be a meeting, then the complaint becomes one that the council has sneaked out of town on a private meeting. The best solution is to announce the conference at a council meeting, but not describe it as a meeting of the locality, and to strictly avoid discussing town or city business while attending the conference.

A gathering of council does not create a meeting if public business is not discussed or carried out and the gathering was not called for the purpose of doing public business. § 2.2-3707. This section is aimed at allowing participation in community events or parties. Without this section, a citizen could criticize a council for holding a meeting if three members of council show up at a community forum.

Legislation during the 2015 session tried to clarify the definition of meeting under §2.2-3701. SB 989 amended the definition of meeting to include that a gathering of two or more members of a public body is not a meeting when no part of purpose of the gathering or attendance is the discussion or transaction of any pubic business, the gathering was not prearranged for the purpose of public business, or if the attendees are at a public forum, debate, or candidate appearance to that is held to inform the electorate and no public business is being transacted even if the performance of members is a topic of discussion or debate at the gathering. This was the law already, so the bill is only a restatement. Finally, a meeting of employees for business purposes does not constitute a meeting, under the § 2.2-3701 definition.

Number of public officials needed to constitute a meeting

Obviously, any meeting of a council qualifies as a public meeting. For the purposes of the act, such a council meeting is created if a majority of council, or three members, regardless of how many are needed for a majority, get together and discuss public business. § 2.2-3701. Therefore, if three members of a council meet to discuss or act on government business, that creates a council meeting for purposes of FOIA, even if it is not a meeting per the locality's rules.

In contrast, if the three members are on a committee and meet as the committee, that meeting is a committee meeting, not a council meeting. If additional council members attend a committee meeting, that does not necessarily convert the meeting from a committee meeting to a council meeting. This was established in a Winchester Circuit Court opinion in *Shenandoah Publishing House, Inc. v. Winchester City Council*, 37 Va. Cir 149 (1995).

Notice provisions

General notice requirements that are spelled out in the act must be followed in order to hold any meeting of a public body. The state code also contains numerous specific notice and advertising requirements for particular types of public business. Examples include notice of zoning actions (§ 15.2-2204) and adopting budgets (§ 15.2-2506). In all cases, the more general requirements in FOIA need to be followed in addition to any other requirements. The state code's specific, subject matter requirements apply only if the public body is discussing the relevant type of public business. For all regular meetings of a council, committee, board, or other agency, notice must be posted on the body's public bulletin board and in the council clerk's office, or, if there is none, the office of the chief administrator. The notice must state the date, time and location of the meeting and must be posted at least three days before the date the meeting is to take place. § 2.2-3707(C).

For regular meetings, a simple way to comply with this requirement is to post a single notice listing the information for all meetings of the next year. This way, nobody will forget to give notice of a regularly scheduled meeting. For special or emergency meetings, the notice must be reasonable given the circumstances. The notice must be given to the public no later than when it is given to the members being called to attend. § 2.2-3707(D).

Any person may file an annual request for notice of all meetings. In that case, the public body must notify the person making the request of all meetings. Sending the annual schedule of all regular meetings will assist in complying with this obligation. If the requester supplies an e-mail address, all notices may be sent via e-mail, unless the person objects. § 2.2-3707(E).

If a citizen submits an e-mail address and other personal information, such as a home address to the locality for the purpose of being notified of meetings and other events, that e-mail address and other information need not be disclosed to others by the locality, pursuant to § 2.2-3705.1(10), but only if the person who has submitted the e-mail address requests the non-disclosure. Localities that are interested in keeping e-mail addresses private may want to send an e-mail to all e-mail recipients asking them to advise whether they want to have their e-mail address withheld and should have a check-box asking if the person wants to opt out of disclosure on the webpage where citizens sign up.

Meeting minutes

Minutes of council meetings must be taken at all open meetings. § 2.2-3707(I). Minutes must be written and include the meeting's date, time, and location, along with attendance, a summary of discussed matters, and any votes taken. Minutes of council committee meetings are required to be taken only if a majority of the members of the council serve on the committee.

Draft minutes and any audio or video recording made of a meeting are available to the public for inspection and copying. § 2.2-3707(I). This means that draft minutes must be disclosed if requested.

The agenda packet and all materials furnished to the members of the council (except documents that are exempt from disclosure, such as advice of the town or city attorney) must be made available for public inspection at the same time it is distributed to the members. § 2.2-3707(F). Any records that are exempt from disclosure do not need to be made available. The practical problem is for staff to remember to cull any exempt documents when making the public copy of the agenda. The better practice is to not include exempt documents as a part of the agenda, but to send them separately.

Recording meetings

Citizens have an absolute right to photograph and make video or audiotapes of public meetings. While the council may establish rules for where the equipment may be set up so meetings are not disrupted, the recording equipment may not be excluded altogether. § 2.2-3707(H). Council may not meet in a location where recordings are prohibited. If a courtroom, for example, has a standing order forbidding any form of recordation, public body meetings must be held elsewhere. § 2.2-3707(H).

Electronic meetings

Generally, council may not hold a meeting via electronic media, including a conference call, pursuant to §§ 2.2-3707 & 3708. There are two exceptions:

First, if the governor declares an emergency, the council may hold an electronic meeting, where members phone in or participate by other electronic means, solely to address the emergency. Council must give notice to the public to the extent possible and must provide public access to the meeting. § 2.2-3708(G).

Second, a member of council may participate electronically if he or she has an emergency or personal matter and identifies the emergency or personal matter, or if he or she has a medical condition that prevents attendance. The minutes should record the reason for the member's absence and the remote location from which the member participated. Each public body must develop a written policy regulating electronic participation by its members. Once this policy is adopted, it

must be applied uniformly to all members. A member's participation from a remote location may be disapproved if it violates the established policy. The disapproval must be noted in the body's minutes. An individual may participate electronically in no more than two meetings per year or 25% of the year's meeting, whichever is less. The body must maintain a physical quorum for the meeting. § 2.2-3708.1.

In addition to these exceptions, council members have some flexibility in communicating through e-mail. A 2004 Virginia Supreme Court opinion, *Beck v. Shelton*, 267 Va. 482; 593 S.E.2d 195, ruled that council members e-mailing each other did not create a meeting for purposes of FOIA. In *Beck*, multiple e-mails were sent by an individual council member to all other members; some e-mails were in a reply to all members, and in one or two of the e-mails, the reply was made more than 24 hours after the e-mail to which it replied. The court found that no meeting had occurred, although the opinion noted that the outcome may have been different had the e-mails been part of instant messaging or a chat room discussion.

The Virginia Supreme Court reinforced its *Beck* reasoning in *Hill v. Fairfax County School Board*, No. 111805 (June 7, 2012). *Hill* involved e-mails between members of a school board that were exchanged over an even shorter interval than in *Beck*. Back-and-forth communications only occurred between two board members (not the three required for a meeting under FOIA). Any e-mail that was received by three or more members was found to be of an informational or unilateral nature and did not create any discussion among members. Following *Beck*, the court reiterated that e-mails between council members must be sufficiently simultaneous to create a meeting for the purposes of FOIA. *Hill* affirmed the lower court's finding that the school board members' communications did not create a meeting because the e-mails did not show the simultaneity or group discussion required under FOIA. Thus, responsive e-mails between at least three council members must occur within quick succession to constitute an assembly of members (though the precise responsive speed that would be necessary is unclear).

Beck and *Hill* indicate that e-mail communication between more than two council members may comprise a meeting under FOIA if consisting of mutual discussion within a time frame short enough to be considered an assemblage. In light of these cases, council members have some discretion to send e-mails to other members if over an extended timeframe or if non-conversational (however, these e-mails will almost always be public records and subject to FOIA's disclosure provisions; see Part II of this guide). Nonetheless, council members should be cautious when communicating public business over e-mail because the courts have not clearly stated where responsive e-mails are considered an assemblage. Furthermore, this vagueness will only become amplified as technology improves and e-mail communication becomes ever more instantaneous. If a series of e-mails is found to be sufficiently analogous to an assembly of three or more council members, then all of FOIA's requirements apply. In that case, demonstrating how a group of e-mails between council members was open to the public may prove difficult.

Voting

All votes must be made publicly. Secret ballots are not allowed, unless permitted by some other provision of law. § 2.2-3710(A). This section, however, specifically authorizes each member of council to contact other members of a council or other body "for the purpose of ascertaining a member's position" on public business without making the position public. § 2.2-3710(B). Further, nonbinding votes may be taken in closed session.

Remote Public Participation

Public bodies that wish to allow their members to participate in meetings remotely, in case of a personal matter or medical condition, must establish a policy governing electronic participation that complies with § 2.2-3708.1. Members will be allowed to participate as long as the reason for their absence does not violate the established policy.

C. Closed meetings.

A closed meeting is a meeting of a council or other public body from which the public is excluded. It may be held only for specific reasons, which are delineated in the act. A closed meeting must be entered into during an open meeting of the public body (the specific procedures are described below). After the closed portion of a meeting, the council must reconvene in open session to certify that the closed meeting portion was carried out legally. There are exceptions to the requirement that a closed meeting be held as a part of an open meeting. They are discussed below.

Purposes for closed meetings

Section 2.2-3711 sets out 46 reasons for holding a closed meeting. A city or town council will generally need to hold a closed meeting for one of six of the possibilities:

- Personnel matters - subsection 1;
- Real property - subsection 3;

- Privacy of individuals unrelated to public business - subsection 4;
- Prospective business - subsection 5;
- Consultation with legal counsel - subsection 7; and
- Terrorism- subsection 19.

1. Personnel matters. Section 2.2-3711(A)(1) authorizes a closed meeting for: "[d]iscussion, consideration or interviews of prospective candidates for employment; assignment, appointment, promotion, performance, demotion, salaries, disciplining or resignation of specific public officers, appointees or employees of any public body."

The most significant requirement in the subsection is that the discussion be about one or more specific people. This means that the council may not discuss general personnel issues in a closed meeting. For example, the council would not be authorized to meet behind closed doors to discuss a pay plan or set salaries for all employees. The council could, however, meet to discuss the pay increase to be given an employee or appointee, based on the council's discussion in the meeting of the employee's performance.

Note that the section applies to three classes of public officials: public officers, public appointees and employees of the public body. Therefore, the council could discuss the performance of a specific planning commission member in closed meeting since that person is an appointee of the council.

Two Virginia attorney general opinions have clouded the use of the section for a closed meeting discussion of most employees and some other public officials. In an opinion issued Dec. 16, 1998, the attorney general opined that a council may not hold a closed meeting to discuss employees who are not directly employed by the council. The opinion states that only the manager, clerk, and city attorney could be discussed in a closed meeting, because the city charter stated that only those three employees are under the "full supervisory authority" of the council. The attorney general confirmed the opinion in a second opinion dated May 18, 2000, which was written in response to a request for reconsideration. 2000 WL 8752.

Many local government attorneys, as well as VML, disagree with this opinion. The specific language of the subsection allowing a closed meeting for personnel matters states that the individual must be an employee of the public body. The opinion limits the term "employee of the public body" in a manner that is inconsistent with the common understanding of the authority of a city or town council over all employees, not just those who report directly to the council. If a council directs the manager to fire an employee for a problem it discussed in a closed meeting, the manager would be expected to fire the individual. Direct supervisory control by council may not exist, but the council retains the ultimate responsibility for the operation of the city or town; hence, the council should logically retain the ability to confidentially discuss the employee. The FOIA Council does advise that, even accepting the attorney's general opinion, the council could convene in closed session to discuss the manager's handling of the personnel matter, since the manager is a direct employee of the council.

The other opinion that has cast a cloud on the use of the exemption was issued April 5, 1999. It states that a school board cannot meet in closed session to discuss choosing a chairman and vice chairman. The rationale was that the chairman and vice chairman are not appointed or employed by the public body. The specific words of the section, however, make personnel matters apply to "specific public officers, appointees or employees" of the public body. Certainly, the chairman is a public officer and appointee of the school board, since the board makes the appointment or election in the case in the opinion, and the chair is the leader of the board.

Opinions of the attorney general do not have the effect of a court decision. They are only opinions that may be considered for guidance. Courts will give some weight to such opinions, but are not bound by them. Localities are cautioned in this area. It is always possible that a judge will simply follow an opinion without evaluating its merits. In that case, a locality could find itself losing a case in court over either of these two issues.

2. Real property. A closed session for discussion of real property issues is allowed for the acquisition of land for a public purpose or disposition of publicly held land, but only if discussing the matter in open session would harm the council's bargaining position. § 2.2-3711(A)(3).

The council does not need to state why an open discussion would harm its position in the motion to hold a closed meeting. Still, a council should be prepared to defend the closed meeting if challenged.

3. Privacy of individuals unrelated to public business. Local governments do not use this section very often because a council meeting is generally limited to discussing public business. However, if as a part of public business a matter arises that affects the privacy of an individual unrelated to public business, the meeting may be carried out in private.

This provision's usefulness can be illustrated through discussion of routing a new street. If a landowner who could be displaced has a medical condition that would make condemning his home a life threatening situation, that would be a privacy issue for the citizen not related to public business. It would be appropriate for the council to avoid discussion in the public view, in order to protect the individual's privacy. § 2.2-3711(A)(4).

4. Prospective business and business retention. In today's competitive market for recruiting and retaining businesses, much negotiation goes on between the council and a company, often involving tax benefits, land deals, employment incentives and similar matters. If that kind of information is discussed in public session, competing localities from other states will gain a competitive advantage, since they will know how much must be offered to take the business away from the Virginia locality. Section 2.2-3711(A)(5) allows a closed meeting to protect these negotiations.

In order to enter into a closed meeting, there must have been no "announcement" of the interest of the business in the community. Whether a local newspaper's report of the business interest may constitute an announcement of the interest is an unresolved question. One circuit court has ruled that a news report without any statement by the government qualifies as an announcement. The state FOIA office, however, takes the position that an announcement is something more than a newspaper report speculating about business. If a public official or official of the business makes the statement about the business in an official capacity, that clearly constitutes an announcement and the section could not be invoked.

The section not only authorizes a meeting for the location of a business, but also the expansion of an existing business. In the case of an expansion, there must have been no announcement of the interest in expanding.

A locality may also go into closed session to discuss the retention of an existing business. The code authorizes this when the retention discussion relies on proprietary information from the business, or memoranda and/or working papers from the public body that, if publicized, would be adverse to the financial interests of the locality. §§ 2.2-3711(40) & 2.2-3705.6(3).

5. Consultation with legal counsel. This important provision is limited to three types of legal matters:

1. Actual litigation;
2. Probable litigation; and,
3. Specific legal matters requiring the advice of counsel. § 2.2-3711(A)(7).

In actual or probable litigation, a closed meeting can be held only if holding a discussion in the open "adversely affect[s] the negotiating or litigating posture" of the council. § 2.2-3711(A)(7). For example, there is no need to hold a closed meeting to simply explain to council that the locality had been sued. The suit is a public record in the circuit court clerk's office, therefore a briefing that the suit had been filed should be done in open meeting. In contrast, a briefing by the city attorney on the strategy for defending the suit would be appropriate for a closed meeting because open discussion would obviously hinder the defense.

Actual litigation refers to existing litigation. Probable litigation is defined to mean that a suit has been "specifically threatened" or the council or its attorney has a "reasonable basis" to believe a suit will be filed.

The third category is limited to "consultation with counsel ... regarding specific legal matters" requiring legal advice. § 2.2-3711(A)(7). This category, like the two litigation categories, is limited to consulting the attorney (or other staff members or consultants) about an appropriate matter for a closed meeting. The section may not be used to hold a discussion among the members of a council, even if the attorney is present. Nonetheless, discussion among members for the purpose of consulting an attorney is allowed. Simply having an attorney present does not allow a closed meeting and does not allow a general discussion among the members. If non-attorney staff members participate, the attorney should still be present and participating in the consultation. This was reinforced by language added in 1999: "Nothing in this subdivision shall be construed to permit the closure of a meeting merely because an attorney ... is in attendance or is consulted on a matter." Id.

This rule was demonstrated in the March 2000 Richmond Circuit Court opinion *Colonial Downs, L.P v. Virginia Racing Commission*, (2000 WL 305986). In that case, the racing commission went into a closed meeting for consultation with counsel, but spent the time holding a general discussion of Colonial Downs' application for licensing. The court held that the meeting was a violation of the act.

6. Terrorism. After the Sept. 11 terrorist attacks, it became clear that some provisions of the act made it easy for a terrorist to gain security information through a FOIA request. One step in response was to allow a meeting in closed session to discuss planning for terrorist activity under § 2.2-3711(A)(19). The public body

may meet to be briefed by staff, attorneys or law-enforcement or emergency personnel to *respond* to terrorist or "a related threat to public safety". This exemption applies "where discussion in an open meeting would jeopardize the safety of any person or the security of any facility, building, structure, information technology system or software program." With the increasing awareness of the possibility of cyber terrorists attacks, this provision was amended by the General Assembly in 2015 to allow for a closed session to discuss planning for specific cybersecurity threats or vulnerabilities. SB 1109.

New Exemptions for 2015

A public body may go into a closed meeting to discuss personal and proprietary information of certain exempt records related to Resource Management Plans. This exemption was added by HB 1618 and SB 1126. The exemption does not apply to discussion or consideration of records that contain information that has been certified for release by the person who is the subject of the information. The exemption also does not apply to records that have been transformed into a statistical or aggregate form that does not allow the person supplying the information or is the subject of the information to be identified.

Localities that participate in adult fatality review teams under §32.1-283.2 may hold a closed meeting to discuss individual adult death cases. HB 1558. The provision also allows for closed meetings for certain discussions of local child fatality review teams. §2.2-3711(A)(21).

Procedures for closed meetings

Getting into closed meetings. In order to go from an open meeting to a closed meeting, there must be a recorded vote in open meeting. The motion must include the following elements:

1. The subject must be identified (example: new park in east end of city);
2. A statement of the purpose of the meeting (acquiring land for park); and,
3. A reference to the code section authorizing the meeting. § 2.2-3712(A).

The degree of specificity in the statement of the subject of a meeting varies with the nature of the issue. A discussion about a pending lawsuit should name the suit. After all, the pleadings are public and the suit may well have been the subject of a newspaper article. On the other hand, a discussion of a sensitive personnel matter should not contain much specificity in the motion, so as to not embarrass the employee who is the subject of the meeting. The council will need to exercise discretion in the motion's specificity.

Nonetheless, in no case will it be sufficient to make a general statement to satisfy the first and second requirements above. "Personnel matters, pursuant to FOIA" is inadequate for a motion for a closed meeting. The Virginia Supreme Court opinion in *White Dog Publishing, Inc. v. Culpeper County Board of Supervisors*, made this clear.

During a closed meeting, only the topics identified in the motion may be discussed. § 2.2-3712(C). In order to discuss more than one topic, the council should either include both topics in one motion, which is the preferred method, or come out of closed meeting and re-enter after making a motion on the second topic. The council may record minutes, but that is not required. In almost every case, it is not a good idea. The minutes serve little purpose, since the council must take any action in open meeting, and there will be a record of the open meeting. § 2.2-3712(I).

Va. Code § 2.2-3712(H) states that any official vote or action must he held in open session. Many local governments, therefore, take no more than a straw poll during a closed meeting, or take no votes at all, no matter how informal.

Getting out of closed meeting. At the conclusion of each closed meeting, the public body must certify in open session that it complied with the act by a roll call vote. The vote must confirm that the meeting was held for purposes allowed by the act and that while in the closed session, only those matters identified in the motion to hold a closed meeting were discussed. If a member disagrees, he must state how the closed meeting did not satisfy the requirements of the act before the vote is taken. § 2.2-3712(D). A record of the vote must be kept in the public body's records.

Interviewing chief administrative officer candidates. Most closed meetings must be held as a part of an open meeting, so the public knows the time and place of it. The act contains an important exception for local governments in § 2.2-3712(B). If a public body is to hold interviews for its chief administrative officer, it may make a single announcement in open meeting that it will hold interviews. It need not identify the location of the interviews or the names of the interviewees. The interviews must be held within 15 days of the motion.

Annexation agreements - no FOIA requirements. Independent of FOIA, Va. Code § 15.2-2907(D) allows a council or board to hold meetings on matters concerning annexation or a voluntary settlement agreement with no FOIA implications. This

means notice need not be given, the public need not be invited, and minutes need not be taken. No other FOIA requirements need to be followed. The section does not prohibit a public body from following the FOIA requirements, but they are not mandatory.

II. Records.

The second major purpose of FOIA is to set out the rules for public record disclosure. The general rule in FOIA concerning records is that they are open to public inspection and copying. However, more than 80 categories of records are exempt from public access. Most do not apply to local governments. The fact that a record may be exempt from disclosure does not require it to be withheld. Each exemption section states in the opening sentence that the records "may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law." § 2.2-3705.1, 2, 3, 4, 5, 6, 7.

Some records, however, are prohibited from being disclosed at all. The custodian has no discretion to permit their disclosure. The main examples are certain tax records that Va. Code § 58.1-3 requires to be kept confidential, and matters for which the Privacy Protection Act prohibits disclosure. The act applies to records of the public body, whether the records are on paper, or in an electronic form, such as e-mails, databases and other electronic formats.

A. Responding to disclosure requests

Custodian of records. The records provisions of the act use the term "custodian of the records" as the person who has the responsibility to respond. Some sections mention the obligation of the public body, but the responsibility is clearly with the custodian. If suit is brought over a violation, however, the public body can expect to be named as a defendant.

One temptation is to deny a request because it was made to the wrong public official. If another public official who works in the same local government has the records, the request should not be denied just because it was directed to the wrong official if the recipient knows or should know that the records are available from another official. In this case, the official should respond to the request with the contact information for the other public body or just work with the other official to provide the records. § 2.2-3704(B)(3).

If the locality stores archived records off-site, and the records are in control of a third party, it is still the public body's responsibility to retrieve those records if they are requested. § 2.2-3704(J). The Library of Virginia is the custodian of the records if the locality properly archives records with the state library.

Procedures for handling requests. Any citizen or member of the media may request an opportunity to inspect and/or copy public records. The request does not have to refer to the act, but only needs to identify the records with reasonable specificity. § 2.2-3704(B). There is no authority to require the request to be in writing, nor may the custodian of the records refuse to reply to a request if the requester refuses to put a request in writing. Some government offices ask for the request to be reduced to writing. This is a useful policy because it helps the custodian better understand what is being requested. That helps the requester, since the custodian can shorten the time researching records, thereby reducing the cost to the individual. If the individual declines to reduce the request to writing, a helpful option is to confer with the individual and write down the request, allowing the person to see the note and hopefully sign it, so no confusion will exist.

The custodian may require the person asking to see or copy records for his name and legal address. § 2.2-3704(A). This 2002 amendment is part of the terrorism bill, but is not limited to requests relating to terrorism. The act is not clear on what happens if the requester refuses. VML suggests that if the requester does refuse, the language that the custodian "may require" the information necessarily implies that the custodian may refuse to allow access to the records.

The act does not give any rights to people who are not residents of Virginia, or to media representatives if the media entity does not publish or broadcast into the state. § 2.2-3704. As a practical matter, however, many government agencies don't discriminate based on where the requester is from. It is generally easy for an out-of-state person or media representative to find a Virginia individual to make the request. Therefore, there is little point in denying a request based on residency. Still, there is nothing that prohibits denying the request, so a locality is certainly free to follow the statute. Last year, a federal court upheld this law.

B. Types of responses

There are three possible responses to a request:

1. Provide the records;
2. Obtain seven additional days to respond; or,
3. Claim an exemption to all or a portion of the request.

The initial response must be made within five business days of the receipt of the request, pursuant to § 2.2-3704, regardless of which response is used. If the custodian fails to respond within the times required,

§ 2.2-3704 considers that to be a denial of the request and makes it a violation of the act.

Notably, the custodian is not required to create records if they do not exist. § 2.2-3704(D). For example, if a request is for a list of trash collectors who do business in a locality, and the locality does not have such information, there is no requirement to create that list. Subsection D does encourage public bodies to abstract or summarize information in a manner agreed to with the requester.

1. Provide the records. The first response, providing the records, is straightforward. The custodian simply makes them available. If the individual asks to receive copies, the copies need to be made within the five days, if possible, or at such time the custodian and requester agree.

In a June 1, 1999 opinion, the attorney general opined that a local commissioner of the revenue is not required to make a copy of the personal property book for a citizen. The personal property book is a large, computer-generated bound book that every commissioner maintains. The attorney general reasoned that the act allows the commissioner to put the burden of copying on the citizen if the office has no means to copy the document. The same reasoning would apply to other local government agencies where the agency is incapable of providing requested information stored on electronic databases. § 2.2-3704(G).

2. Obtain seven additional days to respond. Similarly, if it is "not practically possible to provide the ... records or to determine whether they are available," § 2.2-3704(B)(4), within the five days, the custodian may send a written response to the person explaining the conditions that make the response impractical. Upon compliance with this requirement, the custodian will have an additional seven workdays to respond. The added seven days does not begin until the end of the fifth day of the initial period. For example, if the custodian sends a letter on the second day after receipt of the request, he or she will still have a total of 12 workdays to respond.

One unanswered question is whether the custodian may claim more time to respond based on the time it takes to determine whether an exemption applies. The quoted language above uses the term "available." It is not clear whether deciding if an exemption applies is included in determining whether records are available. In discussions with the Virginia Press Association during the 2000 committee meetings on changes to the act, the VPA spokesman represented that the association would not contest a custodian's obtaining extra time to determine if exemptions apply. No court has answered the issue.

In addition to the 12 days to reply, a public body may petition a court for even more time to respond to a request. The additional time will likely be granted if the public body can demonstrate that the volume of records requested is so large that it would disrupt its operations to respond in the prescribed time and that it is unable to reach an agreement for a time to respond with the requester. § 2.2-3704(C).

3. Claim a partial or full exemption to the request. If one or more of the many exemptions apply, the custodian may, within the five workday limit, send the requester a written explanation of why all or some of the records are exempt. The explanation must identify the subject matter of the records (example: performance evaluations) and must cite the section of FOIA that authorizes the exemption. § 2.2-3704(B)(2). If only a portion of the requested records is exempt, the non-exempt parts must be made available within the five days, unless additional time is properly invoked.

In 1999, the Virginia Supreme Court decided *Lawrence v. Jenkins*, 258 Va. 598, a case in which a county zoning administrator failed to supply the code section he was relying on to exempt certain information in response to a FOIA request. The act required the code sections to be identified in the written response to the requester. Long after the time to respond had passed, the administrator sent the individual a letter identifying the code section. The court ruled that the violation still did not permit the individual to see the records and ruled that the records were exempt. Even though the zoning administrator did fail to meet FOIA requirements, the court determined the violation did not harm the requestor because he would not have been allowed to see the records if the act had been complied with. VML does not recommend relying on *Lawrence*.

Charges for responding to a request

The public body may charge the requester for searching and copying records. The costs must be reasonable, not to exceed the actual cost "incurred in accessing, duplicating, supplying, or searching for the requested records." § 2.2-3704(F). A public body may not charge for overhead items, such as utilities, debt payments and the like. The hourly salary rate of any local employee who spends time researching and assembling records for the request may be charged, as may actual copying costs.

In responding to a request for duplication of part of a geographic information system database by making

copies of GIS maps, the locality may base its charge on a per acre cost if the area requested exceeds 50 acres. § 2.2-3704(F).

If the custodian determines that the cost of responding will be more than $200, he may demand the requester to agree to pay a deposit in the amount of the projected costs before any information is disclosed. The time limits are tolled until payment of the deposit. The custodian is not required to send the estimate in writing, though providing a written estimate is the better practice, in order to avoid a claim by the individual that no deposit was requested. § 2.2-3704(H).

Format of records

Confusingly, the custodian must provide computer records in any "tangible medium identified by the requester," except that it need not produce the material found in an electronic database in "a format not regularly used by the public body." § 2.2-3704(G). The subsection is further confused by a statement that provides – not withstanding this limitation – the public body is to attempt to come to an agreement with the requester regarding the format of the documents to be supplied. Thus, a public body does not have to disclosure electronic records in a format it does not regularly use, but must comply with any request for records maintained in a medium the public body uses in the regular course of business.

E-mails

E-mails have generated much controversy since they began being used in government business operation. E-mails that deal with public business are public records. E-mails kept on the home computer of a council member or local government employee that relate to the transaction of public business are public and subject to inspection and copying by a citizen who makes a request to see the records.

Draft documents

Draft documents are records. The specific mention of draft records is to the minutes of a public body. Section § 2.2-3707 specifically states that draft minutes are available for inspection. Some local governments once had policies that denied the public viewing of draft minutes. The act prohibits such policies. Some draft documents fall into the working papers exemption. In that case, or if any other exemption applies, the draft documents are not required to be made available for inspection.

C. Exemptions list.

The list of records that may be held exempt from disclosure by the custodian is set out in seven separate, lengthy sections. Fortunately, the sections are arranged by subject area in order to make it easier to find the exemptions that may apply.

The current sections are:

- Exclusions of general application to public bodies: § 2.2-3705.1.
- Exclusions; records relating to public safety: § 2.2-3705.2.
- Exclusions; records relating to administrative investigations: § 2.2-3705.3.
- Exclusions; educational records and certain records of educational institutions: § 2.2-3705.4.
- Exclusions; health and social services records: § 2.2-3705.5.
- Exclusions; proprietary records and trade secrets: § 2.2-3705.6.
- Exclusions; records of specific public bodies and certain other limited exemptions: § 2.2-3705.7.

Most local governments will only use 20 or so of the exemptions, and only 10 will apply frequently. The exemptions that most often apply to local government are:

- "State income, business, and estate tax returns, personal property tax returns, scholastic and confidential records held pursuant to § 58.1-3." § 2.2-3705.7(1).
- "Personnel records containing information concerning identifiable individuals, except that access shall not be denied to the person who is the subject thereof." § 2.2-3705.1.(1). Any adult subject may waive confidentiality, in which case the government may release information on the person.
- "Working papers and correspondence of the ... mayor or chief executive officer of any political subdivision of the Commonwealth .... However, no record which is otherwise open to inspection under this chapter shall be deemed exempt by virtue of the fact that it has been attached to or incorporated within any working paper or correspondence. § 2.2-3705.7(2).

  As used in this subdivision: "Working papers" means those records prepared by or for an above named public official for his personal or deliberative use. Generally, once the records have been shared by the chief administrative officer (county administrator or city or town manager), the

records lose the working papers status, unless the records are collected from the council members or other people who have accessed them at the end of a meeting where the records were distributed.

- Consultants' reports as working papers: Working papers, by the above definition, applies to records prepared by or for a manager or mayor for his personal or deliberative use. Once a consultant's report is distributed or disclosed to council or the council has scheduled any action on a matter that is the subject of the consultant's report, the report loses its exempt status as a working paper. § 2.2-3705.8(B). Therefore, until either of the two conditions occur, the report may be withheld as a working paper. Once either event occurs, the working paper's status ceases to exist. If the report is exempt for other reasons, it remains exempt.
- "Written advice of legal counsel to state, regional or local public bodies or public officials, and any other records protected by the attorney client privilege." § 2.2-3705.1(2).
- "Legal memoranda and other work product compiled specifically for use in litigation or for use in an active administrative investigation concerning a matter which is properly the subject of a closed meeting under § 2.2-3711." § 2.2-3705.1(3).

Subsections 2 and 3 of § 2.2-3705.1 are the classic attorney client and attorney's work product rules.

- "Library records which can be used to identify both (i) any library patron who has borrowed material from a library and (ii) the material such patron borrowed." § 2.2-3705.7(3).
- "Any test or examination used, administered or prepared by any public body for purposes of evaluation of (i) any student or any student's performance, (ii) any employee or employment seeker's qualifications or aptitude for employment, retention, or promotion, or (iii) qualifications for any license or certificate issued by a public body." § 2.2-3705.1(4). This subsection includes exemptions for test keys and any information that would defeat the usefulness of the test.
- "Records recorded in or compiled exclusively for use in closed meetings lawfully held pursuant to § 2.1-344. However, no record which is otherwise open to inspection under this chapter shall be deemed exempt by virtue of the fact that it has been reviewed or discussed in a closed meeting." § 2.2-3705.1(5).
- "Computer software developed by or for a ... political subdivision of the Commonwealth." § 2.2-705.1(7).
- "Customer account information of a public utility affiliated with a political subdivision of the Commonwealth, including the customer's name and service address, but excluding the amount of utility service provided and the amount of money paid for such utility service." § 2.2-3705.7(7). Note that under this subsection, anyone has access to the volume of service used by a customer and the price paid, even though the name and address of a customer need not be given. A typical example of how this works: An individual could not demand a listing of the names of customers, but could demand to know how much water, gas, or electricity a customer has used and the amount paid for the same, where the person names the customer.
- "Appraisals and cost estimates of real property subject to a proposed purchase, sale or lease, prior to the completion of such purchase, sale or lease." § 2.2-3705.1(8).

  This section has been modified by Va. Code § 25-248. Local governments are now in the list of agencies that must follow the Uniform Relocation Assistance Act. One of the obligations, in subsection (b) requires that: "real property shall be appraised before the initiation of negotiations, and the owner or his designated representative shall be given an opportunity to accompany the appraiser during his inspection of the property." Therefore, in any purchase of land to which the URAA applies, the landowner must be allowed to see a copy of the appraisal, and the appraisal must be done before beginning negotiations for the land.
- "Confidential information designated as provided in (submitting a bid in procurement regulated by the Procurement Act) as trade secrets or proprietary information by any person who has submitted to a public body an application for prequalification to bid on public construction projects in accordance with subsection B of § 11-46." § 2.2-3705.6(10). Language in the Procurement Act supports this exemption.
- Plans to prevent or respond to terrorist activity or cyber-attacks, to the extent such records set forth specific tactics, or specific security or emergency procedures, the disclosure of which would jeopardize the safety of governmental personnel or the general public, or the security of any governmental facility, building, structure, or information storage system § 2.2-3705.2(4).

- Engineering and architectural drawings, operational, procedural, tactical planning or training manuals, staff meeting minutes or other records, the disclosure of which would reveal surveillance techniques, personnel deployments, alarm or security systems or technologies, or operational and transportation plans or protocols, to the extent such disclosure would jeopardize the security of any governmental facility, building or structure or the safety of persons using such facility, building or structure. § 2.2-3705.2(6).

  These two subsections help localities maintain security without having a risk of terrorists or other people gaining access to the security information.

- Personal information, as defined in § 2.2-3801, including electronic mail addresses, furnished to a public body for the purpose of receiving electronic mail from the public body, provided that the electronic mail recipient has requested that the public body not disclose such information. However, access shall not be denied to the person who is the subject of the record. § 2.2-3705.1(10).

- The name, address and phone number of a person complaining about another person on a zoning, building code or Fire Prevention Code complaint are exempt from disclosure. This provision is not limited to criminal complaints: it applies in any investigation of the complaints. § 2.2-3705.3(10). Building Code and Fire Prevention Codes complaints were added in 2009.

  One new provision exempts information or records of local or regional adult fatality review teams from disclosure. HB 1558. Any locality participating in such review teams may withhold records and information to the extent the information is made confidential by § 32.1-283.6.

D. Criminal incident information.

The majority of the rules for criminal incident information are set out in § 2.2-3706. The section's basic requirement is that "criminal incident information" has to be made available only if it applies to a felony. This means that local law enforcement officials do not have to make misdemeanor criminal incident information available. The policy behind the distinction between misdemeanors and felonies is based on the probable burden that would be shouldered by local police departments and sheriff's offices if required to make public information about every misdemeanor.

There are several exemptions that allow a law enforcement agency to withhold information in order to promote public safety and to not hinder ongoing criminal investigations. If release would hinder an investigation or be likely to cause the criminal to flee or destroy evidence, it need not be released. Once the reason for concern has ended, the exemption no longer applies. However, § 2.2-3706(A)(1)(b),(c) requires the names of adult arrestees and the status of charges or arrests to be released.

The identities of crime victims and confidential informants do not need to be released. There is no time limit on this exemption. Thus, unlike other information, the exemption continues even after the reason for concern ceases to exist.

Various other criminal records are exempt:

- complaints, memos, correspondence and evidence that is not "criminal incident information;"
- photos of adult arrestees, if release would harm an investigation or prosecution;
- confidential reports made to the police or sheriffs personnel;
- local crime commission information identifying persons providing information about criminal activity; and,
- neighborhood watch program information that contains the names, addresses or schedules of the watch participants, if the information is provided under a promise of anonymity.

The provision exempting law-enforcement records containing police and other tactical plans that need to be kept secure for safety reasons is set out in § 2.2-3706(A)(2)(e).

Section 15.2-1722 obligates each police chief and sheriff to maintain records about arrests, investigations and incidents to promote efficient law enforcement operation. Section 2.2-3706(A)(3) clarifies that those records are subject to FOIA, except information of a "personal, medical or financial nature," if the release would jeopardize the safety or privacy of a person. Also exempt are undercover operation plans, background checks of law enforcement job applicants and confidential administrative investigations.

Section 2.2-3706(A)(2)(g) exempts from disclosure the mobile phone and pager numbers of police officers for devices provided by the police department to assist the officers in carrying out their duties. This arose from attempts by reporters to obtain the cell phone numbers of police officers, then calling while the officers were on a call.

Rights of penal institution inmates under FOIA

Section 2.2-3703(C) denies people who are in a local jail or state or federal penitentiary any rights under

FOIA. The only rights are those guaranteed by the Constitution, such as the right to subpoena evidence.

Enforcement provisions

Any person who feels a public body or public official has violated the act may file suit in the general district or circuit court of the locality where the body or official operates. § 2.2-3713(A). A FOIA action may commence in the name of a person, even if the plaintiff's attorney, acting on his or her behalf, made the original FOIA request. The case must be heard within seven days of filing. § 2.2-3713(C). As a practical matter, this rocket docket provision inconveniences judges greatly, as their court schedules are usually very busy. Saturday hearings are common for FOIA cases.

The petitioner must state a claim of a violation with reasonable specificity, pursuant to subsection D. Even though a suit is filed by the complaining citizen, the public body must put on its evidence first and must prove that it has complied with the act. It is not the petitioner's obligation to prove the violation. § 2.2-3713.

The court may award an injunction against repeated violations, or even for a single occurrence of noncompliance. Further, if the petitioner wins the case, he may be awarded attorney's fees by the court. If the court determines that an official willfully or knowingly violated the law, it is required to impose a civil penalty against him or her in an amount between $500 and $2,000 for a first offense and $2,000 to $5,000 for subsequent offenses. The penalties are to be paid into the Literary Fund. § 2.2-3714.

Freedom of Information Advisory Council

The Freedom of Information Advisory Council serves primarily as an office to answer questions about FOIA made by government agencies, the public, and the media. An attorney who staffs the office makes the opinions of the council. The opinions are to be informal, advisory, and nonbinding. If a government agency submits records for a review and advice by the FOIA officer, the officer may not release the submitted information without the permission of the agency that submitted them.

The office has a toll free number (866) 448-4100 for requests, and has a website: http://foiacouncil.dls.virginia.gov/. The council has lists of written opinions on the website.

In addition to issuing opinions, which may be made via telephone, letter or e-mail, the office conducts FOIA training for government agencies. Because public officials must read and familiarize themselves with the act, the training sessions are an important opportunity to learn the act's requirements. § 30-179.

Summary

The Freedom of Information Act includes many requirements and restrictions pertaining to public access of government information. The basic policy woven throughout the act makes clear that the public is to have free access to government information and meetings. The act sets out the types of meetings that can be closed. The exemptions protect the operation of government reasonably well.

FOIA will continue to evolve to meet the changing expectations of the public and government agencies. In the area of electronic information, expect to see significant changes as the General Assembly makes the act more relevant in the fast changing electronic age. For example, application of the act to the use of e-mail, instant messaging and other social media software will likely be revisited.

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Subtitle II. Administration of Government
Part B. Transaction of Public Business
Chapter 37 Virginia Freedom of Information Act

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§ 2.2-3700. Short title; policy.

A. This chapter may be cited as "The Virginia Freedom of Information Act."

B. By enacting this chapter, the General Assembly ensures the people of the Commonwealth ready access to public records in the custody of a public body or its officers and employees, and free entry to meetings of public bodies wherein the business of the people is being conducted. The affairs of government are not intended to be conducted in an atmosphere of secrecy since at all times the public is to be the beneficiary of any action taken at any level of government. Unless a public body or its officers or employees specifically elect to exercise an exemption provided by this chapter or any other statute, every meeting shall be open to the public and all public records shall be available for inspection and copying upon request. All public records and meetings shall be presumed open, unless an exemption is properly invoked.

The provisions of this chapter shall be liberally construed to promote an increased awareness by all persons of governmental activities and afford every opportunity to citizens to witness the operations of government. Any exemption from public access to records or meetings shall be narrowly construed and no record shall be withheld or meeting closed to the public unless specifically made exempt pursuant to this chapter or other specific provision of law. This chapter shall not be construed to discourage the free discussion by government officials or employees of public matters with the citizens of the Commonwealth.

All public bodies and their officers and employees shall make reasonable efforts to reach an agreement with a requester concerning the production of the records requested.

Any ordinance adopted by a local governing body that conflicts with the provisions of this chapter shall be void.

§ 2.2-3701. Definitions.

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

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

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

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

"Meeting" or "meetings" means the meetings including work sessions, when sitting physically, or through telephonic or video equipment pursuant to § 2.2-3708 or2.2-3708.1, as a body or entity, or as an informal assemblage of (i) as many as three members or (ii) a quorum, if less than three, of the constituent membership, wherever held, with or without minutes being taken, whether or not votes are cast, of any public body. Neither the gathering of employees of a public body nor the gathering or attendance of two or more members of a public body (i) at any place or function where no part of the purpose of such gathering or attendance is the discussion or transaction of any public business, and such gathering or attendance was not called or prearranged with any purpose of discussing or transacting any business of the public body, or (ii) at a public forum, candidate appearance, or debate, the purpose of which is to inform the electorate and not to transact public business or to hold discussions relating to the transaction of public business, even though the performance of the members individually or collectively in the conduct of public business may be a topic of discussion or debate at such public meeting, shall be deemed a "meeting" subject to the provisions of this chapter.

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

"Public body" means any legislative body, authority, board, bureau, commission, district or agency of the Commonwealth or of any political subdivision of the Commonwealth, including cities, towns and counties, municipal councils, governing bodies of counties, school boards and planning commissions; boards of visitors of public institutions of higher education; and other organizations, corporations or agencies in the Commonwealth supported wholly or principally by public funds. It shall include (i) the Virginia Birth-Related Neurological Injury Compensation Program and its board of directors established pursuant to Chapter 50 (§ 38.2-5000 et seq.) of Title 38.2 and (ii) any committee, subcommittee, or other entity however designated, of the public body created to perform delegated functions of the public body or to advise the public body. It shall not exclude any such committee, subcommittee or entity because it has private sector or citizen members. Corporations organized by the Virginia Retirement System are "public bodies" for purposes of this chapter.

For the purposes of the provisions of this chapter applicable to access to public records, constitutional officers and private police departments as defined in § 9.1-101 shall be considered public bodies and, except as otherwise expressly provided by law, shall have the

same obligations to disclose public records as other custodians of public records.

"Public records" means all writings and recordings that consist of letters, words or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostatting, photography, magnetic impulse, optical or magneto-optical form, mechanical or electronic recording or other form of data compilation, however stored, and regardless of physical form or characteristics, prepared or owned by, or in the possession of a public body or its officers, employees or agents in the transaction of public business. Records that are not prepared for or used in the transaction of public business are not public records.

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

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

§ 2.2-3702. Notice of chapter.

Any person elected, reelected, appointed or reappointed to any body not excepted from this chapter shall (i) be furnished by the public body's administrator or legal counsel with a copy of this chapter within two weeks following election, reelection, appointment or reappointment and (ii) read and become familiar with the provisions of this chapter.

§ 2.2-3703. Public bodies and records to which chapter inapplicable; voter registration and election records; access by persons incarcerated in a state, local, or federal correctional facility.

A. The provisions of this chapter shall not apply to:

1. The Virginia Parole Board, except that (i) information from the Virginia Parole Board providing the number of inmates considered by such Board for discretionary parole, the number of inmates granted or denied parole, and the number of parolees returned to the custody of the Department of Corrections solely as a result of a determination by such Board of a violation of parole shall be open to inspection and available for release, on a monthly basis, as provided by § 2.2-3704and (ii) all records concerning the finances of the Virginia Parole Board shall be public records and subject to the provisions of this chapter. The information required by clause (i) shall be furnished by offense, sex, race, age of the inmate, and the locality in which the conviction was obtained, upon the request of the party seeking the information;
2. Petit juries and grand juries;
3. Family assessment and planning teams established pursuant to § 2.2-5207;
4. The Virginia State Crime Commission; and
5. The records required by law to be maintained by the clerks of the courts of record, as defined in § 1-212, and courts not of record, as defined in § 16.1-69.5. However, other records maintained by the clerks of such courts shall be public records and subject to the provisions of this chapter.

B. Public access to voter registration and election records shall be governed by the provisions of Title 24.2 and this chapter. The provisions of Title 24.2 shall be controlling in the event of any conflict.

C. No provision of this chapter or Chapter 21 (§ 30-178 et seq.) of Title 30 shall be construed to afford any rights to any person (i) incarcerated in a state, local or federal correctional facility, whether or not such facility is (a) located in the Commonwealth or (b) operated pursuant to the Corrections Private Management Act (§ 53.1-261 et seq.) or (ii) civilly committed pursuant to the Sexually Violent Predators Act (§ 37.2-900 et seq.). However, this subsection shall not be construed to prevent such persons from exercising their constitutionally protected rights, including, but not limited to, their right to call for evidence in their favor in a criminal prosecution.

§ 2.2-3703.1. Disclosure pursuant to court order or subpoena.

Nothing contained in this chapter shall have any bearing upon disclosures required to be made pursuant to any court order or subpoena. No discretionary exemption from mandatory disclosure shall be construed to make records covered by such discretionary exemption privileged under the rules of discovery, unless disclosure is otherwise prohibited by law.

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

A. Except as otherwise specifically provided by law, all public records shall be open to inspection and copying by any citizens of the Commonwealth during the regular office hours of the custodian of such records. Access to such records shall not be denied to citizens of the Commonwealth, representatives of newspapers and magazines with circulation in the Commonwealth, and representatives of radio and television stations broadcasting in or into the Commonwealth. The custodian may require the requester to provide his name and legal address. The custodian of such records shall take all necessary precautions for their preservation and safekeeping.

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

1. The requested records are being entirely withheld because their release is prohibited by law or the custodian has exercised his discretion to withhold the records in accordance with this chapter. Such response shall identify with reasonable particularity the volume and subject matter of withheld records, and cite, as to each category of withheld records, the specific Code section that authorizes the withholding of the records.
2. The requested records are being provided in part and are being withheld in part because the release of part of the records is prohibited by law or the custodian has exercised his discretion to withhold a portion of the records in accordance with this chapter. Such response shall identify with reasonable particularity the subject matter of withheld portions, and cite, as to each category of withheld records, the specific Code section that authorizes the withholding of the records. When a portion of a requested record is withheld, the public body may delete or excise only that portion of the record to which an exemption applies and shall release the remainder of the record.
3. The requested records could not be found or do not exist. However, if the public body that received the request knows that another public body has the requested records, the response shall include contact information for the other public body.
4. It is not practically possible to provide the requested records or to determine whether they are available within the five-work-day period. Such response shall specify the conditions that make a response impossible. If the response is made within five working days, the public body shall have an additional seven work days in which to provide one of the four preceding responses.

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

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

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

F. A public body may make reasonable charges not to exceed its actual cost incurred in accessing, duplicating, supplying, or searching for the requested records. No public body shall impose any extraneous, intermediary or surplus fees or expenses to recoup the general costs associated with creating or maintaining records or transacting the general business of the public body. Any duplicating fee charged by a public body shall not exceed the actual cost of duplication. The public body may also make a reasonable charge for the cost incurred in supplying records produced from a geographic information system at the request of anyone other than the owner of the land that is the subject of the request. However, such charges shall not exceed the actual cost to the public body in supplying such records, except that the public body may charge, on a pro rata per acre basis, for the cost of creating topographi-

cal maps developed by the public body, for such maps or portions thereof, which encompass a contiguous area greater than 50 acres. All charges for the supplying of requested records shall be estimated in advance at the request of the citizen.

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

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

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

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

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

§ 2.2-3704.1. Posting of notice of rights and responsibilities by state public bodies; assistance by the Freedom of Information Advisory Council.

A. All state public bodies created in the executive branch of state government and subject to the provisions of this chapter shall make available the following information to the public upon request and shall post such information on their respective public government websites:

1. A plain English explanation of the rights of a requester under this chapter, the procedures to obtain public records from the public body, and the responsibilities of the public body in complying with this chapter. For purposes of this section, "plain English" means written in nontechnical, readily understandable language using words of common everyday usage and avoiding legal terms and phrases or other terms and words of art whose usage or special meaning primarily is limited to a particular field or profession;
2. Contact information for the person designated by the public body to (i) assist a requester in making a request for records or (ii) respond to requests for public records;
3. A general description, summary, list, or index of the types of public records maintained by such state public body;

4. A general description, summary, list, or index of any exemptions in law that permit or require such public records to be withheld from release;
5. Any policy the public body has concerning the type of public records it routinely withholds from release as permitted by this chapter or other law; and
6. The following statement: "A public body may make reasonable charges not to exceed its actual cost incurred in accessing, duplicating, supplying, or searching for the requested records. No public body shall impose any extraneous, intermediary, or surplus fees or expenses to recoup the general costs associated with creating or maintaining records or transacting the general business of the public body. Any duplicating fee charged by a public body shall not exceed the actual cost of duplication. All charges for the supplying of requested records shall be estimated in advance at the request of the citizen as set forth in subsection F of § 2.2-3704 of the Code of Virginia ."

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

§ 2.2-3705.1. Exclusions to application of chapter; exclusions of general application to public bodies.

The following records are excluded from the provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law:

1. Personnel records containing information concerning identifiable individuals, except that access shall not be denied to the person who is the subject thereof. Any person who is the subject of any personnel record and who is 18 years of age or older may waive, in writing, the protections afforded by this subdivision. If the protections are so waived, the public body shall open such records for inspection and copying.
2. Written advice of legal counsel to state, regional or local public bodies or the officers or employees of such public bodies, and any other records protected by the attorney-client privilege.
3. Legal memoranda and other work product compiled specifically for use in litigation or for use in an active administrative investigation concerning a matter that is properly the subject of a closed meeting under § 2.2-3711.
4. Any test or examination used, administered or prepared by any public body for purposes of evaluation of (i) any student or any student's performance, (ii) any employee or employment seeker's qualifications or aptitude for employment, retention, or promotion, or (iii) qualifications for any license or certificate issued by a public body.

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

   When, in the reasonable opinion of such public body, any such test or examination no longer has any potential for future use, and the security of future tests or examinations will not be jeopardized, the test or examination shall be made available to the public. However, minimum competency tests administered to public school children shall be made available to the public contemporaneously with statewide release of the scores of those taking such tests, but in no event shall such tests be made available to the public later than six months after the administration of such tests.
5. Records recorded in or compiled exclusively for use in closed meetings lawfully held pursuant to § 2.2-3711. However, no record that is otherwise open to inspection under this chapter shall be deemed exempt by virtue of the fact that it has been reviewed or discussed in a closed meeting.
6. Vendor proprietary information software that may be in the official records of a public body. For the purpose of this subdivision, "vendor proprietary software" means computer programs acquired from a vendor for purposes of processing data for agencies or political subdivisions of the Commonwealth.
7. Computer software developed by or for a state agency, state-supported institution of higher education or political subdivision of the Commonwealth.
8. Appraisals and cost estimates of real property subject to a proposed purchase, sale or lease, prior to the completion of such purchase, sale or lease.

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

10. Personal information, as defined in § 2.2-3801, including electronic mail addresses, furnished to a public body for the purpose of receiving electronic mail from the public body, provided that the electronic mail recipient has requested that the public body not disclose such information. However, access shall not be denied to the person who is the subject of the record.

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

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

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

§ 2.2-3705.2. Exclusions to application of chapter; records relating to public safety.

The following records are excluded from the provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law

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

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

   Those portions of engineering and construction drawings and plans that reveal critical structural components, security equipment and systems, ventilation systems, fire protection equipment, mandatory building emergency equipment or systems, elevators, electrical systems, telecommunications equipment and systems, and other utility equipment and systems submitted for the purpose of complying with the Uniform Statewide Building Code (§ 36-97 et seq.) or the Statewide Fire Prevention Code (§ 27-94 et seq.), the disclosure of which would jeopardize the safety or security of any public or private commercial office, multifamily residential or retail building or its occupants in the event of terrorism or other threat to public safety, to the extent that the owner or lessee of such property, equipment or system in writing (i) invokes the protections of this paragraph; (ii) identifies the drawings, plans, or other materials to be protected; and (iii) states the reasons why protection is necessary.

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

3. Documentation or other information that describes the design, function, operation or access control features of any security system, whether

manual or automated, which is used to control access to or use of any automated data processing or telecommunications system.

4. Plans and information to prevent or respond to terrorist activity or cyber attacks, the disclosure of which would jeopardize the safety of any person, including (i) critical infrastructure sector or structural components; (ii) vulnerability assessments, operational, procedural, transportation, and tactical planning or training manuals, and staff meeting minutes or other records; (iii) engineering or architectural records, or records containing information derived from such records, to the extent such records reveal the location or operation of security equipment and systems, elevators, ventilation, fire protection, emergency, electrical, telecommunications or utility equipment and systems of any public building, structure or information storage facility, or telecommunications or utility equipment or systems; and (iv) information not lawfully available to the public regarding specific cybersecurity threats or vulnerabilities or security plans and measures of an entity, facility, building structure, information technology system, or software program. The same categories of records of any person or entity submitted to a public body for the purpose of antiterrorism response planning or cybersecurity planning or protection may be withheld from disclosure if such person or entity in writing (a) invokes the protections of this subdivision, (b) identifies with specificity the records or portions thereof for which protection is sought, and (c) states with reasonable particularity why the protection of such records from public disclosure is necessary to meet the objective of antiterrorism or cybersecurity planning or protection. Such statement shall be a public record and shall be disclosed upon request. Nothing in this subdivision shall be construed to prohibit the disclosure of records relating to the structural or environmental soundness of any building, nor shall it prevent the disclosure of information relating to any building in connection with an inquiry into the performance of that building after it has been subjected to fire, explosion, natural disaster or other catastrophic event.

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

6. Engineering and architectural drawings, operational, procedural, tactical planning or training manuals, or staff meeting minutes or other records, the disclosure of which would reveal surveillance techniques, personnel deployments, alarm or security systems or technologies, or operational and transportation plans or protocols, to the extent such disclosure would jeopardize the security of any governmental facility, building or structure or the safety of persons using such facility, building or structure.

7. Security plans and specific assessment components of school safety audits, as provided in § 22.1-279.8.

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

8. [Expired.]

9. Records of the Commitment Review Committee concerning the mental health assessment of an individual subject to commitment as a sexually violent predator under Chapter 9 (§ 37.2-900 et seq.) of Title 37.2; except that in no case shall records identifying the victims of a sexually violent predator be disclosed.

10. Subscriber data, which for the purposes of this subdivision, means the name, address, telephone number, and any other information identifying a subscriber of a telecommunications carrier, provided directly or indirectly by a telecommunications carrier to a public body that operates a 911 or E-911 emergency dispatch system or an emergency notification or reverse 911 system, if the data is in a form not made available by the telecommunications carrier to the public generally. Nothing in this subdivision shall prevent the release of subscriber data generated in connection with specific calls to a 911 emergency system, where the requester is seeking to obtain public records about the use of the system in response to a specific crime, emergency or other event as to which a citizen has initiated a 911 call.

11. Subscriber data, which for the purposes of this subdivision, means the name, address, telephone number, and any other information identifying a subscriber of a telecommunications carrier, collected by a local governing body in accordance with the Enhanced Public Safety Telephone Services Act (§ 56-484.12 et seq.), and other identifying information of a personal, medical, or financial nature provided to a local governing body in connection with a 911 or E-911 emergency dispatch system or an emergency notification or reverse 911 system, if such records are not otherwise publicly available. Nothing in this subdivision shall prevent the release of subscriber data generated in connection with specific calls to a 911 emergency system, where the requester is seeking to obtain public records about the use of the system in response to a specific crime, emergency or other event as to which a citizen has initiated a 911 call.

12. Records of the Virginia Military Advisory Council or any commission created by executive order for the purpose of studying and making recommendations regarding preventing closure or realignment of federal military and national security installations and facilities located in Virginia and relocation of such facilities to Virginia, or a local or regional military affairs organization appointed by a local governing body, to the extent such records (i) contain information relating to strategies under consideration or development by the Council or such commission or organizations to prevent the closure or realignment of federal military installations located in Virginia or the relocation of national security facilities located in Virginia, to limit the adverse economic effect of such realignment, closure, or relocation, or to seek additional tenant activity growth from the Department of Defense or federal government or (ii) disclose trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), provided to the Council or such commission or organizations in connection with their work. In order to invoke the trade secret protection provided by clause (ii), the submitting entity shall, in writing and at the time of submission (a) invoke this exclusion, (b) identify with specificity the information for which such protection is sought, and (c) state the reason why such protection is necessary. Nothing in this subdivision shall be construed to authorize the withholding of all or part of any record, other than a trade secret that has been specifically identified as required by this subdivision, after the Department of Defense or federal agency has issued a final, unappealable decision, or in the event of litigation, a court of competent jurisdiction has entered a final, unappealable order concerning the closure, realignment, or expansion of the military installation or tenant activities, or the relocation of the national security facility, for which records are sought.

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

14. Documentation or other information relating to the Statewide Agencies Radio System (STARS) or any other similar local or regional public safety communications system that (i) describes the design, function, programming, operation, or access control features of the overall system, components, structures, individual networks, and subsystems of the STARS or any other similar local or regional communications system or (ii) relates to radio frequencies assigned to or utilized by STARS or any other similar local or regional communications system, code plugs, circuit routing, addressing schemes, talk groups, fleet maps, encryption, programming maintained by or utilized by STARS or any other similar local or regional public safety communications system; those portions of engineering and construction drawings and plans that reveal critical structural components, interconnectivity, security equipment and systems, network monitoring, network operation center, master sites, ventilation systems, fire protection equipment, mandatory building emergency equipment, electrical systems, and

other utility equipment and systems related to STARS or any other similar local or regional public safety communications system; and special event plans, operational plans, storm plans, or other pre-arranged programming, the disclosure of which would reveal surveillance techniques, personnel deployments, alarm or security systems or technologies, or operational and transportation plans or protocols, to the extent such disclosure would jeopardize the security of any governmental facility, building, or structure or the safety of any person.

15. Records of a salaried or volunteer Fire/EMS company or Fire/EMS department, to the extent that the records disclose the telephone numbers for cellular telephones, pagers, or comparable portable communication devices provided to its personnel for use in the performance of their official duties.

16. Records of hospitals and nursing homes regulated by the Board of Health pursuant to Chapter 5 (§ 32.1-123 et seq.) of Title 32.1 provided to the Department of Health, to the extent such records reveal the disaster recovery plans or the evacuation plans for such facilities in the event of fire, explosion, natural disaster, or other catastrophic event. Nothing in this subdivision shall be construed to prohibit the disclosure of records relating to the effectiveness of executed evacuation plans after the occurrence of fire, explosion, natural disaster, or other catastrophic event.

§ 2.2-3705.3. Exclusions to application of chapter; records relating to administrative investigations.

The following records are excluded from the provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law:

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

2. Records of active investigations being conducted by the Department of Health Professions or by any health regulatory board in the Commonwealth.

3. Investigator notes, and other correspondence and information, furnished in confidence with respect to an active investigation of individual employment discrimination complaints made to the Department of Human Resource Management, to such personnel of any local public body, including local school boards, as are responsible for conducting such investigations in confidence, or to any public institution of higher education. However, nothing in this section shall prohibit the disclosure of information taken from inactive reports in a form that does not reveal the identity of charging parties, persons supplying the information, or other individuals involved in the investigation.

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

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

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

7. Investigative notes, correspondence and information furnished in confidence, and records otherwise exempted by this chapter or any Virginia statute, provided to or produced by or for (i) the Auditor of Public Accounts; (ii) the Joint Legislative Audit and Review Commission; (iii) an appropriate authority as defined in § 2.2-3010 with respect to an allegation of wrongdoing or abuse under the Fraud and Abuse Whistle Blower Protection Act (§ 2.2-3009 et seq.); (iv) the Office of the State Inspector General with respect to an investigation initiated through the Fraud, Waste and Abuse Hotline or an investigation initiated pursuant to Chapter 3.2 (§ 2.2-307 et seq.); (v) internal auditors appointed by the head of a state agency or by any public institution of higher education; (vi) the committee or the auditor with respect to an investigation or audit conducted pursuant to § 15.2-825; or (vii) the auditors, appointed by the local governing body of any county, city, or town or a school board, who by charter, ordinance, or statute have responsibility for conducting an investigation of any officer, department, or program of such body. Records of completed investigations shall be disclosed in a form that does not reveal the identity of the complainants or persons supplying information to investigators. Unless disclosure is prohibited by this section, the records disclosed shall include, but not be limited to, the agency involved, the identity of the person who is the subject of the complaint, the nature of the complaint, and the actions taken to resolve the complaint. If an investigation does not lead to corrective action, the identity of the person who is the subject of the complaint may be released only with the consent of the subject person. Local governing bodies shall adopt guidelines to govern the disclosure required by this subdivision.

8. Information furnished in confidence to the Department of Human Resource Management with respect to an investigation, consultation, or mediation under §2.2-1202.1, and memoranda, correspondence and other records resulting from any such investigation, consultation or mediation. However, nothing in this section shall prohibit the distribution of information taken from inactive reports in a form that does not reveal the identity of the parties involved or other persons supplying information.

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

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

11. Records furnished to or prepared by the Board of Education pursuant to subsection D of § 22.1-253.13:3 in connection with the review or investigation of any alleged breach in security, unauthorized alteration, or improper administration of tests by local school board employees responsible for the distribution or administration of the tests. However, this section shall not prohibit the disclosure of records to (i) a local school board or division superintendent for the purpose of permitting such board or superintendent to consider or to take personnel action with regard to an employee or (ii) any requester, after the conclusion of a review or investigation, in a form that (a) does not reveal the identity of any person making a complaint or supplying information to the Board on a confidential basis and (b) does not compromise the security of any test mandated by the Board.

12. Investigator notes, and other correspondence and information, furnished in confidence with respect to an active investigation conducted by or for the Board of Education related to the denial, suspension, or revocation of teacher licenses. However, this subdivision shall not prohibit the disclosure of records to a local school board or division superintendent for the purpose of permitting such board or superintendent to consider or to take personnel action with regard to an employee. Records of completed investigations shall be disclosed in a form that does not reveal the identity of any complainant or person supplying information to investigators. The records disclosed shall include information regarding the school or facility involved, the identity of the person who was the subject of the complaint, the nature of the complaint, and the actions taken to resolve the complaint. If an investigation fails to support a complaint or does not lead to corrective action, the identity of the person who was

the subject of the complaint may be released only with the consent of the subject person. No personally identifiable information in the records regarding a current or former student shall be released except as permitted by state or federal law.

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

§ 2.2-3705.4. Exclusions to application of chapter; educational records and certain records of educational institutions.

The following records are excluded from the provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law:

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

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

   Any person who is the subject of any scholastic record and who is 18 years of age or older may waive, in writing, the protections afforded by this subdivision. If the protections are so waived, the public body shall open such records for inspection and copying.

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

3. Records of the Brown v. Board of Education Scholarship Awards Committee relating to personally identifiable information, including scholarship applications, personal financial information, and confidential correspondence and letters of recommendation.

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

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

6. Personal information, as defined in § 2.2-3801,

provided to the Board of the Virginia College Savings Plan or its employees by or on behalf of individuals who have requested information about, applied for, or entered into prepaid tuition contracts or savings trust account agreements pursuant to Chapter 4.9 (§ 23-38.75et seq.) of Title 23. Nothing in this subdivision shall be construed to prohibit disclosure or publication of information in a statistical or other form that does not identify individuals or provide personal information. Individuals shall be provided access to their own personal information.

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

8. Records of a threat assessment team established by a public institution of higher education pursuant to § 23-9.2:10 relating to the assessment or intervention with a specific individual. However, in the event an individual who has been under assessment commits an act, or is prosecuted for the commission of an act that has caused the death of, or caused serious bodily injury, including any felony sexual assault, to another person, the records of such threat assessment team concerning the individual under assessment shall be made available as provided by this chapter, with the exception of any criminal history records obtained pursuant to §19.2-389 or 19.2-389.1, health records obtained pursuant to § 32.1-127.1:03, or scholastic records as defined in § 22.1-289. The public body providing such records shall remove information identifying any person who provided information to the threat assessment team under a promise of confidentiality.

§ 2.2-3705.5. Exclusions to application of chapter; health and social services records.

The following records are excluded from the provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law:

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

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

   Where the person who is the subject of health records is under the age of 18, his right of access may be asserted only by his guardian or his parent, including a noncustodial parent, unless such parent's parental rights have been terminated, a court of competent jurisdiction has restricted or denied such access, or a parent has been denied access to the health record in accordance with § 20-124.6. In instances where the person who is the subject thereof is an emancipated minor, a student in a public institution of higher education, or is a minor who has consented to his own treatment as authorized by § 16.1-338 or 54.1-2969, the right of access may be asserted by the subject person.

   For the purposes of this chapter, statistical summaries of incidents and statistical data concerning abuse of individuals receiving ser-

vices compiled by the Commissioner of Behavioral Health and Developmental Services shall be open to inspection and copying as provided in § 2.2-3704. No such summaries or data shall include any information that identifies specific individuals receiving services.

2. Applications for admission to examinations or for licensure and scoring records maintained by the Department of Health Professions or any board in that department on individual licensees or applicants. However, such material may be made available during normal working hours for copying, at the requester's expense, by the individual who is the subject thereof, in the offices of the Department of Health Professions or in the offices of any health regulatory board, whichever may possess the material.
3. Reports, documentary evidence and other information as specified in §§ 51.5-122, 51.5-141, and 63.2-104.
4. Investigative notes; proprietary information not published, copyrighted or patented; information obtained from employee personnel records; personally identifiable information regarding residents, clients or other recipients of services; other correspondence and information furnished in confidence to the Department of Social Services in connection with an active investigation of an applicant or licensee pursuant to Chapters 17 (§ 63.2-1700 et seq.) and 18 (§ 63.2-1800 et seq.) of Title 63.2; and records and information furnished to the Office of the Attorney General in connection with an investigation or litigation pursuant to Article 19.1 (§8.01-216.1 et seq.) of Chapter 3 of Title 8.01 and Chapter 9 (§ 32.1-310 et seq.) of Title 32.1. However, nothing in this section shall prohibit disclosure of information from the records of completed investigations in a form that does not reveal the identity of complainants, persons supplying information, or other individuals involved in the investigation.
5. Information and records collected for the designation and verification of trauma centers and other specialty care centers within the Statewide Emergency Medical Services System and Services pursuant to Article 2.1 (§ 32.1-111.1 et seq.) of Chapter 4 of Title 32.1.
6. Reports and court documents relating to involuntary admission required to be kept confidential pursuant to § 37.2-818.
7. Data formerly required to be submitted to the Commissioner of Health relating to the establishment of new or the expansion of existing clinical health services, acquisition of major medical equipment, or certain projects requiring capital expenditures pursuant to former § 32.1-102.3:4.
8. Information required to be provided to the Department of Health Professions by certain licensees pursuant to § 54.1-2506.1.
9. Information and records acquired (i) during a review of any child death conducted by the State Child Fatality Review team established pursuant to § 32.1-283.1 or by a local or regional child fatality review team to the extent made confidential by § 32.1-283.2; (ii) during a review of any death conducted by a family violence fatality review team to the extent made confidential by § 32.1-283.3; or (iii) during a review of any adult death conducted by the Adult Fatality Review Team to the extent made confidential by § 32.1-283.5 or by a local or regional adult fatality review team to the extent made confidential by § 32.1-283.6.
10. Patient level data collected by the Board of Health and not yet processed, verified, and released, pursuant to § 32.1-276.9, to the Board by the nonprofit organization with which the Commissioner of Health has contracted pursuant to §32.1-276.4.
11. Records of the Health Practitioners' Monitoring Program Committee within the Department of Health Professions, to the extent such records may identify any practitioner who may be, or who is actually, impaired to the extent disclosure is prohibited by § 54.1-2517.
12. Records submitted as a grant application, or accompanying a grant application, to the Commonwealth Neurotrauma Initiative Advisory Board pursuant to Article 12 (§ 51.5-178 et seq.) of Chapter 14 of Title 51.5, to the extent such records contain (i) medical or mental health records, or other data identifying individual patients or (ii) proprietary business or research-related information produced or collected by the applicant in the conduct of or as a result of study or research on medical, rehabilitative, scientific, technical or scholarly issues, when such information has not been publicly released, published, copyrighted or patented, if the disclosure of such information would be harmful to the competitive position of the applicant.

13. Any record copied, recorded or received by the Commissioner of Health in the course of an examination, investigation or review of a managed care health insurance plan licensee pursuant to §§ 32.1-137.4 and 32.1-137.5, including books, records, files, accounts, papers, documents, and any or all computer or other recordings.
14. Records, information and statistical registries required to be kept confidential pursuant to §§ 63.2-102 and 63.2-104.
15. All data, records, and reports relating to the prescribing and dispensing of covered substances to recipients and any abstracts from such data, records, and reports that are in the possession of the Prescription Monitoring Program pursuant to Chapter 25.2 (§ 54.1-2519 et seq.) of Title 54.1 and any material relating to the operation or security of the Program.
16. Records of the Virginia Birth-Related Neurological Injury Compensation Program required to be kept confidential pursuant to § 38.2-5002.2.
17. Records of the State Health Commissioner relating to the health of any person or persons subject to an order of quarantine or an order of isolation pursuant to Article 3.02 (§ 32.1-48.05 et seq.) of Chapter 2 of Title 32.1; this provision shall not, however, be construed to prohibit the disclosure of statistical summaries, abstracts or other information in aggregate form.
18. Records containing the names and addresses or other contact information of persons receiving transportation services from a state or local public body or its designee under Title II of the Americans with Disabilities Act, (42 U.S.C. § 12131 et seq.) or funded by Temporary Assistance for Needy Families (TANF) created under § 63.2-600.
19. Records of certain health care committees and entities, to the extent that they reveal information that may be withheld from discovery as privileged communications pursuant to § 8.01-581.17.

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

The following records are excluded from the provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law:

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. Confidential proprietary records, 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 records related to businesses that are considering locating or expanding in Virginia, prepared by a public body, where competition or bargaining is involved and where, if such records are made public, the financial interest of the public body would be adversely affected.
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. Confidential proprietary records related to inventory and sales, voluntarily provided by private energy suppliers to the Department of Mines, Minerals and 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.
9. Proprietary, commercial or financial information, balance sheets, trade secrets, and revenue and cost projections provided by a private transportation business to the Virginia Department of

Transportation and the Department of Rail and Public Transportation for the purpose of conducting transportation studies needed to obtain grants or other financial assistance under the Transportation Equity Act for the 21st Century (P.L. 105-178) for transportation projects, 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. However, the exemption provided by this subdivision shall not apply to any wholly owned subsidiary of a public body.

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

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

b. Records provided by a private entity to a responsible public entity, affected jurisdiction, or affected local jurisdiction pursuant to the provisions of the Public-Private Transportation Act of 1995 or the Public-Private Education Facilities and Infrastructure Act of 2002, to the extent that such records contain (i) trade secrets of the private entity as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.); (ii) financial records of the private entity, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise; or (iii) other information submitted by the private entity, where, if the records were made public prior to the execution of an interim agreement or a comprehensive agreement, the financial interest or bargaining position of the public or private entity would be adversely affected. In order for the records specified in clauses (i), (ii), and (iii) to be excluded from the provisions of this chapter, the private entity shall make a written request to the responsible public entity

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

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

3. Stating the reasons why protection is necessary.

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

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

For the purposes of this subdivision, the terms

"affected jurisdiction," "affected local jurisdiction," "comprehensive agreement," "interim agreement," "qualifying project," "qualifying transportation facility," "responsible public entity," and "private entity" shall mean the same as those terms are defined in the Public-Private Transportation Act of 1995 or in the Public-Private Education Facilities and Infrastructure Act of 2002.

12. Confidential proprietary information or trade secrets, not publicly available, provided by a private person or entity to the Virginia Resources Authority or to a fund administered in connection with financial assistance rendered or to be rendered by the Virginia Resources Authority where, if such information were made public, the financial interest of the private person or entity would be adversely affected, and, after June 30, 1997, where such information was provided pursuant to a promise of confidentiality.

13. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), or confidential proprietary records that are not generally available to the public through regulatory disclosure or otherwise, provided by a (a) bidder or applicant for a franchise or (b) franchisee under Chapter 21 (§ 15.2-2100 et seq.) of Title 15.2 to the applicable franchising authority pursuant to a promise of confidentiality from the franchising authority, to the extent the records relate to the bidder's, applicant's, or franchisee's financial capacity or provision of new services, adoption of new technologies or implementation of improvements, where such new services, technologies or improvements have not been implemented by the franchisee on a nonexperimental scale in the franchise area, and where, if such records were made public, the competitive advantage or financial interests of the franchisee would be adversely affected.

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

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

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

15. Records and reports related to Virginia apple producer sales provided to the Virginia State Apple Board pursuant to § 3.2-1215.

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

17. Records submitted as a grant or loan application, or accompanying a grant or loan application, to the Innovation and Entrepreneurship Investment Authority pursuant to Article 3 (§ 2.2-2233.1 et seq.) of Chapter 22 of Title 2.2 or to the Commonwealth Health Research Board pursuant to Chapter 22 (§ 23-277 et seq.) of Title 23 to the extent such records contain proprietary business or research-related information produced or collected by the applicant in the conduct of or as a result of study or research on medical, rehabilitative, scientific, technical, technological, or scholarly issues, when such information has not been publicly released, published, copyrighted, or patented, if the disclosure of such information would be harmful to the competitive position of the applicant.

18. Confidential proprietary records and trade secrets developed and held by a local public body (i) providing telecommunication services pursuant to § 56-265.4:4 and (ii) providing cable television services pursuant to Article 1.1 (§ 15.2-2108.2 et seq.) of Chapter 21 of Title 15.2, to the extent that disclosure of such records would be harmful to the competitive position of the locality. In order for confidential proprietary information or trade secrets to be excluded from the provisions of this chapter, the locality in writing shall (a) invoke the protections of this subdivision, (b) identify with specificity the records or portions thereof for which protection is sought, and (c) state the reasons why protection is necessary.

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

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

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

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

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

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

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

    3. Stating the reasons why protection is necessary.

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

23. Records submitted as a grant application, or accompanying a grant application, to the Tobacco Region Revitalization Commission to the extent such records contain (i) trade secrets as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), (ii) financial records of a grant applicant that is not a public body, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise, or (iii) research-related information produced or collected by the applicant in the conduct of or as a result of study or research on medical, rehabilitative, scientific, technical, technological, or scholarly issues, when such information has not been publicly released, published, copyrighted, or patented, if the disclosure of such information would be harmful to the competitive position of the applicant; and memoranda, staff evaluations, or other records prepared by the Commission or its staff exclusively for the evaluation of grant applications. The exclusion provided by this subdivision shall apply to grants that are consistent with the powers of and in furtherance of the performance of the duties of the Commission pursuant to § 3.2-3103.

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

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

    2. Identifying with specificity the data, records or other materials for which protection is sought; and

    3. Stating the reasons why protection is necessary.

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

24. a. Records of the Commercial Space Flight Authority relating to rate structures or charges for the use of projects of, the sale of products of, or services rendered by the Authority if public disclosure would adversely affect the financial interest or bargaining position of the Authority or a private entity providing records to the Authority; or

b. Records provided by a private entity to the Commercial Space Flight Authority, to the extent that such records contain (i) trade secrets of the private entity as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.); (ii) financial records of the private entity, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise; or (iii) other information submitted by the private entity, where, if the records were made public, the financial interest or bargaining position of the Authority or private entity would be adversely affected.

In order for the records specified in clauses (i), (ii), and (iii) of subdivision 24 b to be excluded from the provisions of this chapter, the private entity shall make a written request to the Authority

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

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

3. Stating the reasons why protection is necessary.

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

25. Documents and other information of a proprietary nature furnished by an agricultural landowner or operator to the Department of Conservation and Recreation, the Department of Environmental Quality, the Department of Agriculture and Consumer Services or any political subdivision, agency, or board of the Commonwealth 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 regulatory enforcement action.

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

27. Documents and other information of a proprietary nature furnished by a licensed public-use airport to the Department of Aviation for funding from programs administered by the Department of Aviation or the Virginia Aviation Board, where if the records were made public, the financial interest of the public-use airport would be adversely affected.

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

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

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

3. Stating the reasons why protection is necessary.

§ 2.2-3705.7. Exclusions to application of chapter; records of specific public bodies and certain other limited exemptions.

The following records are excluded from the provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law:

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

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

   As used in this subdivision:

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

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

   "Working papers" means those records prepared by or for an above-named public official for his personal or deliberative use.

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

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

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

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

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

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

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

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

11. Records, memoranda, working papers, graphics, video or audio tapes, production models, data and information of a proprietary nature produced by or for or collected by or for the Virginia Lottery relating to matters of a specific

lottery game design, development, production, operation, ticket price, prize structure, manner of selecting the winning ticket, manner of payment of prizes to holders of winning tickets, frequency of drawings or selections of winning tickets, odds of winning, advertising, or marketing, where such official records have not been publicly released, published, copyrighted or patented. Whether released, published or copyrighted, all game-related information shall be subject to public disclosure under this chapter upon the first day of sales for the specific lottery game to which it pertains.

12. Records of the Virginia Retirement System, acting pursuant to § 51.1-124.30, or of a local retirement system, acting pursuant to § 51.1-803, or of the Rector and Visitors of the University of Virginia, acting pursuant to § 23-76.1, or of the Virginia College Savings Plan, acting pursuant to § 23-38.77, relating to the acquisition, holding or disposition of a security or other ownership interest in an entity, where such security or ownership interest is not traded on a governmentally regulated securities exchange, to the extent that: (i) such records contain confidential analyses prepared for the Rector and Visitors of the University of Virginia, prepared by the retirement system or the Virginia College Savings Plan, or provided to the retirement system or the Virginia College Savings Plan under a promise of confidentiality, of the future value of such ownership interest or the future financial performance of the entity; and (ii) disclosure of such confidential analyses would have an adverse effect on the value of the investment to be acquired, held or disposed of by the retirement system, the Rector and Visitors of the University of Virginia, or the Virginia College Savings Plan. Nothing in this subdivision shall be construed to prevent the disclosure of records relating to the identity of any investment held, the amount invested, or the present value of such investment.

13. Names and addresses of subscribers to Virginia Wildlife magazine, published by the Department of Game and Inland Fisheries, provided the individual subscriber has requested in writing that the Department not release such information.

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

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

16. Records of the Department of Environmental Quality, the State Water Control Board, State Air Pollution Control Board or the Virginia Waste Management Board relating to (i) active federal environmental enforcement actions that are considered confidential under federal law and (ii) enforcement strategies, including proposed sanctions for enforcement actions. Upon request, such records shall be disclosed after a proposed sanction resulting from the investigation has been proposed to the director of the agency. This subdivision shall not be construed to prohibit the disclosure of records related to inspection reports, notices of violation, and documents detailing the

nature of any environmental contamination that may have occurred or similar documents.

17. As it pertains to any person, records related to the operation of toll facilities that identify an individual, vehicle, or travel itinerary including, but not limited to, vehicle identification data, vehicle enforcement system information; video or photographic images; Social Security or other identification numbers appearing on driver's licenses; credit card or bank account data; home addresses; phone numbers; or records of the date or time of toll facility use.

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

19. Records of the Board for Branch Pilots relating to the chemical or drug testing of a person regulated by the Board, where such person has tested negative or has not been the subject of a disciplinary action by the Board for a positive test result.

20. Records, investigative notes, correspondence, and information pertaining to the planning, scheduling and performance of examinations of holder records pursuant to the Uniform Disposition of Unclaimed Property Act (§ 55-210.1 et seq.) prepared by or for the State Treasurer, his agents, employees or persons employed to perform an audit or examination of holder records.

21. Records of the Virginia Department of Emergency Management or a local governing body relating to citizen emergency response teams established pursuant to an ordinance of a local governing body, to the extent that such records reveal the name, address, including e-mail address, telephone or pager numbers, or operating schedule of an individual participant in the program.

22. Records of state or local park and recreation departments and local and regional park authorities to the extent such records contain information identifying a person under the age of 18 years. However, nothing in this subdivision shall operate to prohibit the disclosure of information defined as directory information under regulations implementing the Family Educational Rights and Privacy Act, 20U.S.C. § 1232g, unless the public body has undertaken the parental notification and opt-out requirements provided by such regulations. Access shall not be denied to the parent, including a noncustodial parent, or guardian of such person, unless the parent's parental rights have been terminated or a court of competent jurisdiction has restricted or denied such access. For records of such persons who are emancipated, the right of access may be asserted by the subject thereof. Any parent or emancipated person who is the subject of the record may waive, in writing, the protections afforded by this subdivision. If the protections are so waived, the public body shall open such records for inspection and copying.

23. Records submitted for inclusion in the Statewide Alert Network administered by the Department of Emergency Management, to the extent that they reveal names, physical addresses, email addresses, computer or internet protocol information, telephone numbers, pager numbers, other wireless or portable communications device information, or operating schedules of individuals or agencies, where the release of such information would compromise the security of the Statewide Alert Network or individuals participating in the Statewide Alert Network.

24. Records of the Judicial Inquiry and Review Commission made confidential by §17.1-913.

25. Records of the Virginia Retirement System acting pursuant to § 51.1-124.30, of a local retirement system acting pursuant to § 51.1-803 (hereinafter collectively referred to as the retirement system), or of the Virginia College Savings Plan, acting pursuant to § 23-38.77 relating to:

    a. Internal deliberations of or decisions by the retirement system or the Virginia College Savings Plan on the pursuit of particular investment strategies, or the selection or termination of investment managers, prior to the execution of such investment strategies or the selection or termination of such managers, to the extent that disclosure of such records would have an adverse impact on the financial interest of the retirement system or the Virginia College Savings Plan; and

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

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

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

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

(3) Stating the reasons why protection is necessary.

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

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

26. Records of the Department of Corrections made confidential by § 53.1-233.

27. Records maintained by the Department of the Treasury or participants in the Local Government Investment Pool (§ 2.2-4600 et seq.), to the extent such records relate to information required to be provided by such participants to the Department to establish accounts in accordance with § 2.2-4602.

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

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

30. Names, physical addresses, telephone numbers, and email addresses contained in correspondence between an individual and a member of the governing body, school board, or other public body of the locality in which the individual is a resident, unless the correspondence relates to the transaction of public business. However, no record that is otherwise open to inspection under this chapter shall be deemed exempt by virtue of the fact that it has been attached to or incorporated within any such correspondence.

31. Records of the Commonwealth's Attorneys' Services Council, to the extent such records are prepared for and utilized by the Commonwealth's Attorneys' Services Council in the training of state prosecutors or law-enforcement personnel, where such records are not otherwise available to the public and the release of such records would reveal confidential strategies, methods or procedures to be employed in law-enforcement activities, or materials created for the investigation and prosecution of a criminal case.

32. Records provided to the Department of Aviation by other entities of the Commonwealth in connection with the operation of aircraft, where the records would not be subject to disclosure by the entity providing the records. The entity providing the records to the Department of Aviation shall identify the specific portion of the records to be protected and the applicable provision of this chapter that exempts the record or portions thereof from mandatory disclosure.

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

34. (Effective July 1, 2018)

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

In order for the records identified in clauses (i) through (iii) to be excluded from the provisions of this chapter, the private entity shall make a written request to the Authority:

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

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

c. Stating the reasons why protection is necessary.

The Authority shall determine whether the requested exclusion from disclosure is necessary to protect such records of the private entity. The Authority shall make a written determination of the nature and scope of the protection to be afforded by it under this subdivision.

§ 2.2-3705.8. Limitation on record exclusions.

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

The provisions of this subsection, however, shall not require public access to records of the official salaries or rates of pay of public employees whose annual rate of pay is $10,000 or less.

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

§ 2.2-3706. Disclosure of criminal records; limitations.

A. All public bodies engaged in criminal law-enforcement activities shall provide requested records in accordance with this chapter as follows:

1. Records required to be released:

a. Criminal incident information relating to felony offenses, which shall include:

(1) A general description of the criminal activity reported;

(2) The date the alleged crime was committed;

(3) The general location where the alleged crime was committed;

(4) The identity of the investigating officer or other point of contact; and

(5) A general description of any injuries suffered or property damaged or stolen.

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

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

b. Adult arrestee photographs taken during the initial intake following the arrest and as part of the routine booking procedure, except when necessary to avoid jeopardizing an investigation

in felony cases until such time as the release of the photograph will no longer jeopardize the investigation; and

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

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

a. Criminal investigative files, defined as any documents and information, including complaints, court orders, memoranda, notes, diagrams, maps, photographs, correspondence, reports, witness statements, and evidence relating to a criminal investigation or prosecution, other than criminal incident information subject to release in accordance with subdivision 1 a;

b. Reports submitted in confidence to (i) state and local law-enforcement agencies, (ii) investigators authorized pursuant to Chapter 3.2 (§ 2.2-307 et seq.), and (iii) campus police departments of public institutions of higher education established pursuant to Chapter 17 (§ 23-232 et seq.) of Title 23;

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

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

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

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

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

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

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

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

k. Records of the Sex Offender and Crimes Against Minors Registry maintained by the Department of State Police pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1, including information obtained from state, local, and regional officials, except to the extent that information is required to be posted on the Internet pursuant to § 9.1-913; and

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

B. Noncriminal records. Records (i) required to be maintained by law-enforcement agencies pursuant to § 15.2-1722 or (ii) maintained by other public bodies engaged in criminal law-enforcement activities shall be subject to the provisions of this chapter except that those portions of noncriminal incident or other noncriminal investigative reports or materials that contain identifying information of a personal, medical, or financial nature may be withheld where the release of such information would jeopardize the safety or privacy of any person. Access to personnel records of persons

employed by a law-enforcement agency shall be governed by the provisions of subdivision A 2 i of this section and subdivision 1 of § 2.2-3705.1, as applicable.

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

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

§ 2.2-3707. Meetings to be public; notice of meetings; recordings; minutes.

A. All meetings of public bodies shall be open, except as provided in §§ 2.2-3707.01and 2.2-3711.

B. No meeting shall be conducted through telephonic, video, electronic or other communication means where the members are not physically assembled to discuss or transact public business, except as provided in § 2.2-3708, 2.2-3708.1 or as may be specifically provided in Title 54.1 for the summary suspension of professional licenses.

C. Every public body shall give notice of the date, time, and location of its meetings by placing the notice in a prominent public location at which notices are regularly posted and in the office of the clerk of the public body, or in the case of a public body that has no clerk, in the office of the chief administrator. All state public bodies subject to the provisions of this chapter shall also post notice of their meetings on their websites and on the electronic calendar maintained by the Virginia Information Technologies Agency commonly known as the Commonwealth Calendar. Publication of meeting notices by electronic means by other public bodies shall be encouraged. The notice shall be posted at least three working days prior to the meeting. Notices for meetings of state public bodies on which there is at least one member appointed by the Governor shall state whether or not public comment will be received at the meeting and, if so, the approximate point during the meeting when public comment will be received.

D. Notice, reasonable under the circumstance, of special or emergency meetings shall be given contemporaneously with the notice provided members of the public body conducting the meeting.

E. Any person may annually file a written request for notification with a public body. The request shall include the requester's name, address, zip code, daytime telephone number, electronic mail address, if available, and organization, if any. The public body receiving such request shall provide notice of all meetings directly to each such person. Without objection by the person, the public body may provide electronic notice of all meetings in response to such requests.

F. At least one copy of all agenda packets and, unless exempt, all materials furnished to members of a public body for a meeting shall be made available for public inspection at the same time such documents are furnished to the members of the public body.

G. The notice provisions of this chapter shall not apply to informal meetings or gatherings of the members of the General Assembly.

H. Any person may photograph, film, record or otherwise reproduce any portion of a meeting required to be open. The public body conducting the meeting may adopt rules governing the placement and use of equipment necessary for broadcasting, photographing, filming or recording a meeting to prevent interference with the proceedings, but shall not prohibit or otherwise prevent any person from photographing, filming, recording, or otherwise reproducing any portion of a meeting required to be open. No public body shall conduct a meeting required to be open in any building or facility where such recording devices are prohibited.

I. Minutes shall be recorded at all open meetings. However, minutes shall not be required to be taken at deliberations of (i) standing and other committees of the General Assembly; (ii) legislative interim study commissions and committees, including the Virginia Code Commission; (iii) study committees or commissions appointed by the Governor; or (iv) study commissions or study committees, or any other committees or subcommittees appointed by the governing bodies or school boards of counties, cities and towns, except where the membership of any such commission, committee or subcommittee includes a majority of the governing body of the county, city or town or school board.

Minutes, including draft minutes, and all other records of open meetings, including audio or audio/visual records shall be deemed public records and subject to the provisions of this chapter.

Minutes shall be in writing and shall include (i) the date, time, and location of the meeting; (ii) the members of the public body recorded as present and absent; and (iii) a summary of the discussion on matters proposed, deliberated or decided, and a record of any votes taken. In addition, for electronic communication meetings conducted in accordance with § 2.2-3708, minutes of state public bodies shall include (a) the iden-

tity of the members of the public body at each remote location identified in the notice who participated in the meeting through electronic communications means, (b) the identity of the members of the public body who were physically assembled at the primary or central meeting location, and (c) the identity of the members of the public body who were not present at the locations identified in clauses (a) and (b), but who monitored such meeting through electronic communications means.

§ 2.2-3707.01. Meetings of the General Assembly.

A. Except as provided in subsection B, public access to any meeting of the General Assembly or a portion thereof shall be governed by rules established by the Joint Rules Committee and approved by a majority vote of each house at the next regular session of the General Assembly. At least 60 days before the adoption of such rules, the Joint Rules Committee shall (i) hold regional public hearings on such proposed rules and (ii) provide a copy of such proposed rules to the Virginia Freedom of Information Advisory Council.

B. Floor sessions of either house of the General Assembly; meetings, including work sessions, of any standing or interim study committee of the General Assembly; meetings, including work sessions, of any subcommittee of such standing or interim study committee; and joint committees of conference of the General Assembly; or a quorum of any such committees or subcommittees, shall be open and governed by this chapter.

C. Meetings of the respective political party caucuses of either house of the General Assembly, including meetings conducted by telephonic or other electronic communication means, without regard to (i) whether the General Assembly is in or out of regular or special session or (ii) whether such caucuses invite staff or guests to participate in their deliberations, shall not be deemed meetings for the purposes of this chapter.

D. No regular, special, or reconvened session of the General Assembly held pursuant to Article IV, Section 6 of the Constitution of Virginia shall be conducted using electronic communication means pursuant § 2.2-3708.

§ 2.2-3707.1. Posting of minutes for state boards and commissions.

All boards, commissions, councils, and other public bodies created in the executive branch of state government and subject to the provisions of this chapter shall post minutes of their meetings on such body's website, if any, and on the electronic calendar maintained by the Virginia Information Technologies Agency commonly known as the Commonwealth Calendar. Draft minutes of meetings shall be posted as soon as possible but no later than ten working days after the conclusion of the meeting. Final approved meeting minutes shall be posted within three working days of final approval of the minutes.

§ 2.2-3708. Electronic communication meetings; applicability; physical quorum required; exceptions; notice; report.

A. Except as expressly provided in subsection G of this section or § 2.2-3708.1, no local governing body, school board, or any authority, board, bureau, commission, district or agency of local government, any committee thereof, or any entity created by a local governing body, school board, or any local authority, board, or commission shall conduct a meeting wherein the public business is discussed or transacted through telephonic, video, electronic or other communication means where the members are not physically assembled. Nothing in this section shall be construed to prohibit the use of interactive audio or video means to expand public participation.

B. Except as provided in subsection G or H of this section or subsection D of § 2.2-3707.01, state public bodies may conduct any meeting wherein the public business is discussed or transacted through electronic communication means, provided (i) a quorum of the public body is physically assembled at one primary or central meeting location, (ii) notice of the meeting has been given in accordance with subsection C, and (iii) the remote locations, from which additional members of the public body participate through electronic communication means, are open to the public. All persons attending the meeting at any of the meeting locations shall be afforded the same opportunity to address the public body as persons attending the primary or central location.

If an authorized public body holds an electronic meeting pursuant to this section, it shall also hold at least one meeting annually where members in attendance at the meeting are physically assembled at one location and where no members participate by electronic communication means.

C. Notice of any meetings held pursuant to this section shall be provided at least three working days in advance of the date scheduled for the meeting. The notice shall include the date, time, place, and purpose for the meeting; shall identify the locations for the

meeting; and shall include a telephone number that may be used at remote locations to notify the primary or central meeting location of any interruption in the telephonic or video broadcast of the meeting to the remote locations. Any interruption in the telephonic or video broadcast of the meeting shall result in the suspension of action at the meeting until repairs are made and public access restored.

D. Agenda packets and, unless exempt, all materials that will be distributed to members of the public body and that have been made available to the staff of the public body in sufficient time for duplication and forwarding to all locations where public access will be provided shall be made available to the public at the time of the meeting. Minutes of all meetings held by electronic communication means shall be recorded as required by § 2.2-3707. Votes taken during any meeting conducted through electronic communication means shall be recorded by name in roll-call fashion and included in the minutes.

E. Three working days' notice shall not be required for meetings authorized under this section held in accordance with subsection G or that are continued to address an emergency or to conclude the agenda of the meeting for which proper notice has been given, when the date, time, place, and purpose of the continued meeting are set during the meeting prior to adjournment. Public bodies conducting emergency meetings through electronic communication means shall comply with the provisions of subsection D requiring minutes of the meeting. The nature of the emergency shall be stated in the minutes.

F. Any authorized public body that meets by electronic communication means shall make a written report of the following to the Virginia Freedom of Information Advisory Council and the Joint Commission on Technology and Science by December 15 of each year:

1. The total number of electronic communication meetings held that year;
2. The dates and purposes of the meetings;
3. A copy of the agenda for the meeting;
4. The number of sites for each meeting;
5. The types of electronic communication means by which the meetings were held;
6. The number of participants, including members of the public, at each meeting location;
7. The identity of the members of the public body recorded as absent and those recorded as present at each meeting location;
8. A summary of any public comment received about the electronic communication meetings; and
9. A written summary of the public body's experience using electronic communication meetings, including its logistical and technical experience.

In addition, any authorized public body shall make available to the public at any meeting conducted in accordance with this section a public comment form prepared by the Virginia Freedom of Information Advisory Council in accordance with § 30-179.

G. Any public body may meet by electronic communication means without a quorum of the public body physically assembled at one location when the Governor has declared a state of emergency in accordance with § 44-146.17, provided (i) the catastrophic nature of the declared emergency makes it impracticable or unsafe to assemble a quorum in a single location and (ii) the purpose of the meeting is to address the emergency. The public body convening a meeting in accordance with this subsection shall (a) give public notice using the best available method given the nature of the emergency, which notice shall be given contemporaneously with the notice provided members of the public body conducting the meeting; (b) make arrangements for public access to such meeting; and (c) otherwise comply with the provisions of this section. The nature of the emergency, the fact that the meeting was held by electronic communication means, and the type of electronic communication means by which the meeting was held shall be stated in the minutes.

§ 2.2-3708.1. Participation in meetings in event of emergency or personal matter; certain disabilities; distance from meeting location for certain public bodies.

A. A member of a public body may participate in a meeting governed by this chapter through electronic communication means from a remote location that is not open to the public only as follows and subject to the requirements of subsection B:

1. If, on or before the day of a meeting, a member of the public body holding the meeting notifies the chair of the public body that such member is unable to attend the meeting due to an emergency or personal matter and identifies with specificity the nature of the emergency or personal matter, and the public body holding the meeting records in its minutes the specific nature of the emergency or personal matter and the remote

location from which the member participated. If a member's participation from a remote location is disapproved because such participation would violate the policy adopted pursuant to subsection B, such disapproval shall be recorded in the minutes with specificity.

Such participation by the member shall be limited each calendar year to two meetings or 25 percent of the meetings of the public body, whichever is fewer;

2. If a member of a public body notifies the chair of the public body that such member is unable to attend a meeting due to a temporary or permanent disability or other medical condition that prevents the member's physical attendance and the public body records this fact and the remote location from which the member participated in its minutes; or

3. If, on the day of a meeting, a member of a regional public body notifies the chair of the public body that such member's principal residence is more than 60 miles from the meeting location identified in the required notice for such meeting and the public body holding the meeting records in its minutes the remote location from which the member participated. If a member's participation from a remote location is disapproved because such participation would violate the policy adopted pursuant to subsection B, such disapproval shall be recorded in the minutes with specificity.

B. Participation by a member of a public body as authorized under subsection A shall be only under the following conditions:

1. The public body has adopted a written policy allowing for and governing participation of its members by electronic communication means, including an approval process for such participation, subject to the express limitations imposed by this section. Once adopted, the policy shall be applied strictly and uniformly, without exception, to the entire membership and without regard to the identity of the member requesting remote participation or the matters that will be considered or voted on at the meeting;

2. A quorum of the public body is physically assembled at the primary or central meeting location; and

3. The public body makes arrangements for the voice of the remote participant to be heard by all persons at the primary or central meeting location.

§ 2.2-3710. Transaction of public business other than by votes at meetings prohibited.

A. Unless otherwise specifically provided by law, no vote of any kind of the membership, or any part thereof, of any public body shall be taken to authorize the transaction of any public business, other than a vote taken at a meeting conducted in accordance with the provisions of this chapter. No public body shall vote by secret or written ballot, and unless expressly provided by this chapter, no public body shall vote by telephone or other electronic communication means.

B. Notwithstanding the foregoing, nothing contained herein shall be construed to prohibit (i) separately contacting the membership, or any part thereof, of any public body for the purpose of ascertaining a member's position with respect to the transaction of public business, whether such contact is done in person, by telephone or by electronic communication, provided the contact is done on a basis that does not constitute a meeting as defined in this chapter or (ii) the House of Delegates or the Senate of Virginia from adopting rules relating to the casting of votes by members of standing committees. Nothing in this subsection shall operate to exclude any public record from the provisions of this chapter.

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

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

1. Discussion, consideration, or interviews of prospective candidates for employment; assignment, appointment, promotion, performance, demotion, salaries, disciplining, or resignation of specific public officers, appointees, or employees of any public body; and evaluation of performance of departments or schools of public institutions of higher education where such evaluation will necessarily involve discussion of the performance of specific individuals. Any teacher shall be permitted to be present during a closed meeting in which there is a discussion or consideration of a disciplinary matter that involves the teacher and some student and the student involved in the matter is present, provided the teacher makes a written request to be present to the presiding officer of the appropriate board.

2. Discussion or consideration of admission or disciplinary matters or any other matters that would involve the disclosure of information contained in

a scholastic record concerning any student of any Virginia public institution of higher education or any state school system. However, any such student, legal counsel and, if the student is a minor, the student's parents or legal guardians shall be permitted to be present during the taking of testimony or presentation of evidence at a closed meeting, if such student, parents, or guardians so request in writing and such request is submitted to the presiding officer of the appropriate board.

3. Discussion or consideration of the acquisition of real property for a public purpose, or of the disposition of publicly held real property, where discussion in an open meeting would adversely affect the bargaining position or negotiating strategy of the public body.
4. The protection of the privacy of individuals in personal matters not related to public business.
5. Discussion concerning a prospective business or industry or the expansion of an existing business or industry where no previous announcement has been made of the business' or industry's interest in locating or expanding its facilities in the community.
6. Discussion or consideration of the investment of public funds where competition or bargaining is involved, where, if made public initially, the financial interest of the governmental unit would be adversely affected.
7. Consultation with legal counsel and briefings by staff members or consultants pertaining to actual or probable litigation, where such consultation or briefing in open meeting would adversely affect the negotiating or litigating posture of the public body; and consultation with legal counsel employed or retained by a public body regarding specific legal matters requiring the provision of legal advice by such counsel. For the purposes of this subdivision, "probable litigation" means litigation that has been specifically threatened or on which the public body or its legal counsel has a reasonable basis to believe will be commenced by or against a known party. Nothing in this subdivision shall be construed to permit the closure of a meeting merely because an attorney representing the public body is in attendance or is consulted on a matter.
8. In the case of boards of visitors of public institutions of higher education, discussion or consideration of matters relating to gifts, bequests and fund-raising activities, and grants and contracts for services or work to be performed by such institution. However, the terms and conditions of any such gifts, bequests, grants, and contracts made by a foreign government, a foreign legal entity, or a foreign person and accepted by a public institution of higher education in Virginia shall be subject to public disclosure upon written request to the appropriate board of visitors. For the purpose of this subdivision, (i) "foreign government" means any government other than the United States government or the government of a state or a political subdivision thereof; (ii) "foreign legal entity" means any legal entity created under the laws of the United States or of any state thereof if a majority of the ownership of the stock of such legal entity is owned by foreign governments or foreign persons or if a majority of the membership of any such entity is composed of foreign persons or foreign legal entities, or any legal entity created under the laws of a foreign government; and (iii) "foreign person" means any individual who is not a citizen or national of the United States or a trust territory or protectorate thereof.
9. In the case of the boards of trustees of the Virginia Museum of Fine Arts, the Virginia Museum of Natural History, the Jamestown-Yorktown Foundation, and The Science Museum of Virginia, discussion or consideration of matters relating to specific gifts, bequests, and grants.
10. Discussion or consideration of honorary degrees or special awards.
11. Discussion or consideration of tests, examinations, or other records excluded from this chapter pursuant to subdivision 4 of § 2.2-3705.1.
12. Discussion, consideration, or review by the appropriate House or Senate committees of possible disciplinary action against a member arising out of the possible inadequacy of the disclosure statement filed by the member, provided the member may request in writing that the committee meeting not be conducted in a closed meeting.
13. Discussion of strategy with respect to the negotiation of a hazardous waste siting agreement or to consider the terms, conditions, and provisions of a hazardous waste siting agreement if the governing body in open meeting finds that an open meeting will have an adverse effect upon the negotiating position of the governing body or the establishment of the terms, conditions and provi-

sions of the siting agreement, or both. All discussions with the applicant or its representatives may be conducted in a closed meeting.

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

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

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

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

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

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

20. Discussion by the Board of the Virginia Retirement System, acting pursuant to §51.1-124.30, or of any local retirement system, acting pursuant to § 51.1-803, or of the Rector and Visitors of the University of Virginia, acting pursuant to § 23-76.1, or by the Board of the Virginia College Savings Plan, acting pursuant to § 23-38.80, regarding the acquisition, holding or disposition of a security or other ownership interest in an entity, where such security or ownership interest is not traded on a governmentally regulated securities exchange, to the extent that such discussion (i) concerns confidential analyses prepared for the Rector and Visitors of the University of Virginia, prepared by the retirement system or by the Virginia College Savings Plan or provided to the retirement system or the Virginia College Savings Plan under a promise of confidentiality, of the future value of such ownership interest or the future financial performance of the entity, and (ii) would have an adverse effect on the value of the investment to be acquired, held or disposed of by the retirement system, the Rector and Visitors of the University of Virginia, or the Virginia College Savings Plan. Nothing in this subdivision shall be construed to prevent the disclosure of information relating to the identity of any investment held, the amount invested or the present value of such investment.

21. Those portions of meetings in which individual child death cases are discussed by the State Child Fatality Review team established pursuant to § 32.1-283.1, those portions of meetings in which individual child death cases are discussed by a regional or local child fatality review team established pursuant to § 32.1-283.2, those portions of meetings in which individual death cases are discussed by family violence fatality review teams established pursuant to § 32.1-283.3, those portions of meetings in which individual adult death cases are discussed by the state Adult Fatality Review Team established pursuant to § 32.1-283.5, and those portions of meetings in which individual adult death cases are discussed by a local or regional adult fatality review team established pursuant to § 32.1-283.6.

22. Those portions of meetings of the University of Virginia Board of Visitors or the Eastern

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

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

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

25. Meetings or portions of meetings of the Board of the Virginia College Savings Plan wherein personal information, as defined in § 2.2-3801, which has been provided to the Board or its employees by or on behalf of individuals who have requested information about, applied for, or entered into prepaid tuition contracts or savings trust account agreements pursuant to Chapter 4.9 (§ 23-38.75 et seq.) of Title 23 is discussed.

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

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

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

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

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

31. Discussion or consideration by the Commitment Review Committee of records excluded from

this chapter pursuant to subdivision 9 of § 2.2-3705.2 relating to individuals subject to commitment as sexually violent predators under Chapter 9 (§37.2-900 et seq.) of Title 37.2.

32. [Expired.]

33. Discussion or consideration of confidential proprietary records and trade secrets excluded from this chapter pursuant to subdivision 18 of § 2.2-3705.6.

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

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

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

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

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

39. Discussion or consideration by the Board of Trustees of the Virginia Retirement System acting pursuant to § 51.1-124.30, by the Investment Advisory Committee appointed pursuant to § 51.1-124.26, by any local retirement system, acting pursuant to § 51.1-803, by the Board of the Virginia College Savings Plan acting pursuant to § 23-38.80, or by the Virginia College Savings Plan's Investment Advisory Committee appointed pursuant to § 23-38.79:1 of records excluded from this chapter pursuant to subdivision 25 of § 2.2-3705.7.

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

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

42. Those portions of meetings of the Virginia Military Advisory Council or any commission created by executive order for the purpose of studying and making recommendations regarding preventing closure or realignment of federal military and national security installations and facilities located in Virginia and relocation of such facilities to Virginia, or a local or regional military affairs organization appointed by a local governing body, during which there is discussion of records excluded from this chapter pursuant to subdivision 12 of § 2.2-3705.2.

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

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

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

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

47. (Effective July 1, 2018)

Discussion or consideration by the Board of Directors of the Virginia Alcoholic Beverage Control Authority of records excluded from this chapter pursuant to subdivision 1 of § 2.2-3705.3 or subdivision 34 of § 2.2-3705.7.

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

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

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

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

§ 2.2-3712. Closed meetings procedures; certification of proceedings.

A. No closed meeting shall be held unless the public body proposing to convene such meeting has taken an affirmative recorded vote in an open meeting approving a motion that (i) identifies the subject matter, (ii) states the purpose of the meeting and (iii) makes specific reference to the applicable exemption from open meeting requirements provided in § 2.2-3707 or subsection A of § 2.2-3711. The matters contained in such motion shall be set forth in detail in the minutes of the open meeting. A general reference to the provisions of this chapter, the authorized exemptions from open meeting requirements, or the subject matter of the closed meeting shall not be sufficient to satisfy the requirements for holding a closed meeting.

B. The notice provisions of this chapter shall not apply to closed meetings of any public body held solely for the purpose of interviewing candidates for the position of chief administrative officer. Prior to any such closed meeting for the purpose of interviewing candidates, the public body shall announce in an open meeting that such closed meeting shall be held at a disclosed or undisclosed location within 15 days thereafter.

C. The public body holding a closed meeting shall restrict its discussion during the closed meeting only to those matters specifically exempted from the provisions of this chapter and identified in the motion required by subsection A.

D. At the conclusion of any closed meeting, the public body holding such meeting shall immediately reconvene in an open meeting and shall take a roll call or other recorded vote to be included in the minutes of that body, certifying that to the best of each member's knowledge (i) only public business matters lawfully exempted from open meeting requirements under this chapter and (ii) only such public business matters as were identified in the motion by which the closed meeting was convened were heard, discussed or considered in the meeting by the public body. Any member of the public body who believes that there was a departure from the requirements of clauses (i) and (ii), shall so state prior to the vote, indicating the substance of the departure that, in his judgment, has taken place. The statement shall be recorded in the minutes of the public body.

E. Failure of the certification required by subsection D to receive the affirmative vote of a majority of the members of the public body present during a meeting shall not affect the validity or confidentiality of such meeting with respect to matters considered therein in compliance with the provisions of this chapter. The recorded vote and any statement made in connection therewith, shall upon proper authentication, constitute evidence in any proceeding brought to enforce the provisions of this chapter.

F. A public body may permit nonmembers to attend a closed meeting if such persons are deemed necessary or if their presence will reasonably aid the public body in its consideration of a topic that is a subject of the meeting.

G. A member of a public body shall be permitted to attend a closed meeting held by any committee or subcommittee of that public body, or a closed meeting of any entity, however designated, created to perform the delegated functions of or to advise that public body. Such member shall in all cases be permitted to observe the closed meeting of the committee, subcommittee or

entity. In addition to the requirements of § 2.2-3707, the minutes of the committee or other entity shall include the identity of the member of the parent public body who attended the closed meeting.

H. Except as specifically authorized by law, in no event may any public body take action on matters discussed in any closed meeting, except at an open meeting for which notice was given as required by § 2.2-3707.

I. Minutes may be taken during closed meetings of a public body, but shall not be required. Such minutes shall not be subject to mandatory public disclosure.

§ 2.2-3713. Proceedings for enforcement of chapter.

A. Any person, including the attorney for the Commonwealth acting in his official or individual capacity, denied the rights and privileges conferred by this chapter may proceed to enforce such rights and privileges by filing a petition for mandamus or injunction, supported by an affidavit showing good cause. Such petition may be brought in the name of the person notwithstanding that a request for public records was made by the person's attorney in his representative capacity. Venue for the petition shall be addressed as follows:

1. In a case involving a local public body, to the general district court or circuit court of the county or city from which the public body has been elected or appointed to serve and in which such rights and privileges were so denied;
2. In a case involving a regional public body, to the general district or circuit court of the county or city where the principal business office of such body is located; and
3. In a case involving a board, bureau, commission, authority, district, institution, or agency of the state government, including a public institution of higher education, or a standing or other committee of the General Assembly, to the general district court or the circuit court of the residence of the aggrieved party or of the City of Richmond.

B. In any action brought before a general district court, a corporate petitioner may appear through its officer, director or managing agent without the assistance of counsel, notwithstanding any provision of law or Rule of the Supreme Court of Virginia to the contrary.

C. Notwithstanding the provisions of § 8.01-644, the petition for mandamus or injunction shall be heard within seven days of the date when the same is made, provided the party against whom the petition is brought has received a copy of the petition at least three working days prior to filing. The hearing on any petition made outside of the regular terms of the circuit court of a locality that is included in a judicial circuit with another locality or localities shall be given precedence on the docket of such court over all cases that are not otherwise given precedence by law.

D. The petition shall allege with reasonable specificity the circumstances of the denial of the rights and privileges conferred by this chapter. A single instance of denial of the rights and privileges conferred by this chapter shall be sufficient to invoke the remedies granted herein. If the court finds the denial to be in violation of the provisions of this chapter, the petitioner shall be entitled to recover reasonable costs, including costs and reasonable fees for expert witnesses, and attorneys' fees from the public body if the petitioner substantially prevails on the merits of the case, unless special circumstances would make an award unjust. In making this determination, a court may consider, among other things, the reliance of a public body on an opinion of the Attorney General or a decision of a court that substantially supports the public body's position.

E. In any action to enforce the provisions of this chapter, the public body shall bear the burden of proof to establish an exemption by a preponderance of the evidence. Any failure by a public body to follow the procedures established by this chapter shall be presumed to be a violation of this chapter.

F. Failure by any person to request and receive notice of the time and place of meetings as provided in § 2.2-3707 shall not preclude any person from enforcing his rights and privileges conferred by this chapter.

§ 2.2-3714. Violations and penalties.

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

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Virginia Conflict of Interests Act

Guide for Local Government Officials

Introduction

The Virginia Conflict of Interests Act regulates the financial relationship of council members and mayors with their city or town and with any other governmental agency that is related to the city or town. The act is intended to be the one-stop-shopping law for a council member's financial involvement in dealings with the city or town.

It regulates how involved a council member may be in an item being considered by council if he or she has a financial interest in that item. The act also defines what constitutes bribery and taking unfair advantage of information gained by reason of being on council. It sets penalties for violations and provides a procedural framework for its enforcement.

The Conflict of Interests Act is codified in Title 2.2, Chapter 31 of the Code of Virginia, § 2.2-3100 and following. While this guide describes the general operation of the law, the reader should consult the law's specific language for a better understanding (code references are given throughout the guide). Furthermore, a council member with questions about a contract or transaction should consult the city or town attorney.

The Virginia Conflict of Interest and Ethics Advisory Council (the Council) was formed to encourage and facilitate compliance with several sections of the Virginia Code, including State and Local Government Conflict of Interests Act. The duties and responsibilities of the Council are discussed throughout this report.

The 2015 General Assembly session brought comprehensive ethics reform, however these rules do not take effect until January 1, 2016. As a result, this guide will be divided into two separate sections:

1. The law as it stands today and a general overview of the Conflict of Interests Act
2. The law that will go into effect on January 1, 2016 and the changes that will apply as of that date.

Any significant changes created by the 2015 legislation will also be noted in the general overview of the Conflict of Interests Act.

Purpose of the act

The first section of the act, Va. Code § 2.2-3100, sets out the purpose of the law, citing three main goals:

1. To help ensure that the government will fully represent the public in its operation;
2. To give citizens confidence in public officials and the government so they will trust the government, by creating a clear set of rules for government officials; and,
3. To assemble all the laws affecting conflict of interests in a single location in order to create uniform rules. (While COIA largely accomplishes this purpose, additional rules are stated in the Virginia Procurement Act and in various other code sections.)

The act contains three general areas of regulation (listed below). The act also has procedural, enforcement, and penalty provisions that apply to the substantive areas of the law.

Areas of regulation

The act regulates the financial relationship of council members in their localities in three general areas:

1. General provisions covering bribes and other illegal behavior.
2. Regulation of financial interests a council member may have in business dealings with his or her locality and with agencies related to his or her locality. The act calls this a personal interest in a contract.
3. Regulation of the level of involvement a person, in his role as a council member or other public office or job, may have in an item being considered by the member's locality that involves the member's business, property or other personal financial interest. The act calls this a personal interest in a transaction.

I. Generally Prohibited Conduct

Bribes and other illegal behavior

Section 2.2-3103 prohibits public officials from taking or soliciting bribes and from allowing money to influence their actions. This section applies to a person's actions as a government official; the prohibitions are not aimed at private businesses that may offer the bribes.

The act prohibits a council member from soliciting or accepting money or benefits for doing his or her work as a public official. § 2.2-3103(1). An example would be a council member who takes money for voting on a rezoning to help a developer build a large project. Similarly, a council member may not offer or take money in exchange for landing himself or herself or another person a job with a government agency, or in exchange for obtaining a contract or business deal with the government. §§ 2.2-3103(1) & 3103(2).

Undue influence

One step below the outright bribery rule is the prohibition on taking gifts and opportunities while serving as a public official. §§ 2.2-3103(5), (6), (8), (9) & 2.2-3103.1. The act prohibits a council member from accepting money, loans, gifts, services, business opportunities, or other benefits if it is reasonable to construe that the benefit was given to influence the council member in his or her duties. An exception is made for political campaign contributions – but only if the contribution is used for a political campaign or constituent service purposes and is reported pursuant to the campaign disclosure laws.

A typical example of this issue for cities and towns is when a large developer gives Christmas gifts of substantial value to the members of council. Whether the gift complies with the act is a judgment call in most cases. Is a Christmas turkey reasonable if the developer is also giving the same gift to his employees, his business associates, and his materials suppliers? The circumstances of the specific case usually indicate whether the gifts are appropriate.

The following items are exempted from the prohibition on gifts: (1) coupons and tickets that are not used; (2) honorary degrees; (3) scholarships or financial aid awards that were awarded in the same manner as they would be to the general public; (4) campaign contributions that are properly received and reported; (5) a gift that relates to the private profession of the officer or a member of the officer's immediate family; and (6) gifts from personal friends as the act defines "personal friend" § 2.2-3101.

Note: Other exemptions were added to this definition in 2015 and are outlined in the section discussing the new laws that go into effect in 2016.

The act limits who can be considered a personal friend for the purposes of the disclosure exemption. The reason for this limitation is to ensure that the term "personal friend" is not applied loosely, allowing anyone to qualify for the gift disclosure exemption.

A lobbyist or a lobbyist's principal cannot be considered a personal friend, with one exception. A person, organization, or business cannot be considered a personal friend if that entity or person is a party to a contract with the local government or agency for which the officer or employee works. This is true whether the contract has been granted or if the person, organization, or business is just seeking to be a party to the contract. However, there are exceptions.

Some may wonder how an officer or official would even try to argue that he or she has a personal friendship with an organization or business. In this context, the terms "organization" and "business" include those who are officers, directors, owners, or have a controlling ownership interest in the organization or business. § 2.2-3101.

Section 2.2-3103.1 pertains to prohibited gifts. This provision applies to all candidates, officers, and employees of local governments and advisory agencies. Until January 1, 2016, these individuals may not accept a tangible gift that is valued at over $250 or a combination of gifts within a year with an aggregate value of over $250 if it is given to him by (1) a lobbyist, (2) a lobbyist's principal, or (3) a person, organization, or business that is seeking to be or already is a party to a contract with the local agency of which he is an officer or employee. However, the limit only applies to individuals that are required to file a disclosure form prescribed in §2.2-3117. Therefore, it does apply to officials of localities with a population under 3,500.

Note: The distinction between tangible and intangible gifts is removed beginning January 1, 2016.

A council member is also prohibited from taking benefits if he or she knows it is being offered to influence him or her. § 2.2-3103(6). Therefore, even if the gift is not unreasonable, the council member may not accept it if the circumstances or statements of the person giving it make it clear that the money is being given to influence the council member.

A further prohibition is aimed at gifts given by a private party looking for a specific action by the government. § 2.2-3103(8). It prohibits a council member from

accepting a gift from a private party whose interests can be affected by the council member's actions, where the timing of the gift would lead a reasonable person to question whether the gift is being given to influence the council member. For example, if the day before an important council vote on a rezoning, the applicant for that rezoning gives the council member $2,000 and calls it a campaign contribution, it would be reasonable to think the money was given to influence the vote. Also, if a council member accepts gifts so often that it creates the appearance that he or she accepts gifts for doing his or her job, that behavior constitutes a violation. § 2.2-3103(9). Violations of these two prohibitions may not be the basis for a criminal charge.

Local governments can adopt ordinance limiting dollar value of gifts

Local governments may adopt an ordinance to limit the dollar value of gifts to the officials and employees of the locality. § 2.2-3104.2. A $50 limit is often used. While this amount is arbitrary, it does make it simpler for all involved to know what behavior is permissible. Whether or not the locality adopts an ordinance limiting gift amounts, if an award is made to a local government employee for meritorious service by an entity that is a 501(c)(3) charitable organization, there is no conflict and no limit on the gift.

Insider information

It is a violation of the act for a public official to use information not available to the public for his or her own or another person's economic benefit. § 2.2-3103(4). For council members, this prohibition is sometimes unfairly alleged. For example, a local businessman on council who pays attention to public plans submitted to the locality and buys land around the project is not violating the provision. Envious business folks, however, may allege a violation of insider information due to the appearance of the situation. When their actions are based on publicly available information, council members have nothing to fear from such claims.

II. Regulation of council member's actions as citizen.

Personal interest in a contract

The act sets forth what financial interests a council member may have in business dealings with his or her locality and with agencies related to his or her locality. § 2.2-3107. The act calls this a personal interest in a contract. While this guide's discussion is limited to the restrictions on council members, the act also sets forth different restrictions for school board members (§ 2.2-3108) and for local government employees (§ 2.2-3109). Council members need to keep in mind the restrictions on the employees of a city or town as they carry out their duties and watch over the affairs of the locality.

According to § 2.2-3107(A), "no person elected or appointed as a member of the governing body of a county, city or town" shall have "a personal interest in a contract" with his or her city or town or with certain other government agencies. (The definition of a personal interest in a contract is described below.)

The council member may not have a personal interest in a contract with any agency of his or her locality, including the departments of the city or town. In addition, he or she may not have a personal interest in a contract with any government agency that is under the council's ultimate control. For example, if the council appoints a library board, then council members would have ultimate control over the library. Therefore, a council member could not be involved in a contract with the library board.

This section of the act also prohibits involvement in a contract with any agency if the council appoints a majority of the members of that agency's governing body. For example, if the locality is a member of a regional jail and its council appoints four of the jail board's seven members, then a council member would be prohibited from being involved in a contract with the jail board.

Definition of personal interest and personal interest in a contract

The act only prohibits a council member's participation if he or she has a personal interest in the contract with one of the agencies described. The definition of "personal interest in a contract" has two parts: "a personal interest" and a "personal interest in a contract." § 2.2-3101.

Personal interest. The definition of a personal interest is the key building block of the act. The term is used throughout. A personal interest exists if any one of the following tests is met:

1. The council member owns at least 3 percent of the equity of a business.
2. The council member has annual income that is or reasonably could be in excess of $5,000 from owning real or personal property or from owning a business.
3. The council member has a salary from the business involved in a contract that exceeds or reasonably could exceed $5,000 annually.

4. The council member's ownership interest in property exceeds $5,000.

5. The council member's liability for a business exceeds 3 percent of the equity of the business.

6. The council member has an option on property and, upon exercise of the option, his or her ownership will meet the levels in either test 1 or 4, above.

Immediate Family. In addition to the council member, if any person in the council member's immediate family has one of the six types of a personal interest, the personal interest exists for the council member. The term "immediate family" always includes the person's spouse. The term also includes any child living in the home who is the council member's dependent. The term "child" is defined in Title 1 of the state code as anyone who is less than 18 years old. Therefore, the definition applies to all minor dependents regardless of their relationship to the council member but it does not apply to adult children of the member, even if he is claimed as a dependent. §1-207. If the child, however, is not a dependent of the council member, the child would not be included. §3101.

As this definition demonstrates, if a council member's wife has a personal interest in a business that would like to contract with the city, the contract is prohibited even though the husband/council member has no involvement.

Note: The definition of "immediate family" was changed in the 2015 legislation and is discussed in the section outline the new laws that will take effect in 2016.

Personal interest in a contract. If the council member's involvement meets any one of the six definitions of a personal interest, the next step is determining whether the council member has a personal interest in the contract in question. According to the act's definition, a council member has a personal interest in a contract with a government agency if that contract is with the council member or with a business in which he or she has a personal interest. § 2.2-3101.

In looking at a particular contract, it is important to ask: Is a council member or his or her business or property involved in the contract? Does that council member have a personal interest as defined by the act? The answers to these questions will help determine if the contract is prohibited under the act.

Situations where conflicts do not exist

Some situations are not conflicts under the act, even though they may appear to be natural conflicts. If a council member earns a total salary of $4,900 per year from a business, that business could contract with the locality, because the council member would not have a personal interest for purposes of the act. As the third test of the definition – salary – shows, the salary must exceed $5,000 per year to create a personal interest.

If a council member serves on the board of a charitable entity, the fact that the council member has divided loyalties between the charity and the locality does not create a conflict, so long as the council member serves on the charity's board for less than $5,000 compensation per year and doesn't own as much as three percent of the equity of the charity. § 2.2-3101.

Exceptions to conflicts in contracts

The act sets out a series of exceptions to the prohibitions on having a personal interest in a contract.

Exceptions that apply only to council members.

Several exceptions are specific to council members. § 2.2-3107(B).

1. A council member may be an employee of the locality as long as the employment predates his appointment or election to council. § 2.2-3107(B)(1). This section of the law also allows employment and service on council if the person was an employee prior to July 1, 1983, whether or not he or she was elected to council after that date. Even though the law allows employees to serve on council, some localities have banned the practice by charter or by local regulation. If an employee serves on council, he or she will regularly run into potential conflicts when matters come before council that affect his or her employment, such as salary and discipline decisions. (This issue is explored below, in the section on personal interests in a transaction).

2. A council member may buy goods or services from his or her locality as long as they are made available to the public at uniform prices. § 2.2-3107(B)(2).

3. A council member may sell goods to his or her locality if the following conditions are met, pursuant to § 2.2-3107(B)(3):

a. The purchase must be made by competitive sealed bidding. Therefore, if the contract is being solicited by a request for proposals, the exception doesn't apply.

b. The contract must be for goods, not services, and the need for the goods must have been established prior to the person's coming on council. An example is if the city needs a tractor, if a council member has a tractor dealership, and if

the city had bought tractors prior to the council member's election.

c. The council member who wants to sell to the locality must play no role in preparing the specifications for the purchase.

d. The remaining members of council must pass a resolution in writing that the council member's bidding on the contract is in the public interest.

Note: this exception does not apply to providing services, rather only goods. For example, a council member who is an accountant could not provide auditing services to his or her town or city.

Eight exceptions that apply to all local government officials and employees.

The following eight exceptions to the prohibition on having a personal interest in a contract apply not only to council members, but to all other local government officials and employees as well. § 2.2-3110(A).

1. Any sale, lease, or exchange of real property between a council member and his or her locality is allowed as long as the council member doesn't participate in the deal on behalf of council, and the fact that the member wasn't involved is recorded in the public record of the government involved in the transaction. The reason for this exception is that each parcel of real estate is deemed to be unique. If a city needs a certain lot or parcel, the fact that a council member owns it should not prohibit the purchase by the city. § 2.2-3110(A)(1).

2. The prohibition does not apply to contracts for the publication of official notices, presumably so that the local newspaper may be used for ads required by state law even when a council member is an owner or employee of that paper. This is a balancing of needs: the state code requires many notices to be run in the local paper. Without this exception, those requirements could not be met. § 2.2-3110(A)(2).

3. For towns and cities with a population under 10,000, contracts between a council member and his or her locality are allowed, despite the general prohibition, if the total of those contracts does not exceed $10,000 per year. Further, contracts up to $25,000 are allowed if the contract is awarded by competitive sealed bidding. This higher level only applies if the public official has filed a statement of economic interests form. Every council member must file that form, so the requirement does not create an added obligation, unless the locality has a population of less than 3,500. § 2.2-3110(A)(3).

4. If the sole personal interest the council member has in the contract is his or her employment by the contracting business and has an annual salary exceeding $10,000, the business may contract with the locality. For this exception to apply, the council member and members of his or her immediate family must have no authority to participate in the deal, and must not participate in the deal. Further, the council member must not participate in the deal on behalf of the locality. A typical example is a contract with a large engineering firm that is the council member's employer. § 2.2-3110(A)(4).

5. If the council member is employed by a public service corporation, a bank, a savings and loan association, or a public utility, and if he or she disqualifies himself from participating on behalf of the city or town and does not participate for his or her locality, then the utility, bank, etc., may contract with the locality. § 2.2-3110(A)(6).

6. The prohibition does not apply to contracts for goods or services below $500. But if a locality normally purchased paper on an annual contract, for example, could it split up a year's worth of paper contracts so that each is less than $500? While the section is silent on splitting up a larger contract to meet this exception, the consensus is that this circumvention would violate the law. § 2.2-3110(A)(7).

7. Program grants made to a council member are allowed if the rates or amounts paid to all qualified applicants are uniform and are established solely by the agency administering the grants. § 2.2-3110(A)(8).

8. If the spouse of a council member is employed by the locality, the personal interest prohibition does not apply if the spouse was employed by the agency more than five years prior to marrying the council member. § 2.2-3110(A)(9). If one spouse is the supervisor of the other spouse, the conflict does not exist if the subordinate spouse earns less than $35,000 per year. § 2.2-3110(B).

III. Council member's participation as public official

Personal interest in a transaction

The rule concerning a personal interest in a transaction sets out the level of involvement a council member may have in an item being considered by his or her council (the transaction) that involves his or her business, property, or other personal financial interest. § 2.2-3112.

As with a personal interest in a contract, the first step is to determine whether the council member has a

personal interest in the transaction. The same definition of a personal interest is used in the transactions provisions as in the contracts provisions, but the definition of personal interest in a transaction goes beyond the definition of a personal interest in a contract.

Definition of transaction & personal interest in a transaction

Transaction. In the context of a city or town council, a transaction is defined as any matter considered by the council, a council committee or subcommittee, or any department, agency, or board of the locality, if any official action is taken or is being contemplated. § 2.2-3101.

Personal interest in a transaction. This term is broadly defined as a personal interest of a council member "in any matter considered by his [locality]". § 2.2-3101. Specifically, a personal interest in a transaction exists if a council member or immediate family member has a personal interest (as defined in Part II) in property, business, or governmental agency – or represents/provides services to any individual or business property – and the property, business, or represented/served individual or business either (1) is the subject of the transaction, or (2) may realize a reasonably foreseeable benefit or detriment as the result of the transaction.

A typical example of representing or servicing an individual or business is where the council member is an accountant and his or her accounting firm handles the books of the business that is the subject of the transaction. Another common example is where the council member or spouse is a principal in an engineering firm that represents an applicant for a land-use permit before council. In these cases, the council member may well have a personal interest in the transaction unless he or she is not directly involved in the representation. An example of a reasonably foreseeable benefit is a council member who loaned $100,000 to a developer, and the developer needs a rezoning to repay the loan.

In practice, if a matter comes before council or a council committee or involves any department of the locality, and a council member has a personal interest in the subject matter or represents the business involved, the council member must then follow the act's requirements for his or her participation in § 2.2-3112 (discussed below in "Levels of transactions" section).

Exceptions and limitation on conflicts

A personal interest in a transaction does not exist if the council member serves on a not-for-profit board without pay and neither the council member nor his immediate family has a personal interest in the not-for-profit organization. (Definition of personal interest in §2.2-3101.)

No conflict exists if an employee or council member of a locality is appointed by his locality to an ex-officio role in a governmental agency and the conflict exists solely due to the employment with the locality or the employment by the locality is of his or her spouse. See the definition of "personal interest in a transaction" in § 2.2-3101.

The act provides in § 2.2-3112(B) that if an employee, but not a council member is disqualified from participating in the transaction, the employee may still represent his private interests before council as long as he isn't paid for the representation and discloses the nature of his interest. This appears to not apply to council members.

Other employees

Section 2.2-3109 sets out the rules for other government employees having a personal interest in a transaction. The section also contains a list of exceptions that apply to the employees of the government agencies in the locality. Those rules and exceptions do not apply to council members. For example, an employee's spouse may contract with the locality to provide services (for example, accounting) if certain conditions are met. In contrast, a council member's spouse could not provide services to the locality.

Levels of transactions

The fact that a council member has a personal interest in a transaction before council does not always require the member to disqualify himself. The act's requirements for participation, if a personal interest in the transaction does exist, set out three levels of transactions. § 2.2-3112(A).

1. If the transaction deals solely with property, a business, or a government agency in which the council member has a personal interest, then he must disqualify himself. Disqualification is also required if the transaction applies solely to a business that is a parent-subsidiary (hold more than a 50% controlling interest) or is an affiliated business (where the same owner or manager controls both businesses).

2. If the transaction affects a business, profession, occupation or group of three or more members to which the council member belongs, he may participate in the transaction only if he completes a disclosure form, described in the "Disclosures" section, below. § 2.2-3112(A)(2). For example, if a council votes on the tax rate for professionals, and if the council member is

an attorney, that puts him in the subject group affected by the professional license tax. If a town only has two attorneys, then the council member/attorney must disqualify himself from participating.

3. If the transaction affects the public generally, the council member may participate. A council member may obviously vote on raising taxes, even though it affects him, because it affects the public generally. In comparing items 2 and 3, many transactions are considered to affect the public generally, even though not every member of the public is affected. For example, the real estate tax applies only to property owners, but it is considered to affect the general public.

Additional exception

If the council member is in a firm that represents the subject of the transaction, but the council member does not personally represent the subject in the transaction, he may participate in the council discussion if a disclosure form, described below, is completed. § 2.2-3112(A)(3).

Effects of disqualification

If a council member is disqualified from participating in a transaction, the act requires several steps. § 2.2-3112:

1. The council member must disclose the interest that causes the disqualification by identifying the interest, including the name and address of the business or property. § 2.2-3115(E). The disclosure is required whether the law requires the disqualification or the council member voluntarily disqualifies himself out of an abundance of caution.

2. The disclosure must be kept for five years in the records of the council.

3. The council member may not vote on or participate in discussion on the transaction.

4. The council member may not attend the portion of a closed meeting at which the transaction is discussed.

5. The council member may not discuss the matter with anyone in the government who is involved in the transaction.

Savings clause for certain votes

The act contains a savings clause to allow the remainder of council to vote when disqualifications rob the council of a quorum. § 2.2-3112(C). The council may act by a vote of the majority of the members who are not disqualified. Even if the law requires a unanimous vote, it only has to be by a unanimous vote of the remaining members. This provision would seem to have the odd result of having only one member of a seven-member council being able to vote and fulfill a unanimous vote requirement if the other six members are disqualified. One caution - the Virginia Supreme Court has ruled that when there are disqualifications, and a vote is taken using this savings clause, the disqualified members of council must remain present to maintain a quorum. If the disqualified members leave the meeting, such that fewer members are present than required for a quorum – a quorum does not exist and the meeting cannot continue. See *Jakabcin v. Front Royal*, 271 Va. 660, 628 S.E.2d 319 (2006).

In order for a council to sell or lease land, state law requires a three-fourths vote of all people elected to council. § 15.2-2100. Section 2.2-3112(C) of the act allows a council member to participate in a discussion and vote on a proposed sale, lease, or similar conveyance of land if the council member's only personal interest in that sale is that he or she is employed by the business that is subject to the contract for the deal.

IV. Disclosures

If a transaction affects a group, business, or profession as set forth in § 2.2-3112(A)(2), the council member may participate if he or she certifies in good faith that he or she can represent the public fairly in the transaction. The certification requires the following elements to be identified § 2.2-3115(H):

- The transaction;
- The nature of the personal interest;
- The fact that the council member is a member of a business, profession, occupation, or group that will be affected by the transaction;
- A statement that the council member is able to participate fairly, objectively, and in the public interest.

If the transaction affects a party that the council member's firm represents but the council member is not involved on behalf of the firm, the disclosure requires the following elements to be identified. § 2.2-3115(I):

- The transaction involved;
- The fact that a party to the transaction is a client of the council member's firm;
- A statement that the council member does not personally represent the client;
- A statement that the council member is able to participate fairly, objectively, and in the public interest.

If either of the disclosures is required, the council member must either state it at the meeting or file it in writing with the clerk of the council or the manager. A written disclosure should be filed before the meeting or, if that is impracticable, by the end of the following business day. § 2.2-3115(H), (I). In both cases, the disclosure is public. VML advises that it is better to make the disclosure at the meeting, orally, when the transaction is on the floor. This conveys a clearer message of self-disqualification than simply handing the clerk a written statement. If the disqualification is handed in with no announcement, the public will wonder why the council member is not participating.

Semiannual Statement of Economic Interests Form

In addition to transaction-specific disclosures, each council member of every locality with a population of more than 3,500 must file the Statement of Economic Interests form. The Statement of Economic Interests form must be filed semiannually with the first filing deadline of Dec. 15, 2015 for the preceding six-month period complete through the last day of October and then by June 15 for the preceding six-month period complete through the last day of April (§ 2.2-3115(A); the form is found in § 2.2-3117). The filing will continue semiannually on Dec. 15 and June 15 of each year.

Note: Under the 2015 legislation, all forms will be filed with the local clerk of the government body beginning in December 2015.

The disclosure form is found in Virginia Code §2.2-3117. Officials and employees are required to disclose various payments and privileges associated with their position. One of these provisions requires an official or employee to disclose a presentation in a single talk, participation in a meeting, or publication of a work if, for that service, he received lodging, transportation, money, or anything of value with a combined value of at least $200. This disclosure requirement includes attendance at any meetings, conferences, or events that the individual attended if the event was designed to educate the official on his or her duties or enhance his or her knowledge or skills related to the position and the official received lodging, transportation, money, or anything of value with a combined value of at least $200.

Note: Beginning in 2016, travel paid for by a locality or other agency on which an officer serves is not considered a gift.

The Virginia Conflict of Interest and Ethics Advisory Council must distribute the forms each year to clerks of council at least 30 days prior to the filing deadline; the clerks, in turn, are to distribute them to council members and any others who must file at least 20 days prior to the filing deadline. § 2.2-3115(A) & (D). These new forms will require the disclosure of holdings in excess of $5,000, which is a change from the previous bar of $10,000. § 2.2-3117.

Council may also adopt an ordinance to require other officials and employees of the locality to file the Statement of Economic Interests form pursuant to § 2.2-3115(A). Typically, this provision is used for the city or town manager, but some localities require numerous employees to file the form. Many localities do not require the form to be completed by any employees or officials. The council may require boards, commissions and councils it appoints to file a disclosure form. § 2.2-3115(B).

In localities with a population of more than 3,500, members of planning commissions, boards of zoning appeals, real estate assessors, and all county, city and town managers must file an annual disclosure of real estate interests. § 2.2-3115(G). That form is found in § 2.2-3118.

The section clarifies that no local government officer or employee is required to file any disclosures not specifically mentioned in the article. § 2.2-3115(C).

V. Enforcement & penalties

Criminal penalties

A knowing violation of the Conflict of Interests Act is a Class 1 misdemeanor. § 2.2-3120. According to the act, a violation is knowingly made if the council member acts or refuses to act when he or she knows that the behavior is either prohibited or required by the act. An example of refusing to do a required act is a council member's refusal to file a disclosure form. A Class 1 misdemeanor has maximum penalties of one year in jail and a fine of $2,500.

Three other specific violations have a lower, Class 3 penalty (maximum $500 fine):

1. Failure to disqualify oneself from participating in a transaction.

2. Failure to file the annual statement of economic interests.

3. Failure to file the statement of reasons for a disqualification in a transaction.

Additional consequences for violations

In addition to the criminal consequences, if the council member is found guilty of a knowing violation, he is also guilty of malfeasance in office. In that case,

the judge may order the forfeiture of the seat on council. § 2.2-3122.

If a contract is entered into that involves either a council member who violated the general provisions relating to bribes, insider information, undue influence (§ 2.2-3103), or a violation of the "personal interest in a contract" provisions, the council may rescind the contract. In that case, an innocent contractor may not receive the profits he anticipated in the deal. The contractor may only receive a "reasonable value," according to § 2.2-3123.

If a council action involves a violation of "the personal interest in a transaction" requirements, the council may rescind the award of a contract or other decision made. In rescinding the action, the best interests of the locality and any third parties are to be considered. § 2.2-3112(C).

If a council member violates any of the general provisions related to bribes and other illegal behavior, the personal interest in a contract rules, or the personal interest in a transaction rules, any value he or she received from the deal is to be forfeited. If the violation was knowingly made, the judge may impose a civil penalty equal to the value received.

Note: Beginning in 2016, there is an additional civil penalty of $250 if a form is filed late.

Advisory opinions

Commonwealth's Attorney

The law allows some opportunity to avoid a problem by setting up a process to obtain an opinion on the matter from the commonwealth's attorney. The commonwealth's attorney is required by § 2.2-3126(B) to issue advisory opinions on whether a fact situation constitutes a violation. In addition to issuing opinions, the commonwealth's attorney is charged with prosecuting violations of the act by local officials. If the council member gives the attorney all the relevant facts and the attorney determines that the council member is allowed by law to participate, the council member may not be prosecuted for doing so. § 2.2-3121(B). If the commonwealth's attorney opines that the facts constitute a violation, the council member then may ask the attorney general to review and override the local opinion. The law makes it clear that any written opinions are public records and are therefore available to the public.

If the council member obtains a written opinion from the town or city attorney, based on full disclosure of the facts, the council member may introduce the favorable opinion from the attorney upon challenge. § 2.2-3121(C).

Note: Beginning in 2016, city, town, or county attorneys may also provide advisory opinions.

The Virginia Conflict of Interest and Ethics Advisory Council

The Council is another resource that may be used to help localities avoid a conflicts or ethics problem. It has the authority to issue formal advisory opinions and guidelines relating to ethics and conflicts issues. Additionally, the Council may issue informal advice in response to specific questions. Any informal advice issued by the Council is protected by attorney-client privilege and is exempt from disclosure under the Virginia Freedom of Information Act. § 30-349(4).

Another role of the Council is to provide trainings on ethics and conflicts issues. These training seminars will be available to lobbyists, state and local government officers and employees, legislators, and other interested persons. The materials for these trainings will also be published by the Council, when it is deemed appropriate. § 30-349(5), (6).

What's New - Major Changes to Take Effect January 1, 2016

In the 2015 session, the General Assembly modified many limits and rules of COIA. The bills are HB 2070 and SB 1424. While issues concerning state officials were the motivating factors for this legislation, it also has significant meaning for localities.

The main changes in the 2015 include:

1. The limits on gifts are reduced from $250 to $100 per year and apply to all gifts, not just those defined by the law to be tangible.
2. Travel paid by the public agency for agency matters is excluded from the definition of gift.
3. The semi-annual statement of economic interest forms in § 2.2-3117 are to be filed with the local clerk of the governing body.
4. If the form is filed late, there will be an automatic $250 civil penalty.

The 2015 bills limit all gifts to $100 per gift or cumulatively per calendar year, to any person who files the form set out in § 2.2-3117 if the gift is from one of following three groups, if the official or employee knows or has reason to know the donor is in one of the groups:

Registered lobbyists;

Lobbyist principals;

Entity seeking to enter into a contract with the locality or other entity or has a contract with the locality or entity. In this last category, the entity includes officers, directors or owners with a controlling interest in the business.

Beginning on January 1, 2016, the distinction between tangible and intangible gifts is removed. An officer or employee of a local government who is required to file the statement of economic interests form (§2.2-3117) or his immediate family may not accept any gift with a value over $100 or a combination of gifts within a year with an aggregate value of over $100. § 2.2-3103.1. Gifts valued at less than $20 are not subject to aggregation toward the $100 limit. Again, since this only applies to persons who are required to file a disclosure form in § 2.2-3117, it does not apply to localities with a population under 3,500.

Exceptions

The $100 limit on gifts has several key exceptions:

- Widely attended events (defined in § 2.2-3103.1(A))
- Gifts from personal friends (defined in § 2.2-3103.1(F))
- Gifts from foreign dignitaries
- Travel if approved by the Conflicts Council

The new law will allow officials to attend meetings of entities such as non-profit groups or lobbying associations if certain conditions are met. The meeting must meet the new definition of a "widely attended event" set out in § 2.2-3103.1(A) of: "at least 25 persons have been invited to attend or there is a reasonable expectation that at least 25 persons will attend the event and the event is open to individuals (i) who share a common interest, (ii) who are members of a public, civic, charitable, or professional organization, (iii) who are from a particular industry or profession, or (iv) who represent persons interested in a particular issue." This exception is limited to food, beverages, entertainment and the cost of admission.

Personal friend definition

If the gift is from a personal friend who is in one of the three groups prohibited from giving gifts (lobbyists, lobbyists principals, and contractors with the locality), then the gift may be accepted if certain conditions are met. § 2.2-3103.1(F).

When determining whether an official can accept a gift from a "personal friend" the official should consider: "(i) the circumstances under which the gift was offered; (ii) the history of the relationship between the person and the donor, including the nature and length of the friendship and any previous exchange of gifts between them; (iii) to the extent known to the person, whether the donor personally paid for the gift or sought a tax deduction or business reimbursement for the gift; and (iv) whether the donor has given the same or similar gifts to other persons required to file the disclosure form prescribed in § 2.2-3117…".§ 2.2-3121(B) (Effective January 1, 2016).

If the official or employee desires, he may ask the Virginia Conflict of Interest and Ethics Advisory Council (Conflicts Council) the local Commonwealth's attorney or the county, city or town attorney for an opinion as to whether the gift is acceptable.

Gifts from foreign dignitaries

Gifts from foreign dignitaries exceeding $100 in value are permissible if the person accepts the gift on behalf of the locality or agency and turns it over to the locality or agency. § 2.2-3103(E) (Effective January 1, 2016).

Travel approved by the Conflicts Council

If travel expenses to be paid by lobbyists, lobbyist principals, and contractors with the locality will exceed $100, an official may ask the Conflicts Council for an advisory opinion. The Council will evaluate whether the trip bears a reasonable relationship to the duties of the person asking, and if it does, shall approve the travel.

The criteria include whether the trip is "composed primarily of public officials, (ii) at which public policy related to the duties of the requester will be discussed in a substantial manner, (iii) reasonably expected to educate the requester on issues relevant to his official duties or to enhance the requester's knowledge and skills relative to his official duties, or (iv) at which the requester has been invited to speak regarding matters reasonably related to the requester's official duties § 30-356.1.

Travel Paid for by the Locality

Travel paid by a locality for a local government official or employee or paid by any other local board, commission, authority or other entity the official serves on will no longer be considered a gift. The definition of gift was amended to exclude: "travel related to an official meeting of the Commonwealth, its political subdivisions, or any board, commission, authority, or other entity, or any charitable organization established pursuant to § 501(c)(3) of the Internal Revenue Code affiliated with such entity, to which such person has been appointed or elected or is a member by virtue of his office or employment". § 2.2-3101.

The gift definition also excludes food and beverage at an event where the official is performing official duties; food, beverages and registration fees for an event where he is a speaker, presenter or lecturer; travel paid by the United States government or the government of any state or the political subdivision of such state; honorary wall plaques and similar recognitions "given in recognition of" service. § 2.2-3101 (Version effective January 1, 2016)

Immediate family definition

This new limit applies to the officer or employee as well as their "immediate family. The 2014 bills limited immediate family to spouses, and a child who lives in the house and is a dependent of the official or employee. Child is defined in § 1-207 to be persons under 18 years old. The 2015 bills redefine, once again, the term "immediate family" to include the spouse and any "other person" who resides in the house of the official/employee and who is a dependent. § 2.2-3101 (definition of immediate family). The definition is no longer restricted to dependents under the age of 18.

Return of Gifts

With the many changes to the Conflict of Interests Act, there may still be questions as to whether a gift may be accepted by a local official. The 2015 bills have a return of gift provision to address this concern. The recipient of a forbidden gift will not be held in violation of the act if the recipient does not use it and returns it "within a reasonable period of time of discovery of the value of the gift" and does not take a charitable deduction for the value of the returned gift, or pays the donor for the gift, to an amount that reduces the gift's value to less than $100. § 2.2-3103.2. If a local official receives a gift and then discovers it is in violation of the act, the official has the ability to correct the problem without punishment.

Civil Penalty

If any local official or employee who is required to file the statement of economic interests set out in § 2.2-3117 fails to do so by the due date, there will be a $250 civil penalty enforced by the Commonwealth's attorney. The penalties are to be used to help fund the Conflicts Council. § 2.2-3124(B).

City, Town, or County Attorney Advisory Opinions

The 2015 legislation expands the power to issue advisory opinions to city, town, and county attorneys. § 2.2-3121 (Effective January 1, 2016). A local officer or employee will not be prosecuted for a knowing violation if the alleged violation resulted from his good faith reliance on a written opinion from the city, town, or county attorney. § 2.2-3121(B) (Effective January 1, 2016). Like opinions from the Commonwealth's attorney, advisory opinions from city, town, or county attorneys are public record.

Summary

The Virginia Conflict of Interests Act determines when public officials and employees have personal interests in public contracts or transactions, if those interests conflict with the officials' public duties, and how the officials should behave considering such a conflict. COIA dictates the terms for disclosure of public officials' personal and financial interests and decides when officials must disqualify themselves. The act also defines

other types of conduct that public officials are prohibited from engaging in, including involvement in bribery, undue influence, and use of insider information.

Council members should always consult COIA's specific language if a potential conflict may arise. Inquiries about specific contracts or transactions should be directed to the relevant city or town attorney. We hope this guide will help local governments become better informed of their responsibilities if a prospective conflict may occur.

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Part E. State Officers and Employees
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Article 1. General Provisions

§ 2.2-3100. Policy; application; construction.

The General Assembly, recognizing that our system of representative government is dependent in part upon (i) citizen legislative members representing fully the public in the legislative process and (ii) its citizens maintaining the highest trust in their public officers and employees, finds and declares that the citizens are entitled to be assured that the judgment of public officers and employees will be guided by a law that defines and prohibits inappropriate conflicts and requires disclosure of economic interests. To that end and for the purpose of establishing a single body of law applicable to all state and local government officers and employees on the subject of conflict of interests, the General Assembly enacts this State and Local Government Conflict of Interests Act so that the standards of conduct for such officers and employees may be uniform throughout the Commonwealth.

This chapter shall supersede all general and special acts and charter provisions which purport to deal with matters covered by this chapter except that the provisions of §§ 15.2-852, 15.2-2287, 15.2-2287.1, and 15.2-2289 and ordinances adopted pursuant thereto shall remain in force and effect. The provisions of this chapter shall be supplemented but not superseded by the provisions on ethics in public contracting in Article 6 (§ 2.2-4367 et seq.) of Chapter 43 of this title and ordinances adopted pursuant to § 2.2-3104.2 regulating receipt of gifts.

The provisions of this chapter do not preclude prosecution for any violation of any criminal law of the Commonwealth, including Articles 2 (Bribery and Related Offenses, § 18.2-438 et seq.) and 3 (Bribery of Public Servants and Party Officials, §18.2-446 et seq.) of Chapter 10 of Title 18.2, and do not constitute a defense to any prosecution for such a violation.

This chapter shall be liberally construed to accomplish its purpose.

§ 2.2-3100.1. Copy of chapter; review by officers and employees.

Any person required to file a disclosure statement of personal interests pursuant to subsections A or B of § 2.2-3114, subsections A or B of § 2.2-3115 or § 2.2-3116shall be furnished by the public body's administrator a copy of this chapter within two weeks following the person's election, reelection, employment, appointment or reappointment.

All officers and employees shall read and familiarize themselves with the provisions of this chapter.

§ 2.2-3101. (Effective January 1, 2016) Definitions.

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

"Advisory agency" means any board, commission, committee or post which does not exercise any sovereign power or duty, but is appointed by a governmental agency or officer or is created by law for the purpose of making studies or recommendations, or advising or consulting with a governmental agency.

"Affiliated business entity relationship" means a relationship, other than a parent-subsidiary relationship, that exists when (i) one business entity has a controlling ownership interest in the other business entity, (ii) a controlling owner in one entity is also a controlling owner in the other entity, or (iii) there is shared management or control between the business entities. Factors that may be considered in determining the existence of an affiliated business entity relationship include that the same person or substantially the same person owns or manages the two entities, there are common or commingled funds or assets, the business entities share the use of the same offices or employees, or otherwise share activities, resources or personnel on a regular basis, or there is otherwise a close working relationship between the entities.

"Business" means a corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, trust or foundation, or any other individual or entity carrying on a business or profession, whether or not for profit.

"Candidate" means a person who seeks or campaigns for an office of the Commonwealth or one of its governmental units in a general, primary, or special election and who is qualified to have his name placed on the ballot for the office. The candidate shall become subject to the provisions of this chapter upon the filing of a statement of qualification pursuant to § 24.2-501. The State Board of Elections or general registrar shall notify each such candidate of the provisions of this chapter. Notification made by the general registrar shall consist of information developed by the State Board of Elections.

"Contract" means any agreement to which a governmental agency is a party, or any agreement on behalf of a governmental agency that involves the payment of money appropriated by the General Assembly

or a political subdivision, whether or not such agreement is executed in the name of the Commonwealth, or some political subdivision thereof. "Contract" includes a subcontract only when the contract of which it is a part is with the officer's or employee's own governmental agency.

"Council" means the Virginia Conflict of Interest and Ethics Advisory Council established in § 30-355.

"Employee" means all persons employed by a governmental or advisory agency, unless otherwise limited by the context of its use.

"Financial institution" means any bank, trust company, savings institution, industrial loan association, consumer finance company, credit union, broker-dealer as defined in subsection A of § 13.1-501, or investment company or advisor registered under the federal Investment Advisors Act or Investment Company Act of 1940.

"Gift" means any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. It includes services as well as gifts of transportation, local travel, lodgings and meals, whether provided in-kind, by purchase of a ticket, payment in advance or reimbursement after the expense has been incurred. "Gift" does not include (i) any offer of a ticket, coupon, or other admission or pass unless the ticket, coupon, admission, or pass is used; (ii) honorary degrees; (iii) any athletic, merit, or need-based scholarship or any other financial aid awarded by a public or private school, institution of higher education, or other educational program pursuant to such school, institution, or program's financial aid standards and procedures applicable to the general public; (iv) a campaign contribution properly received and reported pursuant to Chapter 9.3 (§24.2-945 et seq.) of Title 24.2; (v) any gift related to the private profession or occupation of an officer or employee or of a member of his immediate family; (vi) food or beverages consumed while attending an event at which the filer is performing official duties related to his public service; (vii) food and beverages received at or registration or attendance fees waived for any event at which the filer is a featured speaker, presenter, or lecturer; (viii) unsolicited awards of appreciation or recognition in the form of a plaque, trophy, wall memento, or similar item that is given in recognition of public, civic, charitable, or professional service; (ix) a devise or inheritance; (x) travel disclosed pursuant to the Campaign Finance Disclosure Act (§ 24.2-945 et seq.); (xi) travel paid for or provided by the government of the United States, any of its territories, or any state or any political subdivision of such state; (xii) travel provided to facilitate attendance by a legislator at a regular or special session of the General Assembly, a meeting of a legislative committee or commission, or a national conference where attendance is approved by the House or Senate Committee on Rules; (xiii) travel related to an official meeting of the Commonwealth, its political subdivisions, or any board, commission, authority, or other entity, or any charitable organization established pursuant to § 501(c)(3) of the Internal Revenue Code affiliated with such entity, to which such person has been appointed or elected or is a member by virtue of his office or employment; or (xiv) gifts from relatives or personal friends. For the purpose of this definition, "relative" means the donee's spouse, child, uncle, aunt, niece, nephew, or first cousin; a person to whom the donee is engaged to be married; the donee's or his spouse's parent, grandparent, grandchild, brother, sister, step-parent, step-grandparent, step-grandchild, step-brother, or step-sister; or the donee's brother's or sister's spouse. For the purpose of this definition, "personal friend" does not include any person that the filer knows or has reason to know is (a) a lobbyist registered pursuant to Article 3 (§ 2.2-418 et seq.) of Chapter 4 of Title 2.2; (b) a lobbyist's principal as defined in § 2.2-419; (c) for an officer or employee of a local governmental or advisory agency, a person, organization, or business who is a party to or is seeking to become a party to a contract with the local agency of which he is an officer or an employee; or (d) for an officer or employee of a state governmental or advisory agency, a person, organization, or business who is a party to or is seeking to become a party to a contract with the Commonwealth. For purposes of this definition, "person, organization, or business" includes individuals who are officers, directors, or owners of or who have a controlling ownership interest in such organization or business.

"Governmental agency" means each component part of the legislative, executive or judicial branches of state and local government, including each office, department, authority, post, commission, committee, and each institution or board created by law to exercise some regulatory or sovereign power or duty as distinguished from purely advisory powers or duties. Corporations organized or controlled by the Virginia Retirement System are "governmental agencies" for purposes of this chapter.

"Immediate family" means (i) a spouse and (ii) any other person who resides in the same household as the officer or employee and who is a dependent of the officer or employee.

"Officer" means any person appointed or elected to any governmental or advisory agency including local school boards, whether or not he receives compensation or other emolument of office. Unless the context requires otherwise, "officer" includes members of the judiciary.

"Parent-subsidiary relationship" means a relationship that exists when one corporation directly or indirectly owns shares possessing more than 50 percent of the voting power of another corporation.

"Personal interest" means a financial benefit or liability accruing to an officer or employee or to a member of his immediate family. Such interest shall exist by reason of (i) ownership in a business if the ownership interest exceeds three percent of the total equity of the business; (ii) annual income that exceeds, or may reasonably be anticipated to exceed, $5,000 from ownership in real or personal property or a business; (iii) salary, other compensation, fringe benefits, or benefits from the use of property, or any combination thereof, paid or provided by a business or governmental agency that exceeds, or may reasonably be anticipated to exceed, $5,000 annually; (iv) ownership of real or personal property if the interest exceeds $5,000 in value and excluding ownership in a business, income, or salary, other compensation, fringe benefits or benefits from the use of property; (v) personal liability incurred or assumed on behalf of a business if the liability exceeds three percent of the asset value of the business; or (vi) an option for ownership of a business or real or personal property if the ownership interest will consist of clause (i) or (iv) above.

"Personal interest in a contract" means a personal interest that an officer or employee has in a contract with a governmental agency, whether due to his being a party to the contract or due to a personal interest in a business that is a party to the contract.

"Personal interest in a transaction" means a personal interest of an officer or employee in any matter considered by his agency. Such personal interest exists when an officer or employee or a member of his immediate family has a personal interest in property or a business or governmental agency, or represents or provides services to any individual or business and such property, business or represented or served individual or business (i) is the subject of the transaction or (ii) may realize a reasonably foreseeable direct or indirect benefit or detriment as a result of the action of the agency considering the transaction. Notwithstanding the above, such personal interest in a transaction shall not be deemed to exist where (a) an elected member of a local governing body serves without remuneration as a member of the board of trustees of a not-for-profit entity and such elected member or member of his immediate family has no personal interest related to the not-for-profit entity or (b) an officer, employee, or elected member of a local governing body is appointed by such local governing body to serve on a governmental agency, or an officer, employee, or elected member of a separate local governmental agency formed by a local governing body is appointed to serve on a governmental agency, and the personal interest in the transaction of the governmental agency is the result of the salary, other compensation, fringe benefits, or benefits provided by the local governing body or the separate governmental agency to the officer, employee, elected member, or member of his immediate family.

"State and local government officers and employees" shall not include members of the General Assembly.

"State filer" means those officers and employees required to file a disclosure statement of their personal interests pursuant to subsection A or B of § 2.2-3114.

"Transaction" means any matter considered by any governmental or advisory agency, whether in a committee, subcommittee, or other entity of that agency or before the agency itself, on which official action is taken or contemplated.

Article 2. Generally Prohibited and Unlawful Conduct

§ 2.2-3102. Application.

This article applies to generally prohibited conduct that shall be unlawful and to state and local government officers and employees.

§ 2.2-3103. Prohibited conduct.

No officer or employee of a state or local governmental or advisory agency shall:

1. Solicit or accept money or other thing of value for services performed within the scope of his official duties, except the compensation, expenses or other remuneration paid by the agency of which he is an officer or employee. This prohibition shall not apply to the acceptance of special benefits that may be authorized by law;

2. Offer or accept any money or other thing of value for or in consideration of obtaining employment, appointment, or promotion of any person with any governmental or advisory agency;

3. Offer or accept any money or other thing of value

for or in consideration of the use of his public position to obtain a contract for any person or business with any governmental or advisory agency;

4. Use for his own economic benefit or that of another party confidential information that he has acquired by reason of his public position and which is not available to the public;

5. Accept any money, loan, gift, favor, service, or business or professional opportunity that reasonably tends to influence him in the performance of his official duties. This subdivision shall not apply to any political contribution actually used for political campaign or constituent service purposes and reported as required by Chapter 9.3 (§ 24.2-945 et seq.) of Title 24.2;

6. Accept any business or professional opportunity when he knows that there is a reasonable likelihood that the opportunity is being afforded him to influence him in the performance of his official duties;

7. Accept any honoraria for any appearance, speech, or article in which the officer or employee provides expertise or opinions related to the performance of his official duties. The term "honoraria" shall not include any payment for or reimbursement to such person for his actual travel, lodging, or subsistence expenses incurred in connection with such appearance, speech, or article or in the alternative a payment of money or anything of value not in excess of the per diem deduction allowable under § 162 of the Internal Revenue Code, as amended from time to time. The prohibition in this subdivision shall apply only to the Governor, Lieutenant Governor, Attorney General, Governor's Secretaries, and heads of departments of state government;

8. Accept a gift from a person who has interests that may be substantially affected by the performance of the officer's or employee's official duties under circumstances where the timing and nature of the gift would cause a reasonable person to question the officer's or employee's impartiality in the matter affecting the donor. Violations of this subdivision shall not be subject to criminal law penalties;

9. Accept gifts from sources on a basis so frequent as to raise an appearance of the use of his public office for private gain. Violations of this subdivision shall not be subject to criminal law penalties; or

10. Use his public position to retaliate or threaten to retaliate against any person for expressing views on matters of public concern or for exercising any right that is otherwise protected by law, provided, however, that this subdivision shall not restrict the authority of any public employer to govern conduct of its employees, and to take disciplinary action, in accordance with applicable law, and provided further that this subdivision shall not limit the authority of a constitutional officer to discipline or discharge an employee with or without cause.

§ 2.2-3103.1. (Effective January 1, 2016) Certain gifts prohibited.

A. For purposes of this section:

"Person, organization, or business" includes individuals who are officers, directors, or owners of or who have a controlling ownership interest in such organization or business.

"Widely attended event" means an event at which at least 25 persons have been invited to attend or there is a reasonable expectation that at least 25 persons will attend the event and the event is open to individuals (i) who share a common interest, (ii) who are members of a public, civic, charitable, or professional organization, (iii) who are from a particular industry or profession, or (iv) who represent persons interested in a particular issue.

B. No officer or employee of a local governmental or advisory agency or candidate required to file the disclosure form prescribed in § 2.2-3117 or a member of his immediate family shall solicit, accept, or receive any single gift with a value in excess of $100 or any combination of gifts with an aggregate value in excess of $100 within any calendar year for himself or a member of his immediate family from any person that he or a member of his immediate family knows or has reason to know is (i) a lobbyist registered pursuant to Article 3 (§ 2.2-418 et seq.) of Chapter 4; (ii) a lobbyist's principal as defined in § 2.2-419; or (iii) a person, organization, or business who is or is seeking to become a party to a contract with the local agency of which he is an officer or an employee. Gifts with a value of less than $20 are not subject to aggregation for purposes of this prohibition.

C. No officer or employee of a state governmental or advisory agency or candidate required to file the disclosure form prescribed in § 2.2-3117 or a member of his immediate family shall solicit, accept, or receive any single gift with a value in excess of $100 or any combination of gifts with an aggregate value in excess of $100 within any calendar year for himself or a member of his immediate family from any person that he or a member of his immediate family knows or has reason to know is (i) a lobbyist registered pursuant to Article 3 (§ 2.2-418 et seq.) of Chapter 4; (ii) a lobbyist's principal as defined in § 2.2-419; or (iii) a person, organization, or business who is or is seeking to become a party to a contract with the state governmental or advi-

sory agency of which he is an officer or an employee or over which he has the authority to direct such agency's activities. Gifts with a value of less than $20 are not subject to aggregation for purposes of this prohibition.

D. Notwithstanding the provisions of subsections B and C, such officer, employee, or candidate or a member of his immediate family may accept or receive a gift of food and beverages, entertainment, or the cost of admission with a value in excess of $100 when such gift is accepted or received while in attendance at a widely attended event and is associated with the event. Such gifts shall be reported on the disclosure form prescribed in § 2.2-3117.

E. Notwithstanding the provisions of subsections B and C, such officer or employee or a member of his immediate family may accept or receive a gift from a foreign dignitary with a value exceeding $100 for which the fair market value or a gift of greater or equal value has not been provided or exchanged. Such gift shall be accepted on behalf of the Commonwealth or a locality and archived in accordance with guidelines established by the Library of Virginia. Such gift shall be disclosed as having been accepted on behalf of the Commonwealth or a locality, but the value of such gift shall not be required to be disclosed.

F. Notwithstanding the provisions of subsections B and C, such officer, employee, or candidate or a member of his immediate family may accept or receive certain gifts with a value in excess of $100 from a person listed in subsection B or C if such gift was provided to such officer, employee, or candidate or a member of his immediate family on the basis of a personal friendship. Notwithstanding any other provision of law, a person listed in subsection B or C may be a personal friend of such officer, employee, or candidate or his immediate family for purposes of this subsection. In determining whether a person listed in subsection B or C is a personal friend, the following factors shall be considered: (i) the circumstances under which the gift was offered; (ii) the history of the relationship between the person and the donor, including the nature and length of the friendship and any previous exchange of gifts between them; (iii) to the extent known to the person, whether the donor personally paid for the gift or sought a tax deduction or business reimbursement for the gift; and (iv) whether the donor has given the same or similar gifts to other persons required to file the disclosure form prescribed in §2.2-3117 or 30-111.

G. Notwithstanding the provisions of subsections B and C, such officer, employee, or candidate or a member of his immediate family may accept or receive gifts of travel, including travel-related transportation, lodging, hospitality, food or beverages, or other thing of value, with a value in excess of $100 that is paid for or provided by a person listed in subsection B or C when the officer, employee, or candidate has submitted a request for approval of such travel to the Council and has received the approval of the Council pursuant to § 30-356.1. Such gifts shall be reported on the disclosure form prescribed in § 2.2-3117.

H. During the pendency of a civil action in any state or federal court to which the Commonwealth is a party, the Governor or the Attorney General or any employee of the Governor or the Attorney General who is subject to the provisions of this chapter shall not solicit, accept, or receive any gift from any person that he knows or has reason to know is a person, organization, or business that is a party to such civil action. A person, organization, or business that is a party to such civil action shall not knowingly give any gift to the Governor or the Attorney General or any of their employees who are subject to the provisions of this chapter.

I. The $100 limitation imposed in accordance with this section shall be adjusted by the Council every five years, as of January 1 of that year, in an amount equal to the annual increases for that five-year period in the United States Average Consumer Price Index for all items, all urban consumers (CPI-U), as published by the Bureau of Labor Statistics of the U.S. Department of Labor, rounded to the nearest whole dollar.

§ 2.2-3103.2. (Effective January 1, 2016) Return of gifts.

No person shall be in violation of any provision of this chapter prohibiting the acceptance of a gift if (i) the gift is not used by such person and the gift or its equivalent in money is returned to the donor or delivered to a charitable organization within a reasonable period of time upon the discovery of the value of the gift and is not claimed as a charitable contribution for federal income tax purposes or (ii) consideration is given by the donee to the donor for the value of the gift within a reasonable period of time upon the discovery of the value of the gift provided that such consideration reduces the value of the gift to an amount not in excess of $100 as provided in subsection B or C of § 2.2-3103.1.

§ 2.2-3104.01. (Effective January 1, 2016) Prohibited conduct; bids or proposals under the Virginia Public Procurement Act, Public-Private Transportation Act, and Public-Private Education Facilities and Infrastructure Act; loans or grants from the Commonwealth's Development Opportunity Fund

A. Neither the Governor, his political action committee, or the Governor's Secretaries, if the Secretary is responsible to the Governor for an executive branch agency with jurisdiction over the matters at issue, shall knowingly solicit or accept a contribution, gift, or other item with a value greater than $50 from any bidder, offeror, or private entity, or from an officer or director of such bidder, offeror, or private entity, who has submitted a bid or proposal to an executive branch agency that is directly responsible to the Governor pursuant to the Virginia Public Procurement Act (§ 2.2-4300 et seq.), the Public-Private Transportation Act of 1995 (§ 33.2-1800 et seq.), or the Public-Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.) (i) during the period between the submission of the bid and the award of the public contract under the Virginia Public Procurement Act or (ii) following the submission of a proposal under the Public-Private Transportation Act of 1995 or the Public-Private Education Facilities and Infrastructure Act of 2002 until the execution of a comprehensive agreement thereunder.

B. Neither the Governor, his campaign committee, nor a political action committee established on his behalf shall knowingly solicit or accept a contribution, gift, or other item with a value greater than $100 from any person or entity that has submitted an application for a grant or loan from the Commonwealth's Development Opportunity Fund during the period in which the person or entity's application for such an award is pending and for the one-year period immediately after any such award is made. For purposes of this subsection, "entity" includes individuals who are officers, directors, or owners of or who have a controlling ownership interest in such entity.

C. The provisions of this section shall apply only for public contracts, proposals, or comprehensive agreements where the stated or expected value of the contract is $5 million or more or for grants or loans from the Commonwealth's Development Opportunity Fund regardless of the value of the grant or loan. The provisions of this section shall not apply to contracts awarded as the result of competitive sealed bidding as set forth in § 2.2-4302.1.

D. Any person who knowingly violates this section shall be subject to a civil penalty of $500 or up to two times the amount of the contribution or gift, whichever is greater, and the contribution, gift, or other item shall be returned to the donor. The attorney for the Commonwealth shall initiate civil proceedings to enforce the civil penalties. Any civil penalties collected shall be payable to the State Treasurer for deposit to the general fund and shall be used exclusively to fund the Council.

§ 2.2-3104.02. Prohibited conduct for constitutional officers.

In addition to the prohibitions contained in § 2.2-3103, no constitutional officer shall, during the one year after the termination of his public service, act in a representative capacity on behalf of any person or group, for compensation, on any matter before the agency of which he was an officer.

The provisions of this section shall not apply to any attorney for the Commonwealth.

Any person subject to the provisions of this section may apply to the attorney for the Commonwealth for the jurisdiction where such person was elected as provided in § 2.2-3126, for an advisory opinion as to the application of the restriction imposed by this section on any post-public employment position or opportunity.

§ 2.2-3104.1. Exclusion of certain awards from scope of chapter.

The provisions of this chapter shall not be construed to prohibit or apply to the acceptance by (i) any employee of a local government, or (ii) a teacher or other employee of a local school board of an award or payment in honor of meritorious or exceptional services performed by the teacher or employee and made by an organization exempt from federal income taxation pursuant to the provisions of Section 501(c)(3) of the Internal Revenue Code.

§ 2.2-3104.2. Ordinance regulating receipt of gifts.

The governing body of any county, city, or town may adopt an ordinance setting a monetary limit on the acceptance of any gift by the officers, appointees or employees of the county, city or town and requiring the disclosure by such officers, appointees or employees of the receipt of any gift.

§ 2.2-3104. (Effective January 1, 2016) Prohibited conduct for certain officers and employees of state government. OMITTED

Article 3. Prohibited Conduct Relating to Contracts

§ 2.2-3105. Application.

This article proscribes certain conduct relating to contracts by state and local government officers and employees. The provisions of this article shall be supplemented but not superseded by the provisions on ethics in public contracting in Article 6 (§ 2.2-4367 et seq.) of Chapter 43 of this title.

§ 2.2-3106. Prohibited contracts by officers and employees of state government and Eastern Virginia Medical School. OMITTED

§ 2.2-3108. Prohibited contracts by members of school boards.

A. No person elected or appointed as a member of a local school board shall have a personal interest in (i) any contract with his school board or (ii) any contract with any governmental agency that is subject to the ultimate control of the school board of which he is a member.

B. The provisions of this section shall not apply to:

1. A member's personal interest in a contract of employment provided the employment first began prior to the member becoming a member of the school board;
2. Contracts for the sale by a governmental agency of services or goods at uniform prices available to the public; or
3. A contract awarded to a member of a school board as a result of competitive sealed bidding where the school board has established a need for the same or substantially similar goods through purchases prior to the election or appointment of the member to serve on the school board. However, the member shall have no involvement in the preparation of the specifications for such contract, and the remaining members of the school board, by written resolution, shall state that it is in the public interest for the member to bid on such contract.

§ 2.2-3109. Prohibited contracts by other officers and employees of local governmental agencies.

A. No other officer or employee of any governmental agency of local government, including a hospital authority as defined in § 2.2-3109.1, shall have a personal interest in a contract with the agency of which he is an officer or employee other than his own contract of employment.

B. No officer or employee of any governmental agency of local government, including a hospital authority as defined in § 2.2-3109.1, shall have a personal interest in a contract with any other governmental agency that is a component of the government of his county, city or town unless such contract is (i) awarded as a result of competitive sealed bidding or competitive negotiation as set forth in §2.2-4302.1 or 2.2-4302.2 or is awarded as a result of a procedure embodying competitive principles as authorized by subdivision A 10 or 11 of § 2.2-4343 or (ii) is awarded after a finding, in writing, by the administrative head of the governmental agency that competitive bidding or negotiation is contrary to the best interest of the public.

C. The provisions of this section shall not apply to:

1. An employee's personal interest in additional contracts for goods or services, or contracts of employment with his own governmental agency that accrue to him because of a member of his immediate family, provided the employee does not exercise any control over (i) the employment or the employment activities of the member of his immediate family and (ii) the employee is not in a position to influence those activities or the award of the contract for goods or services;
2. An officer's or employee's personal interest in a contract of employment with any other governmental agency that is a component part of the government of his county, city or town;
3. Contracts for the sale by a governmental agency of services or goods at uniform prices available to the general public;
4. Members of local governing bodies who are subject to § 2.2-3107;
5. Members of local school boards who are subject to § 2.2-3108; or
6. Any ownership or financial interest of members of the governing body, administrators, and other personnel serving in a public charter school in renovating, lending, granting, or leasing public charter school facilities, as the case may be, provided such interest has been disclosed in the public charter school application as required by § 22.1-212.8.

§ 2.2-3109.1. Prohibited contracts; additional exclusions for contracts by officers and employees of hospital authorities. OMITTED

§ 2.2-3110. Further exceptions.

A. The provisions of Article 3 (§ 2.2-3106 et seq.) of this chapter shall not apply to:

1. The sale, lease or exchange of real property between an officer or employee and a governmental agency, provided the officer or employee does not participate in any way as such officer or employee in such sale, lease or exchange, and this fact is set forth as a matter of public record by the governing body of the governmental agency or by the administrative head thereof;
2. The publication of official notices;
3. Contracts between the government or school board of a town or city with a population of less than 10,000 and an officer or employee of that town or city government or school board when the total of such contracts between the town or city government or school board and the officer or employee of that town or city government or school board or a business controlled by him does not exceed $10,000 per year or such amount exceeds $10,000 and is less than $25,000 but results from contracts arising from awards made on a sealed bid basis, and such officer or employee has made disclosure as provided for in § 2.2-3115;
4. An officer or employee whose sole personal interest in a contract with the governmental agency is by reason of income from the contracting firm or governmental agency in excess of $10,000 per year, provided the officer or employee or a member of his immediate family does not participate and has no authority to participate in the procurement or letting of such contract on behalf of the contracting firm and the officer or employee either does not have authority to participate in the procurement or letting of the contract on behalf of his governmental agency or he disqualifies himself as a matter of public record and does not participate on behalf of his governmental agency in negotiating the contract or in approving the contract;
5. When the governmental agency is a public institution of higher education, an officer or employee whose personal interest in a contract with the institution is by reason of an ownership in the contracting firm in excess of three percent of the contracting firm's equity or such ownership interest and income from the contracting firm is in excess of $10,000 per year, provided that (i) the officer or employee's ownership interest, or ownership and income interest, and that of any immediate family member in the contracting firm is disclosed in writing to the president of the institution, which writing certifies that the officer or employee has not and will not participate in the contract negotiations on behalf of the contracting firm or the institution, (ii) the president of the institution makes a written finding as a matter of public record that the contract is in the best interests of the institution, (iii) the officer or employee either does not have authority to participate in the procurement or letting of the contract on behalf of the institution or disqualifies himself as a matter of public record, and (iv) does not participate on behalf of the institution in negotiating the contract or approving the contract;
6. Except when the governmental agency is the Virginia Retirement System, contracts between an officer's or employee's governmental agency and a public service corporation, financial institution, or company furnishing public utilities in which the officer or employee has a personal interest, provided the officer or employee disqualifies himself as a matter of public record and does not participate on behalf of his governmental agency in negotiating the contract or in approving the contract;
7. Contracts for the purchase of goods or services when the contract does not exceed $500;
8. Grants or other payment under any program wherein uniform rates for, or the amounts paid to, all qualified applicants are established solely by the administering governmental agency; or
9. An officer or employee whose sole personal interest in a contract with his own governmental agency is by reason of his marriage to his spouse who is employed by the same agency, if the spouse was employed by such agency for five or more years prior to marrying such officer or employee.

B. Neither the provisions of this chapter nor, unless expressly provided otherwise, any amendments thereto shall apply to those employment contracts or renewals thereof or to any other contracts entered into prior to August 1, 1987, which were in compliance with either the former Virginia Conflict of Interests Act, Chapter

22 (§ 2.1-347 et seq.) or the former Comprehensive Conflict of Interests Act, Chapter 40 (§ 2.1-599 et seq.) of Title 2.1 at the time of their formation and thereafter. Those contracts shall continue to be governed by the provisions of the appropriate prior Act. Notwithstanding the provisions of subdivision (f) (4) of § 2.1-348 of Title 2.1 in effect prior to July 1, 1983, the employment by the same governmental agency of an officer or employee and spouse or any other relative residing in the same household shall not be deemed to create a material financial interest except when one of such persons is employed in a direct supervisory or administrative position, or both, with respect to such spouse or other relative residing in his household and the annual salary of such subordinate is $35,000 or more.

Article 4. Prohibited Conduct Relating to Transactions

§ 2.2-3111. Application.

This article proscribes certain conduct by state and local government officers and employees having a personal interest in a transaction.

§ 2.2-3112. Prohibited conduct concerning personal interest in a transaction; exceptions.

A. Each officer and employee of any state or local governmental or advisory agency who has a personal interest in a transaction:

1. Shall disqualify himself from participating in the transaction if (i) the transaction has application solely to property or a business or governmental agency in which he has a personal interest or a business that has a parent-subsidiary or affiliated business entity relationship with the business in which he has a personal interest or (ii) he is unable to participate pursuant to subdivision 2, 3 or 4. Any disqualification under the provisions of this subdivision shall be recorded in the public records of the officer's or employee's governmental or advisory agency. The officer or employee shall disclose his personal interest as required by subsection E of § 2.2-3114 or subsection F of § 2.2-3115 and shall not vote or in any manner act on behalf of his agency in the transaction. The officer or employee shall be prohibited from (i) attending any portion of a closed meeting authorized by the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) when the matter in which he has a personal interest is discussed and (ii) discussing the matter in which he has a personal interest with other governmental officers or employees at any time;
2. May participate in the transaction if he is a member of a business, profession, occupation, or group of three or more persons the members of which are affected by the transaction, and he complies with the declaration requirements of subsection F of § 2.2-3114 or subsection H of § 2.2-3115;
3. May participate in the transaction when a party to the transaction is a client of his firm if he does not personally represent or provide services to such client and he complies with the declaration requirements of subsection G of § 2.2-3114 or subsection I of § 2.2-3115; or
4. May participate in the transaction if it affects the public generally, even though his personal interest, as a member of the public, may also be affected by that transaction.

B. Disqualification under the provisions of this section shall not prevent any employee having a personal interest in a transaction in which his agency is involved from representing himself or a member of his immediate family in such transaction provided he does not receive compensation for such representation and provided he complies with the disqualification and relevant disclosure requirements of this chapter.

C. Notwithstanding any other provision of law, if disqualifications of officers or employees in accordance with this section leave less than the number required by law to act, the remaining member or members shall constitute a quorum for the conduct of business and have authority to act for the agency by majority vote, unless a unanimous vote of all members is required by law, in which case authority to act shall require a unanimous vote of remaining members. Notwithstanding any provisions of this chapter to the contrary, members of a local governing body whose sole interest in any proposed sale, contract of sale, exchange, lease or conveyance is by virtue of their employment by a business involved in a proposed sale, contract of sale, exchange, lease or conveyance, and where such member's or members' vote is essential to a constitutional majority required pursuant to Article VII, Section 9 of the Constitution of Virginia and § 15.2-2100, such member or members of the local governing body may vote and participate in the deliberations of the governing body concerning whether to approve, enter into or execute such sale, contract of sale, exchange, lease or conveyance. Official action taken under circumstances

that violate this section may be rescinded by the agency on such terms as the interests of the agency and innocent third parties require.

D. The provisions of subsection A shall not prevent an officer or employee from participating in a transaction merely because such officer or employee is a party in a legal proceeding of a civil nature concerning such transaction.

E. The provisions of subsection A shall not prevent an employee from participating in a transaction regarding textbooks or other educational material for students at state institutions of higher education, when those textbooks or materials have been authored or otherwise created by the employee.

Article 5. Disclosure Statements Required to Be Filed

§ 2.2-3113. Application.

This article requires disclosure of certain personal and financial interests by state and local government officers and employees.

§ 2.2-3114. Disclosure by state officers and employees. OMITTED

§ 2.2-3114.1. (Effective until January 1, 2016) Filings of statements of economic interests by General Assembly members. OMITTED

§ 2.2-3114.1. (Effective January 1, 2016) Filings of statements of economic interests by General Assembly members. OMITTED

§ 2.2-3115. (Effective January 1, 2016) Disclosure by local government officers and employees

A. The members of every governing body and school board of each county and city and of towns with populations in excess of 3,500 shall file, as a condition to assuming office or employment, a disclosure statement of their personal interests and other information as is specified on the form set forth in § 2.2-3117 and thereafter shall file such a statement semiannually by December 15 for the preceding six-month period complete through the last day of October and by June 15 for the preceding six-month period complete through the last day of April.

The members of the governing body of any authority established in any county or city, or part or combination thereof, and having the power to issue bonds or expend funds in excess of $10,000 in any fiscal year, shall file, as a condition to assuming office, a disclosure statement of their personal interests and other information as is specified on the form set forth in § 2.2-3118 and thereafter shall file such a statement annually on or before December 15, unless the governing body of the jurisdiction that appoints the members requires that the members file the form set forth in § 2.2-3117 semiannually by December 15 for the preceding six-month period complete through the last day of October and by June 15 for the preceding six-month period complete through the last day of April.

Persons occupying such positions of trust appointed by governing bodies and persons occupying such positions of employment with governing bodies as may be designated to file by ordinance of the governing body shall file, as a condition to assuming office or employment, a disclosure statement of their personal interests and other information as is specified on the form set forth in § 2.2-3117 and thereafter shall file such a statement semiannually by December 15 for the preceding six-month period complete through the last day of October and by June 15 for the preceding six-month period complete through the last day of April.

Persons occupying such positions of trust appointed by school boards and persons occupying such positions of employment with school boards as may be designated to file by an adopted policy of the school board shall file, as a condition to assuming office or employment, a disclosure statement of their personal interests and other information as is specified on the form set forth in § 2.2-3117 and thereafter shall file such a statement semiannually by December 15 for the preceding six-month period complete through the last day of October and by June 15 for the preceding six-month period complete through the last day of April.

B. Nonsalaried citizen members of local boards, commissions and councils as may be designated by the governing body shall file, as a condition to assuming office, a disclosure form of their personal interests and such other information as is specified on the form set forth in § 2.2-3118 and thereafter shall file such form annually on or before December 15.

C. No person shall be mandated to file any disclosure not otherwise required by this article.

D. The disclosure forms required by subsections A and B shall be made available by the Virginia Conflict of Interest and Ethics Advisory Council at least 30 days prior to the filing deadline, and the clerks of the governing body and school board shall distribute the forms

to designated individuals at least 20 days prior to the filing deadline. Forms shall be filed and maintained as public records for five years in the office of the clerk of the respective governing body or school board. Forms filed by members of governing bodies of authorities shall be filed and maintained as public records for five years in the office of the clerk of the governing body of the county or city. Such forms shall be made public no later than six weeks after filing.

E. Candidates for membership in the governing body or school board of any county, city or town with a population of more than 3,500 persons shall file a disclosure statement of their personal interests as required by § 24.2-502.

F. Any officer or employee of local government who has a personal interest in any transaction before the governmental or advisory agency of which he is an officer or employee and who is disqualified from participating in that transaction pursuant to subdivision A 1 of § 2.2-3112 or otherwise elects to disqualify himself, shall forthwith make disclosure of the existence of his interest, including the full name and address of the business and the address or parcel number for the real estate if the interest involves a business or real estate, and his disclosure shall be reflected in the public records of the agency for five years in the office of the administrative head of the officer's or employee's governmental or advisory agency.

G. In addition to any disclosure required by subsections A and B, in each county and city and in towns with populations in excess of 3,500, members of planning commissions, boards of zoning appeals, real estate assessors, and all county, city and town managers or executive officers shall make annual disclosures of all their interests in real estate located in the county, city or town in which they are elected, appointed, or employed. Such disclosure shall include any business in which such persons own an interest, or from which income is received, if the primary purpose of the business is to own, develop or derive compensation through the sale, exchange or development of real estate in the county, city or town. Such disclosure shall be filed as a condition to assuming office or employment, and thereafter shall be filed annually with the clerk of the governing body of such county, city, or town on or before December 15. Such disclosures shall be filed and maintained as public records for five years. Such forms shall be made public no later than six weeks after filing. Forms for the filing of such reports shall be made available by the Virginia Conflict of Interest and Ethics Advisory Council to the clerk of each governing body.

H. An officer or employee of local government who is required to declare his interest pursuant to subdivision A 2 of § 2.2-3112 shall declare his interest by stating (i) the transaction involved, (ii) the nature of the officer's or employee's personal interest affected by the transaction, (iii) that he is a member of a business, profession, occupation, or group the members of which are affected by the transaction, and (iv) that he is able to participate in the transaction fairly, objectively, and in the public interest. The officer or employee shall either make his declaration orally to be recorded in written minutes for his agency or file a signed written declaration with the clerk or administrative head of his governmental or advisory agency, as appropriate, who shall, in either case, retain and make available for public inspection such declaration for a period of five years from the date of recording or receipt. If reasonable time is not available to comply with the provisions of this subsection prior to participation in the transaction, the officer or employee shall prepare and file the required declaration by the end of the next business day. The officer or employee shall also orally disclose the existence of the interest during each meeting of the governmental or advisory agency at which the transaction is discussed and such disclosure shall be recorded in the minutes of the meeting.

I. An officer or employee of local government who is required to declare his interest pursuant to subdivision A 3 of § 2.2-3112, shall declare his interest by stating (i) the transaction involved, (ii) that a party to the transaction is a client of his firm, (iii) that he does not personally represent or provide services to the client, and (iv) that he is able to participate in the transaction fairly, objectively, and in the public interest. The officer or employee shall either make his declaration orally to be recorded in written minutes for his agency or file a signed written declaration with the clerk or administrative head of his governmental or advisory agency, as appropriate, who shall, in either case, retain and make available for public inspection such declaration for a period of five years from the date of recording or receipt. If reasonable time is not available to comply with the provisions of this subsection prior to participation in the transaction, the officer or employee shall prepare and file the required declaration by the end of the next business day.

§ 2.2-3116. (Effective from January 1, 2016, until July 1, 2016) Disclosure by certain constitutional officers.

For the purposes of this chapter, holders of the constitutional offices of treasurer, sheriff, attorney for the Commonwealth, clerk of the circuit court, and com-

missioner of the revenue of each county and city shall be required to file with the Council, as a condition to assuming office, the Statement of Economic Interests set forth in § 2.2-3117. These officers shall file statements semiannually by December 15 for the preceding six-month period complete through the last day of October and by June 15 for the preceding six-month period complete through the last day of April. Candidates shall file statements as required by § 24.2-502. These officers shall be subject to the prohibition on certain gifts set forth in subsection B of § 2.2-3103.1.

§ 2.2-3116. (Effective July 1, 2016) Disclosure by certain constitutional officers.

For the purposes of this chapter, holders of the constitutional offices of treasurer, sheriff, attorney for the Commonwealth, clerk of the circuit court, and commissioner of the revenue of each county and city shall be required to file with the Council, as a condition to assuming office, the Statement of Economic Interests set forth in § 2.2-3117. These officers shall file statements semiannually by December 15 for the preceding six-month period complete through the last day of October and by June 15 for the preceding six-month period complete through the last day of April. Candidates shall file statements as required by § 24.2-502. Statements shall be filed electronically with the Council in accordance with the standards approved by it pursuant to § 30-356. These officers shall be subject to the prohibition on certain gifts set forth in subsection B of § 2.2-3103.1.

§ 2.2-3117. (Effective January 1, 2016) Disclosure form.

(Effective from January 1, 2016, until July 1, 2016) The disclosure form to be used for filings required by subsections A and D of § 2.2-3114 and subsections A and E of § 2.2-3115 shall be substantially similar to the following. Any person who knowingly and intentionally makes a false statement of a material fact on the Statement of Economic Interests is guilty of a Class 5 felony.

(Effective July 1, 2016) The disclosure form to be used for filings required by subsections A and D of § 2.2-3114 and subsections Aand E of § 2.2-3115 shall be substantially similar to the following. Except as otherwise provided in § 2.2-3115, all completed forms shall be filed electronically with the Council in accordance with the standards approved by it pursuant to § 30-356. Any person who knowingly and intentionally makes a false statement of a material fact on the Statement of Economic Interests is guilty of a Class 5 felony.

STATEMENT OF ECONOMIC INTERESTS.

Name_____

Office or position held or sought. _____

Address_____

Names of members of immediate family. _____

DEFINITIONS AND EXPLANATORY MATERIAL.

"Business" means a corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, trust or foundation, or any other individual or entity carrying on a business or profession, whether or not for profit.

"Close financial association" means an association in which the person filing shares significant financial involvement with an individual and the filer would reasonably be expected to be aware of the individual's business activities and would have access to the necessary records either directly or through the individual. "Close financial association" does not mean an association based on (i) the receipt of retirement benefits or deferred compensation from a business by which the person filing this statement is no longer employed, or (ii) the receipt of compensation for work performed by the person filing as an independent contractor of a business that represents an entity before any state governmental agency when the person filing has had no communications with the state governmental agency. "Contingent liability" means a liability that is not presently fixed or determined, but may become fixed or determined in the future with the occurrence of some certain event.

"Gift" means any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. It includes services as well as gifts of transportation, lodgings and meals, whether provided in-kind, by purchase of a ticket, payment in advance or reimbursement after the expense has been incurred. "Gift" does not include (i) any offer of a ticket, coupon, or other admission or pass unless the ticket, coupon, admission, or pass is used; (ii) honorary degrees; (iii) any athletic, merit, or need-based scholarship or any other financial aid awarded by a public or private school, institution of higher education, or other educational program pursuant to such school, institution, or program's financial aid standards and procedures applicable to the general public; (iv) a campaign contribution properly received and reported pursuant to Chapter 9.3 (§24.2-945 et seq.) of Title 24.2; (v) any gift related to the private profession or occupation of an officer or employee or of a member of his immediate family; (vi) food or beverages consumed while attending an event at which the filer is performing official duties related to his public service; (vii) food and beverages received at or registration or attendance fees waived for any event at which the filer is a featured speaker, presenter, or lecturer; (viii) unsolicited awards of appreciation or recognition in the form of a plaque, trophy, wall memento, or similar item that is given in recognition of public, civic, charitable, or professional service; (ix) a devise or inheritance; (x) travel disclosed pursuant to the Campaign Finance Disclosure Act (§ 24.2-945 et seq.); (xi) travel paid for or provided by the government of the United States, any of its territories, or any state or any political subdivision of such state; (xii) travel provided to facilitate attendance by a legislator at a regular or special session of the General Assembly, a meeting of a legislative committee or commission, or a national conference where attendance is approved by the House or Senate Committee on Rules; (xiii) travel related to an official meeting of the Commonwealth, its political subdivisions, or any board, commission, authority, or other entity, or any charitable organization established pursuant to § 501(c)(3) of the Internal Revenue Code affiliated with such entity, to which such person has been appointed or elected or is a member by virtue of his office or employment; or (xiv) gifts from relatives or personal friends. "Relative" means the donee's spouse, child, uncle, aunt, niece, nephew, or first cousin; a person to whom the donee is engaged to be married; the donee's or his spouse's parent, grandparent, grandchild, brother, sister, step-parent, step-grandparent, step-grandchild, step-brother, or step-sister; or the donee's brother's or sister's spouse. "Personal friend" does not include any person that the filer knows or has reason to know is (a) a lobbyist registered pursuant to Article 3 (§ 2.2-418 et seq.) of Chapter 4 of Title 2.2; (b) a lobbyist's principal as defined in § 2.2-419; (c) for an officer or employee of a local governmental or advisory agency, a person, organization, or business who is a party to or is seeking to become a party to a contract with the local agency of which he is an officer or an employee; or (d) for an officer or employee of a state governmental or advisory agency, a person, organization, or business who is a party to or is seeking to become a party to a contract with the Commonwealth. "Person, organization, or business" includes individuals who are officers, directors, or owners of or who have a controlling ownership interest in such organization or business.

"Immediate family" means (i) a spouse and (ii) any other person who resides in the same household as the officer or employee and who is a dependent of the officer or employee.

TRUST. If you or your immediate family, separately or together, are the only beneficiaries of a trust, treat the trust's assets as if you own them directly. If you or your immediate family has a proportional interest in a trust, treat that proportion of the trust's assets as if you own them directly. For example, if you and your immediate family have a one-third interest in a trust, complete your Statement as if you own one-third of each of the trust's assets. If you or a member of your immediate family created a trust and can revoke it without the beneficiaries' consent, treat its assets as if you own them directly.

REPORT TO THE BEST OF INFORMATION AND BELIEF. Information required on this Statement must be provided on the basis of the best knowledge, information, and belief of the individual filing the Statement as of the date of this report unless otherwise stated.

COMPLETE ITEMS 1 THROUGH 10. REFER TO SCHEDULES ONLY IF DIRECTED.

You may attach additional explanatory information.

1. Offices and Directorships.
Are you or a member of your immediate family a paid officer or paid director of a business?
EITHER check NO / / OR check YES / / and complete Schedule A.

2. Personal Liabilities.
Do you or a member of your immediate family owe more than $ 5,000 to any one creditor including contingent liabilities? (Exclude debts to any government and loans secured by recorded liens on property at least equal in value to the loan.)
EITHER check NO / / OR check YES / / and complete Schedule B.

3. Securities.
Do you or a member of your immediate family, directly or indirectly, separately or together, own securities valued in excess of $ 5,000 invested in one business? Account for mutual funds, limited partnerships and trusts.
EITHER check NO / / OR check YES / / and complete Schedule C.

4. Payments for Talks, Meetings, and Publications.
During the past six months did you receive in your capacity as an officer or employee of your agency lodging, transportation, money, or anything else of value with a combined value exceeding $ 100 (i) for a single talk, meeting, or published work or (ii) for a meeting, conference, or event where your attendance at the meeting, conference, or event was designed to (a) educate you on issues relevant to your duties as an officer or employee of your agency or (b) enhance your knowledge and skills relative to your duties as an officer or employee of your agency?
EITHER check NO / / OR check YES / / and complete Schedule D.

5. Gifts.
During the past six months did a business, government, or individual other than a relative or personal friend (i) furnish you or a member of your immediate family with any gift or entertainment at a single event and the value received exceeded $ 50 or (ii) furnish you or a member of your immediate family with gifts or entertainment in any combination and the total value received exceeded $ 50, and for which you or the member of your immediate family neither paid nor rendered services in exchange? Account for entertainment events only if the average value per person attending the event exceeded $ 50. Account for all business entertainment (except if related to the private profession or occupation of you or the member of your immediate family who received such business entertainment) even if unrelated to your official duties.
EITHER check NO / / OR check YES / / and complete Schedule E.

6. Salary and Wages.
List each employer that pays you or a member of your immediate family salary or wages in excess of $ 5,000 annually. (Exclude state or local government or advisory agencies.)
If no reportable salary or wages, check here / /.
.....
.....
.....

7. Business Interests.
Do you or a member of your immediate family, separately or together, operate your own business, or own or control an interest in excess of $ 5,000 in a business?
EITHER check NO / / OR check YES / / and complete Schedule F.

8. Payments for Representation and Other Services.

8A.
Did you represent, excluding activity defined as lobbying in § 2.2-419, any businesses before any state governmental agencies, excluding courts or judges, for which you received total compensation during the past six months in excess of $ 1,000, excluding compensation for other services to such businesses and representation consisting solely of the filing of mandatory papers and subsequent representation regarding the mandatory papers? (Officers and employees of local governmental and advisory agencies do NOT need to answer this question or complete Schedule G-1.)
EITHER check NO / / OR check YES / / and complete Schedule G-1.

8B.
Subject to the same exceptions as in 8A, did persons with whom you have a close financial association (partners, associates or others) represent, excluding activity defined as lobbying in § 2.2-419, any businesses before any state governmental agency for which total compensation was received during the past six months in excess of $ 1,000? (Officers and employees of local governmental and advisory agencies do NOT need to answer this question or complete Schedule G-2.)
EITHER check NO / / OR check YES / / and complete Schedule G-2.

8C.
Did you or persons with whom you have a close financial association furnish services to businesses operating in Virginia pursuant to an agreement between you and such businesses, or between persons with whom you have a close financial association and such businesses for which total compensation in excess of $ 1,000 was received during the past six months? Services reported under this provision shall not include services involving the representation of businesses that are reported under item 8A or 8B.
EITHER check NO / / OR check YES / / and complete Schedule G-3.

9.Real Estate.

9A.State Officers and Employees.
Do you or a member of your immediate family hold an interest, including a partnership interest, valued at more than $ 5,000 in real property (other than your principal residence) for which you have not already listed the full address on Schedule F? Account for real estate held in trust.
EITHER check NO / / OR check YES / / and complete Schedule H-1.

9B. Local Officers and Employees.
Do you or a member of your immediate family hold an interest, including a partnership interest, or option, easement, or land contract, valued at more than $ 5,000 in real property (other than your principal residence) for which you have not already listed the full address on Schedule F? Account for real estate held in trust.
EITHER check NO / / OR check YES / / and complete Schedule H-2.

10. Real Estate Contracts with Governmental Agencies.
Do you or a member of your immediate family hold an interest valued at more than $ 5,000 in real estate, including a corporate, partnership, or trust interest, option, easement, or land contract, which real estate is the subject of a contract, whether pending or completed within the past six months, with a governmental agency? If the real estate contract provides for the leasing of the property to a governmental agency, do you or a member of your immediate family hold an interest in the real estate valued at more than $ 1,000? Account for all such contracts whether or not your interest is reported in Schedule F, H-1, or H-2. This requirement to disclose an interest in a lease does not apply to an interest derived through an ownership interest in a business unless the ownership interest exceeds three percent of the total equity of the business.
EITHER check NO / / OR check YES / / and complete Schedule I.
Statements of Economic Interests are open for public inspection.

AFFIRMATION BY ALL FILERS.

I swear or affirm that the foregoing information is full, true and correct to the best of my knowledge.

Signature.....…

(Return only if needed to complete Statement.)

SCHEDULES
to
STATEMENT OF ECONOMIC INTERESTS.

NAME =lf

SCHEDULE A -- OFFICES AND DIRECTORSHIPS.
Identify each business of which you or a member of your immediate family is a paid officer or paid director.

Name of Business	Address of Business	Position Held and by Whom
_____	_____	_____
_____	_____	_____

RETURN TO ITEM 2

SCHEDULE B -- PERSONAL LIABILITIES.
Report personal liability by checking each category. Report only debts in excess of $ 5,000. Do not report debts to any government. Do not report loans secured by recorded liens on property at least equal in value to the loan.

Report contingent liabilities below and indicate which debts are contingent.

1. My personal debts are as follows:

_____

Check appropriate categories	$5,001 to $50,000	More than $50,000
Banks	_____	_____
Savings institutions	_____	_____
Other loan or finance companies	_____	_____
Insurance companies	_____	_____
Stock, commodity or other brokerage companies	_____	_____
Other businesses:		
(State principal business activity for each creditor and its name.)		
Individual creditors:		
(State principal business or occupation of each creditor and its name.)		
_____	_____	_____
_____	_____	_____
Individual creditors:		
(State principal business or occupation of each creditor and its name.)		
_____	_____	_____
_____	_____	_____

2. The personal debts of the members of my immediate family are as follows:

Check appropriate categories	Check one $5,001 to $50,000	More than $50,000
Banks	_____	_____
Savings institutions	_____	_____
Other loan or finance companies	_____	_____
Insurance companies	_____	_____
Stock, commodity or other brokerage companies	_____	_____
Other businesses:		
(State principal business activity for each creditor and its name.)		
_____	_____	_____
_____	_____	_____
Individual creditors:		
(State principal business or occupation of each creditor and its name.)		
_____	_____	_____
_____	_____	_____

RETURN TO ITEM 3

SCHEDULE C -- SECURITIES.

"Securities" INCLUDES stocks, bonds, mutual funds, limited partnerships, and commodity futures contracts.
"Securities" EXCLUDES certificates of deposit, money market funds, annuity contracts, and insurance policies.

Identify each business or Virginia governmental entity in which you or a member of your immediate family, directly or indirectly, separately or together, own securities valued in excess of $5,000. Name each issuer and type of security individually.

Do not list U.S. Bonds or other government securities not issued by the Commonwealth of Virginia or its authorities, agencies, or local governments. Do not list organizations that do not do business in this Commonwealth, but most major businesses conduct business in Virginia. Account for securities held in trust.

If no reportable securities, check here / /.

Name of Issuer	Type of Security (stocks, bonds, mutual funds, etc.)	Check one $5,001 to $50,000	 $50,001 to $250,000	 More than $250,000
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

RETURN TO ITEM 4

SCHEDULE D -- PAYMENTS FOR TALKS, MEETINGS, AND PUBLICATIONS.

List each source from which you received during the past six months in your capacity as an officer or employee of your agency lodging, transportation, money, or any other thing of value with combined value exceeding $200 (i) for your presentation of a single talk, participation in one meeting, or publication of a work or (ii) for your attendance at a meeting, conference, or event where your attendance at the meeting, conference, or event was designed to (a) educate you on issues relevant to your duties as an officer or employee of your agency or (b) enhance your knowledge and skills relative to your duties as an officer or employee of your agency. Any lodging, transportation, money, or other thing of value received by an officer or employee that does not satisfy the provisions of clause (i), (ii) (a), or (ii) (b) shall be listed as a gift on Schedule E.

List payments or reimbursements by an advisory or governmental agency only for meetings or travel outside the Commonwealth.

List a payment even if you donated it to charity.

Do not list information about a payment if you returned it within 60 days or if you received it from an employer already listed under Item 6 or from a source of income listed on Schedule F.

If no payment must be listed, check here / /.

Payer	Approximate Value	Circumstances	Type of payment (e.g., honoraria, travel reimbursement, etc.)
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

RETURN TO ITEM 5

SCHEDULE E -- GIFTS.

List each business, governmental entity, or individual that, during the past six months, (i) furnished you or a member of your immediate family with any gift or entertainment at a single event, and the value received exceeded $50 or (ii) furnished you or a member of your immediate family with gifts or entertainment in any combination and the total value received exceeded $100, and for which you or the member of your immediate family neither paid nor rendered services in exchange. List each such gift or event. Do not list entertainment events unless the average value per person attending the event exceeded $50. Do not list business entertainment related to the private profession or occupation of you or the member of your immediate family who received such business entertainment. Do not list gifts or other things of value given by a relative or personal friend for reasons clearly unrelated to your public position. Do not list campaign contributions publicly reported as required by Chapter 9.3 (§ 24.2-945 et seq.) of Title 24.2 of the Code of Virginia.

Name of Recipient	Name of Business, Organization, or Individual	City or County and State	Exact Gift or Event	Approximate Value
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

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SCHEDULE F -- BUSINESS INTERESTS.

Complete this Schedule for each self-owned or family-owned business (including rental property, a farm, or consulting work), partnership, or corporation in which you or a member of your immediate family, separately or together, own an interest having a value in excess of $5,000.

If the enterprise is owned or operated under a trade, partnership, or corporate name, list that name; otherwise, merely explain the nature of the enterprise. If rental property is owned or operated under a trade, partnership, or corporate name, list the name only; otherwise, give the address of each property. Account for business interests held in trust.

Name of Business, Corporation, Partnership, Farm; Address of Rental Property	City or County and State	Nature of Enterprise (farming, law, rental property, etc.)	Gross Income		
			$50,000 or less	$50,001 to $250,000	More than $250,000
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____					_____

RETURN TO ITEM 8

SCHEDULE G-1 -- PAYMENTS FOR REPRESENTATION BY YOU.

List the businesses you represented, excluding activity defined as lobbying in § 2.2-419, before any state governmental agency, excluding any court or judge, for which you received total compensation during the past six months in excess of $1,000, excluding compensation for other services to such businesses and representation consisting solely of the filing of mandatory papers and subsequent representation regarding the mandatory papers filed by you.

Identify each business, the nature of the representation and the amount received by dollar category from each such business. You may state the type, rather than name, of the business if you are required by law not to reveal the name of the business represented by you.

Only STATE officers and employees should complete this Schedule.

Name of Business	Type of Business	Purpose of Representation	Name of Agency	Amount Received $1,001 to $10,000	$10,001 to $50,000	$50,001 to $100,000	$100,001 to $250,000	$250,001 and over
_____	_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____	_____

If you have received $250,001 or more from a single business within the reporting period, indicate the amount received, rounded to the nearest $10,000.

Amount Received: _____.

SCHEDULE G-2 -- PAYMENTS FOR REPRESENTATION BY ASSOCIATES.

List the businesses that have been represented, excluding activity defined as lobbying in § 2.2-419, before any state governmental agency, excluding any court or judge, by persons who are your partners, associates or others with whom you have a close financial association and who received total compensation in excess of $1,000 for such representation during the past six months, excluding representation consisting solely of the filing of mandatory papers and subsequent representation regarding the mandatory papers filed by your partners, associates or others with whom you have a close financial association.

Identify such businesses by type and also name the state governmental agencies before which such person appeared on behalf of such businesses.

Only STATE officers and employees should complete this Schedule.

Type of business	Name of state governmental agency
_____	_____
_____	_____
_____	_____
_____	_____

SCHEDULE G-3 -- PAYMENTS FOR OTHER SERVICES GENERALLY.

Indicate below types of businesses that operate in Virginia to which services were furnished by you or persons with whom you have a close financial association pursuant to an agreement between you and such businesses, or between persons with whom you have a close financial association and such businesses and for which total compensation in excess of $1,000 was received during the past six months. Services reported in this Schedule shall not include services involving the representation of businesses that are reported in Schedule G-1 or G-2.

Identify opposite each category of businesses listed below (i) the type of business, (ii) the type of service rendered and (iii) the value by dollar category of the compensation received for all businesses falling within each category.

	Check if services were rendered	Type of service rendered	Value of Compensation $1,001 to $10,000	$10,001 to $50,000	$50,001 to $100,000	$100,001 to $250,000	$250,001 and over
Electric utilities	_____	_____	_____	_____	_____	_____	_____
Gas utilities	_____	_____	_____	_____	_____	_____	_____
Telephone utilities	_____	_____	_____	_____	_____	_____	_____

Water utilities	_____	_____	_____	_____	_____	_____	_____
Cable television companies	_____	_____	_____	_____	_____	_____	_____
Intrastate transportation companies	_____	_____	_____	_____	_____	_____	_____
Oil or gas retail companies	_____	_____	_____	_____	_____	_____	_____
Banks	_____	_____	_____	_____	_____	_____	_____
Savings institutions	_____	_____	_____	_____	_____	_____	_____
Loan or finance companies	_____	_____	_____	_____	_____	_____	_____
Manufacturing companies (state type of product, e.g., textile, furniture, etc.)	_____	_____	_____	_____	_____	_____	_____
Mining companies	_____	_____	_____	_____	_____	_____	_____
Life insurance companies	_____	_____	_____	_____	_____	_____	_____
Casualty insurance companies	_____	_____	_____	_____	_____	_____	_____
Other insurance companies	_____	_____	_____	_____	_____	_____	_____
Retail companies	_____	_____	_____	_____	_____	_____	_____
Beer, wine or liquor companies or distributors	_____	_____	_____	_____	_____	_____	_____
Trade associations	_____	_____	_____	_____	_____	_____	_____
Professional associations	_____	_____	_____	_____	_____	_____	_____
Associations of public employees or officials	_____	_____	_____	_____	_____	_____	_____
Counties, cities or towns	_____	_____	_____	_____	_____	_____	_____
Labor organizations	_____	_____	_____	_____	_____	_____	_____
Other	_____	_____	_____	_____	_____	_____	_____

RETURN TO ITEM 9

SCHEDULE H-1 -- REAL ESTATE -- STATE OFFICERS AND EMPLOYEES.

List real estate other than your principal residence in which you or a member of your immediate family holds an interest, including a partnership interest, option, easement, or land contract, valued at more than $5,000. Each parcel shall be listed individually.

List each location (state, and county or city) where you own real estate.	Describe the type of real estate you own in each location (business, recreational, apartment, commercial, open land, etc.).	If the real estate is owned or recorded in a name other than your own, list that name.
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

SCHEDULE H-2 -- REAL ESTATE -- LOCAL OFFICERS AND EMPLOYEES.

List real estate other than your principal residence in which you or a member of your immediate family holds an interest, including a partnership interest or option, easement, or land contract, valued at more than $5,000. Each parcel shall be listed individually. Also list the names of any co-owners of such property, if applicable.

List each location (state, and county or city) where you own real estate.	Describe the type of real estate you own in each location (business, recreational, apartment, commercial, open land, etc.).	If the real estate is owned or recorded in a name other than your own, list that name.	List the names of any co-owners, if applicable.
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

SCHEDULE I -- REAL ESTATE CONTRACTS WITH GOVERNMENTAL AGENCIES.

List all contracts, whether pending or completed within the past six months, with a governmental agency for the sale or exchange of real estate in which you or a member of your immediate family holds an interest, including a corporate, partnership or trust interest, option, easement, or land contract, valued at more than $10,000. List all contracts with a governmental agency for the lease of real estate in which you or a member of your immediate family holds such an interest valued at more than $1,000. This requirement to disclose an interest in a lease does not apply to an interest derived through an ownership interest in a business unless the ownership interest exceeds three percent of the total equity of the business.

State officers and employees report contracts with state agencies.

Local officers and employees report contracts with local agencies.

List your real estate interest and the person or entity, including the type of entity, which is party to the contract. Describe any management role and the percentage ownership interest you or your immediate family member has in the real estate or entity.	List each governmental agency which is a party to the contract and indicate the county or city where the real estate is located.	State the annual income from the contract, and the amount, if any, of income you or any immediate family member derives annually from the contract.
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

§ 2.2-3118. (Effective January 1, 2016) Disclosure form; certain citizen members.

A. (Effective from January 1, 2016, until July 1, 2016) The financial disclosure form to be used for filings required pursuant to subsection B of § 2.2-3114 and subsection B of § 2.2-3115 shall be filed in accordance with the provisions of § 30-356. The financial disclosure form shall be substantially as follows:

A. (Effective July 1, 2016) The financial disclosure form to be used for filings required pursuant to subsection B of § 2.2-3114 and subsection B of § 2.2-3115 shall be filed in accordance with the provisions of § 30-356. The financial disclosure form shall be substantially similar to the following. Except as otherwise provided in § 2.2-3115, all completed forms shall be filed electronically with the Council in accordance with the standards approved by it pursuant to § 30-356.

DEFINITIONS AND EXPLANATORY MATERIAL.

"Business" means a corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, trust or foundation, or any other individual or entity carrying on a business or profession, whether or not for profit.

"Close financial association" means an association in which the person filing shares significant financial involvement with an individual and the filer would reasonably be expected to be aware of the individual's business activities and would have access to the necessary records either directly or through the individual. "Close financial association" does not mean an association based on (i) the receipt of retirement benefits or deferred compensation from a business by which the person filing this statement is no longer employed, or (ii) the receipt of compensation for work performed by the person filing as an independent contractor of a business that represents an entity before any state governmental agency when the person filing has no communications with the state governmental agency.

"Contingent liability" means a liability that is not presently fixed or determined, but may become fixed or determined in the future with the occurrence of some certain event.

"Immediate family" means (i) a spouse and (ii) any other person who resides in the same household as the filer and who is a dependent of the filer.

"Personal interest" means, for the purposes of this form only, a personal and financial benefit or liability accruing to a filer or a member of his immediate family. Such interest shall exist by reason of (i) ownership in real or personal property, tangible or intangible; (ii) ownership in a business; (iii) income from a business; or (iv) personal liability on behalf of a business; however, unless the ownership interest in a business exceeds three percent of the total equity of the business, or the liability on behalf of a business exceeds three percent of the total assets of the business, or the annual income, and/or property or use of such property, from the business exceeds $ 10,000 or may reasonably be anticipated to exceed $ 10,000, such interest shall not constitute a "personal interest."

Name_____

Office or position held or to be held

_____

Address_____

I. FINANCIAL INTERESTS My personal interests and those of my immediate family are as follows:

Include all forms of personal interests held at the time of filing: real estate, stocks, bonds, equity interests in proprietorships and partnerships. You may exclude:

1. Deposits and interest bearing accounts in banks, savings institutions and other institutions accepting such deposits or accounts;

2. Interests in any business, other than a news medium, representing less than three percent of the total equity value of the business;

3. Liability on behalf of any business representing less than three percent of the total assets of such business; and

4. Income (other than from salary) less than $ 10,000 annually from any business. You need not state the value of any interest. You must state the name or principal business activity of each business in which you have a personal interest.

A. My personal interests are:

1. Residence, address, or, if no address, location

_____

2. Other real estate, address, or, if no address, location

_____

3. Name or principal business activity of each business in which stock, bond or equity interest is held

_____

B. The personal interests of my immediate family are:

1. Real estate, address or, if no address, location

_____

2. Name or principal business activity of each business in which stock, bond or equity interest is held

_____

II. OFFICES, DIRECTORSHIPS AND SALARIED EMPLOYMENTS

The paid offices, paid directorships and salaried employments which I hold or which members of my immediate family hold and the businesses from which I or members of my immediate family receive retirement benefits are as follows:

(You need not state any dollar amounts.)

A. My paid offices, paid directorships and salaried employments are:

_____

Position held	Name of business
_____	_____
_____	_____
_____	_____

B. The paid offices, paid directorships and salaried employments of members of my immediate family are:

_____

Position held	Name of business
_____	_____
_____	_____
_____	_____

III. BUSINESSES TO WHICH SERVICES WERE FURNISHED

A. The businesses I have represented, excluding activity defined as lobbying in § 2.2-419, before any state governmental agency, excluding any court or judge, for which I have received total compensation in excess of $ 1,000 during the preceding year, excluding compensation for other services to such businesses and representation consisting solely of the filing of mandatory papers, are as follows

Identify businesses by name and name the state governmental agencies before which you appeared on behalf of such businesses.

_____

Name of business	Name of governmental agency
_____	_____
_____	_____
_____	_____

B. The businesses that, to my knowledge, have been represented, excluding activity defined as lobbying in § 2.2-419, before any state governmental agency, excluding any court or judge, by persons with whom I have a close financial association and who received total compensation in excess of $ 1,000 during the preceding year, excluding compensation for other services to such businesses and representation consisting solely of the filing of mandatory papers, are as follows:

Identify businesses by type and name the state governmental agencies before which such person appeared on behalf of such businesses.

_____

Name of business	Name of governmental agency
_____	_____
_____	_____
_____	_____

C. All other businesses listed below that operate in Virginia to which services were furnished pursuant to an agreement between you and such businesses and for which total compensation in excess of $ 1,000 was received during the preceding year:

Check each category of business to which services were furnished.

Electric utilities	_____
Gas utilities	_____
Telephone utilities	_____
Water utilities	_____
Cable television companies	_____
Intrastate transportation companies	_____
Interstate transportation companies	_____

Oil or gas retail companies _____

Banks _____

Savings institutions _____

Loan or finance companies _____

Manufacturing companies (state type of product, e.g., textile, furniture, etc.) _____

Mining companies _____

Life insurance companies _____

Casualty insurance companies _____

Other insurance companies _____

Retail companies _____

Beer, wine or liquor companies or distributors _____

Trade associations _____

Professional associations _____

Associations of public employees or officials _____

Counties, cities or towns _____

Labor organizations _____

IV. COMPENSATION FOR EXPENSES The persons, associations, or other sources other than my governmental agency from which I or a member of my immediate family received remuneration in excess of $ 100 during the preceding year, in cash or otherwise, as honorariums or payment of expenses in connection with my attendance at any meeting or other function to which I was invited in my official capacity are as follows:

Name of Source	Description of occasion	Amount of remuneration for each occasion
_____	_____	_____
_____	_____	_____

B. The provisions of Part III A and B of the disclosure form prescribed by this section shall not be applicable to officers and employees of local governmental and local advisory agencies.

C. Except for real estate located within the county, city or town in which the officer or employee serves or a county, city or town contiguous to the county, city or town in which the officer or employee serves, officers and employees of local governmental or advisory agencies shall not be required to disclose under Part I of the form any other interests in real estate.

§ 2.2-3118.1. Special provisions for individuals serving in or seeking multiple positions or offices; reappointees.

A. The filing of a single current statement of economic interests by a state officer or employee required to file the form prescribed in § 2.2-3117 shall suffice for the purposes of this chapter as filing for all state positions or offices held or sought by such individual during a single reporting period. The filing of a single current financial disclosure statement by a state officer or employee required to file the form prescribed in § 2.2-3118 shall suffice for the purposes of this chapter as filing for all state positions or offices held or sought by such individual and requiring the filing of the § 2.2-3118 form during a single reporting period.

B. Any individual who has met the requirement for periodically filing a statement provided in § 2.2-3117 or 2.2-3118 shall not be required to file an additional statement upon such individual's reappointment to the same office or position for which he is required to file, provided such reappointment occurs within six months after filing a statement pursuant to § 2.2-3117 and within 12 months after filing a statement pursuant to § 2.2-3118.

Article 6. School Boards and Employees of School Boards

§ 2.2-3119. Additional provisions applicable to school boards and employees of school boards; exceptions.

A. Notwithstanding any other provision of this chapter, it shall be unlawful for the school board of any county or city or of any town constituting a separate school division to employ or pay any teacher or other school board employee from the public funds, federal, state or local, or for a division superintendent to recommend to the school board the employment of any teacher or other employee, if the teacher or other employee is the father, mother, brother, sister, spouse, son, daughter, son-in-law, daughter-in-law, sister-in-law or brother-in-law of the superintendent, or of any member of the school board.

This section shall apply to any person employed by any school board in the operation of the public free school system, adult education programs or any other program maintained and operated by a local county, city or town school board.

B. This section shall not be construed to prohibit the employment, promotion, or transfer within a school division of any person within a relationship described in subsection A when such person:

1. Has been employed pursuant to a written contract with a school board or employed as a substitute teacher or teacher's aide by a school board prior to the taking of office of any member of such board or division superintendent of schools; or
2. Has been employed pursuant to a written contract with a school board or employed as a substitute teacher or teacher's aide by a school board prior to the inception of such relationship; or
3. Was employed by a school board at any time prior to June 10, 1994, and had been employed at any time as a teacher or other employee of any Virginia school board prior to the taking of office of any member of such school board or division superintendent of schools.

C. A person employed as a substitute teacher may not be employed to any greater extent than he was employed by the school board in the last full school year prior to the taking of office of such board member or division superintendent or to the inception of such relationship. The exceptions in subdivisions B 1, B 2, and B 3 shall apply only if the prior employment has been in the same school divisions where the employee and the superintendent or school board member now seek to serve simultaneously.

D. If any member of the school board or any division superintendent knowingly violates these provisions, he shall be personally liable to refund to the local treasury any amounts paid in violation of this law, and the funds shall be recovered from the individual by action or suit in the name of the Commonwealth on the petition of the attorney for the Commonwealth. Recovered funds shall be paid into the local treasury for the use of the public schools.

E. The provisions of this section shall not apply to employment by a school district located in Planning Districts 3, 11, 12, and 13 of the father, mother, brother, sister, spouse, son, daughter, son-in-law, daughter-in-law, sister-in-law, or brother-in-law of any member of the school board provided (i) the member certifies that he had no involvement with the hiring decision and (ii) the superintendent certifies to the remaining members of the governing body in writing that the employment is based upon merit and fitness and the competitive rating of the qualifications of the individual and that no member of the board had any involvement with the hiring decision.

Article 7. Penalties and Remedies

§ 2.2-3120. Knowing violation of chapter a misdemeanor.

Any person who knowingly violates any of the provisions of Articles 2 through 6 (§§2.2-3102 through 2.2-3119) of this chapter shall be guilty of a Class 1 misdemeanor, except that any member of a local governing body who knowingly violates subsection A of § 2.2-3112 or subsection D or F of § 2.2-3115 shall be guilty of a Class 3 misdemeanor. A knowing violation under this section is one in which the person engages in conduct, performs an act or refuses to perform an act when he knows that the conduct is prohibited or required by this chapter.

§ 2.2-3121. (Effective January 1, 2016) Advisory opinions.

A. A state officer or employee shall not be prosecuted for a knowing violation of this chapter if the alleged violation resulted from his good faith reliance on a written opinion of the Attorney General or the Virginia Conflict of Interest and Ethics Advisory Council made in response to his written request for such opinion and the opinion was made after a full disclosure of the facts regardless of whether such opinion is later withdrawn provided the alleged violation occurred prior to the withdrawal of the opinion.

B. A local officer or employee shall not be prosecuted for a knowing violation of this chapter if the alleged violation resulted from his good faith reliance on a written opinion of the attorney for the Commonwealth, his county, city, or town attorney, or the Council made in response to his written request for such opinion and the opinion was made after a full disclosure of the facts regardless of whether such opinion is later withdrawn provided the alleged violation occurred prior to the withdrawal of the opinion. The written opinion shall be a public record and shall be released upon request.

§ 2.2-3122. Knowing violation of chapter constitutes malfeasance in office or employment.

Any person who knowingly violates any of the provisions of this chapter shall be guilty of malfeasance in office or employment. Upon conviction thereof, the judge or jury trying the case, in addition to any other fine or penalty provided by law, may order the forfeiture of such office or employment.

§ 2.2-3123. Invalidation of contract; recision of sales.

A. Any contract made in violation of § 2.2-3103 or §§ 2.2-3106 through 2.2-3109may be declared void and may be rescinded by the governing body of the contracting or selling governmental agency within five years of the date of such contract. In cases in which the contract is invalidated, the contractor shall retain or receive only the reasonable value, with no increment for profit or commission, of the property or services furnished prior to the date of receiving notice that the contract has been voided. In cases of recision of a contract of sale, any refund or restitution shall be made to the contracting or selling governmental agency.

B. Any purchase by an officer or employee made in violation of § 2.2-3103 or §§2.2-3106 through 2.2-3109 may be rescinded by the governing body of the contracting or selling governmental agency within five years of the date of such purchase.

§ 2.2-3124. (Effective January 1, 2016) Civil penalty from violation of this chapter.

A. In addition to any other fine or penalty provided by law, an officer or employee who knowingly violates any provision of §§ 2.2-3103 through 2.2-3112 shall be subject to a civil penalty in an amount equal to the amount of money or thing of value received as a result of such violation. If the thing of value received by the officer or employee in violation of §§ 2.2-3103 through 2.2-3112 increases in value between the time of the violation and the time of discovery of the violation, the greater value shall determine the amount of the civil penalty. Further, all money or other things of value received as a result of such violation shall be forfeited in accordance with the provisions of § 19.2-386.33.

B. An officer or employee required to file the disclosure form prescribed by § 2.2-3117 who fails to file such form within the time period prescribed shall be assessed a civil penalty in an amount equal to $250. The Council shall notify the Attorney General of any state officer's or employee's failure to file the required form and the Attorney General shall assess and collect the civil penalty. The clerk of the school board or the clerk of the governing body of the county, city, or town shall notify the attorney for the Commonwealth for the locality in which the officer or employee was elected or is employed of any local officer's or employee's failure to file the required form and the attorney for the Commonwealth shall assess and collect the civil penalty. The Council shall notify the Attorney

General and the clerk shall notify the attorney for the Commonwealth within 30 days of the deadline for filing. All civil penalties collected pursuant to this subsection shall be deposited into the general fund and used exclusively to fund the Council.

§ 2.2-3125. Limitation of actions.

The statute of limitations for the criminal prosecution of a person for violation of any provision of this chapter shall be one year from the time the Attorney General, if the violation is by a state officer or employee, or the attorney for the Commonwealth, if the violation is by a local officer or employee, has actual knowledge of the violation or five years from the date of the violation, whichever event occurs first. Any prosecution for malfeasance in office shall be governed by the statute of limitations provided by law.

§ 2.2-3126. Enforcement.

A. The provisions of this chapter relating to an officer or employee serving at the state level of government shall be enforced by the Attorney General.

In addition to any other powers and duties prescribed by law, the Attorney General shall have the following powers and duties within the area for which he is responsible under this section:

1. He shall advise the agencies of state government and officers and employees serving at the state level of government on appropriate procedures for complying with the requirements of this chapter. He may review any disclosure statements, without notice to the affected person, for the purpose of determining satisfactory compliance, and shall investigate matters that come to his attention reflecting possible violations of the provisions of this chapter by officers and employees serving at the state level of government;
2. If he determines that there is a reasonable basis to conclude that any officer or employee serving at the state level of government has knowingly violated any provision of this chapter, he shall designate an attorney for the Commonwealth who shall have complete and independent discretion in the prosecution of such officer or employee;
3. He shall render advisory opinions to any state officer or employee who seeks advice as to whether the facts in a particular case would constitute a violation of the provisions of this chapter. He shall determine which opinions or portions thereof are of general interest to the public and may, from time to time, be published.

   Irrespective of whether an opinion of the Attorney General has been requested and rendered, any person has the right to seek a declaratory judgment or other judicial relief as provided by law.

B. The provisions of this chapter relating to an officer or employee serving at the local level of government shall be enforced by the attorney for the Commonwealth within the political subdivision for which he is elected.

Each attorney for the Commonwealth shall be responsible for prosecuting violations by an officer or employee serving at the local level of government and, if the Attorney General designates such attorney for the Commonwealth, violations by an officer or employee serving at the state level of government. In the event the violation by an officer or employee serving at the local level of government involves more than one local jurisdiction, the Attorney General shall designate which of the attorneys for the Commonwealth of the involved local jurisdictions shall enforce the provisions of this chapter with regard to such violation.

Each attorney for the Commonwealth shall establish an appropriate written procedure for implementing the disclosure requirements of local officers and employees of his county, city or town, and for other political subdivisions, whose principal offices are located within the jurisdiction served by such attorney for the Commonwealth. The attorney for the Commonwealth shall provide a copy of this act to all local officers and employees in the jurisdiction served by such attorney who are required to file a disclosure statement pursuant to Article 5 (§ 2.2-3113 et seq.) of this chapter. Failure to receive a copy of the act shall not be a defense to such officers and employees if they are prosecuted for violations of the act.

Each attorney for the Commonwealth shall render advisory opinions as to whether the facts in a particular case would constitute a violation of the provisions of this chapter to the governing body and any local officer or employee in his jurisdiction and to political subdivisions other than a county, city or town, including regional political subdivisions whose principal offices are located within the jurisdiction served by such attorney for the Commonwealth. If the advisory opinion is written, then such written opinion shall be a public record and shall be released upon request. In case the opinion given by the attorney for the Commonwealth indicates that the facts would constitute a violation, the officer or employee affected thereby may request that the Attorney General review the opinion. A conflicting

opinion by the Attorney General shall act to revoke the opinion of the attorney for the Commonwealth. The Attorney General shall determine which of his reviewing opinions or portions thereof are of general interest to the public and may, from time to time, be published.

Irrespective of whether an opinion of the attorney for the Commonwealth or the Attorney General has been requested and rendered, any person has the right to seek a declaratory judgment or other judicial relief as provided by law.

§ 2.2-3127. Venue.

Any prosecution for a violation involving an officer serving at the state level of government shall be brought in the Circuit Court of the City of Richmond. Any prosecution for a violation involving an employee serving at the state level of government shall be within the jurisdiction in which the employee has his principal place of state employment.

Any proceeding provided in this chapter shall be brought in a court of competent jurisdiction within the county or city in which the violation occurs if the violation involves an officer or employee serving at the local level of government.

Article 8. Orientation for State Filers OMITTED

Virginia Public Records Act Requirements:

By Jeffrey S. Gore and Roger C. Wiley
Hefty & Wiley PC

Local government officials generally are not enthusiastic about the Virginia Public Records Act (the "Act"). Many elected officials are only vaguely aware that the Act exists. Managers and agency heads are likely to view it as just another nuisance requirement imposed by the state or even as an example of that most despised species --an unfunded mandate. Other local officials may be puzzled about how to handle the masses of paper that clutter their offices or the electronic messages and documents that fill up their email inboxes and hard drives.

All of those reactions are predictable and sometimes they may seem valid. Certainly the state is not sending localities money to spend on records management. Most of the Act's requirements, however, merely reflect what would be viewed as good business and management practice. No organization can really operate efficiently if it can't determine what it did last month, last year, or 10 years ago.

Dependence on one's own memory of past events can be very risky, and although most organizations have a few long-serving individuals who provide "institutional memory," all of them move on eventually. Keeping records and maintaining them in an accessible manner is vital not only for those who come along later, but for our own daily performance.

Having an effective system for keeping the records that are important and getting rid of those that are no longer needed, to make room for new ones, is just common sense. Still, it is easy to neglect records management. Getting today's work done can always claim priority over organizing and storing records of yesterday's work. Some of us are instinctively good at file maintenance while others need to be prodded.

The more positive way to view the Public Records Act is that, by imposing some legal requirements, it forces us to think about records management and assign it as a specific task to someone in our organization. The Act's legal mandate also gives officials a justification for budgeting and spending the resources necessary to make a records management system function properly.

We hope that this handbook will give local government officials a basic understanding of the Virginia Public Records Act and how to comply with it. In its opening section you will find a discussion of the Act's basic requirements, presented in question and answer format, followed by several appendices that contain additional detailed information, as shown in the Table of Contents.

What is the purpose of the Virginia Public Records Act?

Virginia Public Records Act (the "Act") is found in Chapter 7 of Title 42.1 of the Code of Virginia, the Title dealing with "Libraries." It is located in that part of the Code because the Library of Virginia is the state agency designated to administer the Act and issue regulations to implement it. The Act establishes the basic rules and authorizes the Library to issue more detailed regulations specifying how state and local public agencies, officials and employees handle "public records." This includes determining exactly what constitutes a public record, how to maintain that public record, and when and how to eventually dispose of it – all of which the Act describes as the "lifecycle" of the public record.

What is a public record?

As defined in the Act, a public record is any recorded information possessed by a public agency, public official or public employee that documents a transaction or activity by or with any such agency, official or employee. The recorded information is a public record if it is produced, collected, received or retained in connection with the transaction of public business, regardless of its physical form. The medium (paper, film, magnetic or electronic file, etc.) on which the information is recorded has no bearing on whether it is a public record.

What local agencies officials are covered by the Act's requirements? Does it also apply to elected constitutional officers?

The Act applies to all departments, divisions, boards, commissions and authorities of a locality or in which a locality participates to conduct public business.

Officers and employees of these various local agencies have a responsibility to comply the Act's requirements for the records they create or receive.

Elected city and county constitutional officers and the staffs and records of their offices are specifically included in the definitions of covered officials and agencies.

What about members of a local governing body?

Members of a city or town council, or county board of supervisors, regardless of their terms or compensation, are officers of the locality and are thus subject to the Act's requirement. In the past, many of them have not treated their individual correspondence and other records about public business, kept at home or in their private places of employment, as public records.

Legally, however, the Act does apply to these records. In recent years, as requests for disclosure of members' individual records under the Virginia Freedom of Information Act have become more common, clerks of governing bodies and local government managers and attorneys have begun assisting their governing bodies in establishing better systems to maintain these records and comply with the Act.

What are the primary responsibilities of local governments under the Act?

• Tell governing body members to read the Act

Every person elected, re-elected, appointed, or reappointed to the governing body of any locality or other local public body subject to the Act must be provided a copy of the Act within two weeks of election, re-election, appointment or reappointment. The Act assigns responsibility for doing this to the public body's chief administrator, agency head or legal counsel, but in practice the duty may be delegated to someone else, such as the clerk of the public body. The Act also requires members of the public body to read and become familiar with the Act after they receive it. Following this explanation is a copy of the Act with amendments through July 1, 2014, to be used for this purpose.

• Designate a local public records officer

Every locality is required to designate at least one records officer to serve as a liaison to the Library of Virginia, and to implement and oversee a records management program, and coordinate the disposition, including destruction, of obsolete records. Local records officers can be designated either by the governing body of the locality or agency or by its chief administrative officer. The locality must give the Library contact information for its designated public records officers and update that information as it changes. Larger localities and organizations may decide to designate more than one records officer, with some having responsibility for the records of only a single department, but all public records in the locality must have someone designated to be responsible for them. The Library conducts training programs for local records officers to help them understand and comply with the requirements of the Act.

• Establish a local records management and retention program

The Act requires every locality and local agency to "ensure that its public records are preserved, maintained, and accessible throughout their lifecycle." Appendix A is a model ordinance prepared by the Library of Virginia for localities to use in establishing a records management program and designating a local public records officer. The Library has also published a very good technical manual for the establishment of a records management program, which along with much other useful information, is available on the public records section of the Library's website: **http://www.lva.virginia.gov/agencies/records/**.

What are some duties of a records retention officer?

The primary duties are to be certain that the departments or agencies for which the officer is responsible keep their records for the required length of time, maintain them in an accessible manner, and destroy them when it is time to do so.

What does "accessible throughout their lifecycle" mean?

How many of us have a box or drawer in our office full of five floppy disks or 3.5 inch diskettes, but no longer have a drive on our desktop computer with which to read them? One of the jobs of the records retention officer is to make sure that records aren't made inaccessible in that way. Records must be maintained in a form that can be viewed or read for as long as those records are required to be kept. For paper records that is generally not a problem, except for very old records that must be kept permanently. These may require photographing, copying or scanning to preserve their contents. For records stored in other media, the Act requires that they be converted or migrated to new media as technologies become obsolete, "as often as necessary so that information is not lost due to hardware, software, or media obsolescence or deterioration."

How long do records have to be kept?

The length of time varies depending on the type of record. As authorized by the Act, the Library of Virginia has established retention schedules for various categories of state and local government records. Some types of records must be maintained permanently. For certain types of permanent records that are considered essential, copies must also be made and sent to the Library for storage, so they can be recovered in case the originals are destroyed by fire, flood or other catastrophe. Other types of records must be kept only a few years and then destroyed. Appendix B of this handbook contains more detailed information about the schedules that apply to local government records. All the schedules are also available online: **www.lva.virginia.gov/agencies/records/sched_local/index.htm**.

Are we really obligated to destroy some older records? Why?

Yes, the Act requires destruction of public records "in a timely manner" once their designated retention period has expired. The Library's website has more guidance – www.lva.viginia.gov/agencies/records/timely.asp.

In part, this requirement is intended to make room for new records by getting rid of ones no longer needed. The Act also says that it is state policy for records management to be uniform throughout the Commonwealth. Requiring destruction on a regular schedule ensures that records of the same age and type will be available in all localities at any given time. This is helpful to someone researching information of the same type in more than one locality. Following the schedules for destruction of records will also be helpful in limiting the scope of future requests for disclosure of records under the Virginia Freedom of Information Act.

What conditions must be met before destroying records?

First, the designated retention schedule for the records must have expired. Second, the records must not be the subject of any current Freedom of Information Act disclosure request, litigation or audit, or any proposed change in the retention schedules. Third, the locality or agency's designated public records officer must have certified on a form approved by the Library that the records are appropriate for destruction. After the records are destroyed that form must be sent to the Library. The forms required for the record destruction process are found in Appendix C of this handbook.

Can we give the records away or sell them instead of destroying them?

The Act requires that any records created before 1912 be offered to the Library of Virginia before being destroyed. Selling public records or giving them to anyone else is specifically prohibited by the Act.

What are the consequences if we don't comply with the retention and destruction requirements for our records? Are there fines or penalties?

Unlike the Freedom of Information Act (FOIA), the Public Records does not authorize private citizens to sue public agencies or officials to force them to comply with the Act. The Librarian of Virginia is given limited authority to sue someone who is illegally retaining public records that he is not entitled to keep, such as an officeholder whose term has expired. The Act also gives the Library the power to audit state or local agencies for compliance with the Act and to report non-compliance to the local governing body and the General Assembly. Such audits are not frequent, and the Library has no power to impose monetary or other penalties for non-compliance even when revealed by audit.

Why do we need to comply, then?

The best reason for compliance is that good records management can make your organization more efficient and benefit both current and future local officials.

Legally, the lack of a specific penalty does not change your legal obligation to comply with the Act, and deliberately ignoring it could be cited as poor job performance, or even as malfeasance in an extreme case.

The Freedom of Information Act may provide another reason to comply with the Public Records Act in some cases. When a citizen requests access to a record under FOIA, the local agency or official has an obligation to produce that record, unless it is covered by a specific statutory exemption.

If the record has been discarded or destroyed before the end of the retention period established by the State Library, the failure to comply with the Public Records Act may be revealed, which is embarrassing at the very least. We are not aware that any court has ruled that failure to produce the record due to its premature destruction also constitutes a violation of FOIA, but we believe such an argument could be made. FOIA violations, of course, can result in civil penalties and payment of the requester's attorney fees.

TITLE 42.1. LIBRARIES
Chapter 7. Virginia Public Records Act

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§ 42.1-76 Legislative intent; title of chapter

The General Assembly intends by this chapter to establish a single body of law applicable to all public officers and employees on the subject of public records management and preservation and to ensure that the procedures used to manage and preserve public records will be uniform throughout the Commonwealth.

This chapter may be cited as the Virginia Public Records Act.

§ 42.1-76.1 Notice of Chapter

Any person elected, reelected, appointed, or reappointed to the governing body of any agency subject to this chapter shall (i) be furnished by the agency or public body's administrator or legal counsel with a copy of this chapter within two weeks following election, reelection, appointment, or reappointment and (ii) read and become familiar with the provisions of this chapter.

§ 42.1-77 Definitions

As used in this chapter:

"Agency" means all boards, commissions, departments, divisions, institutions, authorities, or parts thereof, of the Commonwealth or its political subdivisions and includes the offices of constitutional officers.

"Archival quality" means a quality of reproduction consistent with established standards specified by state and national agencies and organizations responsible for establishing such standards, such as the Association for Information and Image Management, the American National Standards Institute, and the National Institute of Standards and Technology.

"Archival record" means a public record of continuing and enduring value useful to the citizens of the Commonwealth and necessary to the administrative functions of public agencies in the conduct of services and activities mandated by law that is identified on a Library of Virginia approved records retention and disposition schedule as having sufficient informational value to be permanently maintained by the Commonwealth.

"Archives" means the program administered by The Library of Virginia for the preservation of archival records.

"Board" means the State Library Board.

"Conversion" means the act of moving electronic records to a different format, especially data from an obsolete format to a current format.

"Custodian" means the public official in charge of an office having public records.

"Disaster plan" means the information maintained by an agency that outlines recovery techniques and methods to be followed in case of an emergency that impacts the agency's records.

"Electronic record" means a public record whose creation, storage, and access require the use of an automated system or device. Ownership of the hardware, software, or media used to create, store, or access the electronic record has no bearing on a determination of whether such record is a public record.

"Essential public record" means records that are required for recovery and reconstruction of any agency to enable it to resume its core operations and functions and to protect the rights and interests of persons.

"Librarian of Virginia means the State Librarian of Virginia or his designated representative.

"Lifecycle" means the creation, use, maintenance, and disposition of a public record.

"Metadata" means data describing the context, content, and structure of records and their management through time.

"Migration" means the act of moving electronic records from one information system or medium to another to ensure continued access to the records while maintaining the records' authenticity, integrity, reliability, and usability.

"Original record" means the first generation of the information and is the preferred version of a record. Archival records should to the maximum extent possible be original records.

"Preservation" means the processes and operations involved in ensuring the technical and intellectual survival of authentic records through time.

"Private record" means a record that does not relate to or affect the carrying out of the constitutional, statutory, or other official ceremonial duties of a public official, including the correspondence, diaries, journals, or notes that are not prepared for, utilized for, circulated, or communicated in the course of transacting public business.

"Public official" means all persons holding any office created by the Constitution of Virginia or by any act of the General Assembly, the Governor and all other officers of the executive branch of the state government, and all other officers, heads, presidents or chairmen of boards, commissions, departments, and agencies of the state government or its political subdivisions.

"Public record" or *"record"* means recorded information that documents a transaction or activity by or with any public officer, agency or employee of an agency.

Regardless of physical form or characteristic, the recorded information is a public record if it is produced, collected, received or retained in pursuance of law or in connection with the transaction of public business. The medium upon which such information is recorded has no bearing on the determination of whether the recording is a public record.

For purposes of this chapter, *"public record"* shall not include nonrecord materials, meaning materials made or acquired and preserved solely for reference use or exhibition purposes, extra copies of documents preserved only for convenience or reference, and stocks of publications.

"Records retention and disposition schedule" means a Library of Virginia-approved timetable stating the required retention period and disposition action of a records series. The administrative, fiscal, historical, and legal value of a public record shall be considered in appraising its appropriate retention schedule. The terms "administrative," "fiscal," "historical," and "legal" value shall be defined as:

1. *"Administrative value"*: Records shall be deemed of administrative value if they have continuing utility in the operation of an agency.
2. *"Fiscal value"*: Records shall be deemed of fiscal value if they are needed to document and verify financial authorizations, obligations, and transactions.
3. *"Historical value"*: Records shall be deemed of historical value if they contain unique information, regardless of age, that provides understanding of some aspect of the government and promotes the development of an informed and enlightened citizenry.
4. *"Legal value"*: Records shall be deemed of legal value if they document actions taken in the protection and proving of legal or civil rights and obligations of individuals and agencies.

§ 42.1-78 Confidentiality safeguarded

Any records made confidential by law shall be so treated. Records which by law are required to be closed to the public shall not be deemed to be made open to the public under the provisions of this chapter. Records in the custody of The Library of Virginia which are required to be closed to the public shall be open for public access 75 years after the date of creation of the record. No provision of this chapter shall be construed to authorize or require the opening of any records ordered to be sealed by a court. All records deposited in the archives that are not made confidential by law shall be open to public access.

§ 42.1-79 Records management function vested in The Library of Virginia

A. The archival and records management function shall be vested in The Library of Virginia. The Library of Virginia shall be the official custodian and trustee for the Commonwealth of all public records of whatever kind, and regardless of physical form or characteristics, that are transferred to it from any agency. As the Commonwealth's official repository of public records, The Library of Virginia shall assume ownership and administrative control of such records on behalf of the Commonwealth. The Library of Virginia shall own and operate any equipment necessary to manage and retain control of electronic archival records in its custody, but may, at its discretion, contract with third-party entities to provide any or all services related to managing archival records on equipment owned by the contractor, by other third parties, or by The Library of Virginia.

B. The Librarian of Virginia shall name a State Archivist who shall perform such functions as the Librarian of Virginia assigns.

C. Whenever legislation affecting public records management and preservation is under consideration, The Library of Virginia shall review the proposal and advise the General Assembly on the effects of its proposed implementation.

§ 42.1-82 Duties and powers of Library Board

A. The State Library Board shall:

1. Issue regulations concerning procedures for the disposal, physical destruction or other disposition of public records containing social security numbers. The procedures shall include all reasonable steps to destroy such documents by (i) shredding, (ii) erasing, or (iii) otherwise modifying the social security numbers in those records to make them unreadable or undecipherable by any means.
2. Issue regulations and guidelines designed to facilitate the creation, preservation, storage, filing, reformatting, management, and destruction of public records by agencies. Such regulations shall mandate procedures for records management and include recommendations for the creation, retention, disposal, or other disposition of public records.

B. The State Library Board may establish advisory committees composed of persons with expertise in the

matters under consideration to assist the Library Board in developing regulations and guidelines.

§ 42.1-85 Records Management Program; agencies to cooperate; agencies to designate records officer

A. The Library of Virginia shall administer a records management program for the application of efficient and economical methods for managing the lifecycle of public records consistent with regulations and guidelines promulgated by the State Library Board, including operation of a records center or centers. The Library of Virginia shall establish procedures and techniques for the effective management of public records, make continuing surveys of records and records keeping practices, and recommend improvements in current records management practices, including the use of space, equipment, software, and supplies employed in creating, maintaining, and servicing records.

B. Any agency with public records shall cooperate with The Library of Virginia in conducting surveys. Each agency shall establish and maintain an active, continuing program for the economical and efficient management of the records of such agency. The agency shall be responsible for ensuring that its public records are preserved, maintained, and accessible throughout their lifecycle, including converting and migrating electronic records as often as necessary so that information is not lost due to hardware, software, or media obsolescence or deterioration. Any public official who converts or migrates an electronic record shall ensure that it is an accurate copy of the original record. The converted or migrated record shall have the force of the original.

C. Each state agency and political subdivision of this Commonwealth shall designate as many as appropriate, but at least one, records officer to serve as a liaison to The Library of Virginia for the purposes of implementing and overseeing a records management program, and coordinating legal disposition, including destruction, of obsolete records. Designation of state agency records officers shall be by the respective agency head. Designation of a records officer for political subdivisions shall be by the governing body or chief administrative official of the political subdivision. Each entity responsible for designating a records officer shall provide The Library of Virginia with the name and contact information of the designated records officer, and shall ensure that such information is updated in a timely manner in the event of any changes.

D. The Library of Virginia shall develop and make available training and education opportunities concerning the requirements of and compliance with this chapter for records officers in the Commonwealth.

§ 42.1-86 Essential public records; security recovery copies; disaster plans

A. In cooperation with the head of each agency, The Library of Virginia shall establish and maintain a program for the selection and preservation of essential public records. The program shall provide for preserving, classifying, arranging, and indexing essential public records so that such records are made available to the public. The program shall provide for making recovery copies or designate as recovery copies existing copies of such essential public records.

B. Recovery copies shall meet quality standards established by The Library of Virginia and shall be made by a process that accurately reproduces the record and forms a durable medium. A recovery copy may also be made by creating a paper or electronic copy of an original electronic record. Recovery copies shall have the same force and effect for all purposes as the original record and shall be as admissible in evidence as the original record whether the original record is in existence or not. Recovery copies shall be preserved in the place and manner prescribed by the State Library Board and the Governor.

C. The Library of Virginia shall develop a plan to ensure preservation of public records in the event of disaster or emergency as defined in § 44-146.16. This plan shall be coordinated with the Department of Emergency Management and copies shall be distributed to all agency heads. The plan shall be reviewed and updated at least once every five years. The personnel of the Library shall be responsible for coordinating emergency recovery operations when public records are affected. Each agency shall ensure that a plan for the protection and recovery of public records is included in its comprehensive disaster plan.

§ 42.1-86.1 Disposition of public records

A. No agency shall sell or give away public records. No agency shall destroy or discard a public record unless (i) the record appears on a records retention and disposition schedule approved pursuant to § 42.1-82 and the record's retention period has expired; (ii) a certificate of records destruction, as designated by the Librarian of Virginia, has been properly completed and approved by the agency's designated records officer; and (iii) there is no litigation, audit, investigation, request for records pursuant to the Virginia Freedom of

Information Act (§ 2.2-3700 et seq.), or renegotiation of the relevant records retention and disposition schedule pending at the expiration of the retention period for the applicable records series. After a record is destroyed or discarded, the agency shall forward the original certificate of records destruction to The Library of Virginia.

B. No agency shall destroy any public record created before 1912 without first offering it to The Library of Virginia.

C. Each agency shall ensure that records created after July 1, 2006 and authorized to be destroyed or discarded in accordance with subsection A, are destroyed or discarded in a timely manner in accordance with the provisions of this chapter; provided, however, such records that contain identifying information as defined in clauses (iii) through (ix), or clause (xii) of subsection C of §18.2-186.3, shall be destroyed within six months of the expiration of the records retention period.

§ 42.1-87 Archival public records

A. Custodians of archival public records shall keep them in fire-resistant, environmentally controlled, physically secure rooms designed to ensure proper preservation and in such arrangement as to be easily accessible. Current public records should be kept in the buildings in which they are ordinarily used. It shall be the duty of each agency to consult with The Library of Virginia to determine the best manner in which to store long-term or archival electronic records. In entering into a contract with a third-party storage provider for the storage of public records, an agency shall require the third-party to cooperate with The Library of Virginia in complying with rules and regulations promulgated by the Board.

B. Public records deemed unnecessary for the transaction of the business of any state agency, yet deemed to be of archival value, may be transferred with the consent of the Librarian of Virginia to the custody of the Library of Virginia.

C. Public records deemed unnecessary for the transaction of the business of any county, city, or town, yet deemed to be of archival value, shall be stored either in The Library of Virginia or in the locality, at the decision of the local officials responsible for maintaining public records. Archival public records shall be returned to the locality upon the written request of the local officials responsible for maintaining local public records. Microfilm shall be stored in The Library of Virginia but the use thereof shall be subject to the control of the local officials responsible for maintaining local public records.

D. Record books deemed archival should be copied or repaired, renovated or rebound if worn, mutilated, damaged or difficult to read. Whenever the public records of any public official are in need of repair, restoration or rebinding, a judge of the court of record or the head of such agency or political subdivision of the Commonwealth may authorize that the records in need of repair be removed from the building or office in which such records are ordinarily kept, for the length of time necessary to repair, restore or rebind them, provided such restoration and rebinding preserves the records without loss or damage to them. Before any restoration or repair work is initiated, a treatment proposal from the contractor shall be submitted and reviewed in consultation with The Library of Virginia. Any public official who causes a record book to be copied shall attest it and shall certify an oath that it is an accurate copy of the original book. The copy shall then have the force of the original.

E. Nothing in this chapter shall be construed to divest agency heads of the authority to determine the nature and form of the records required in the administration of their several departments or to compel the removal of records deemed necessary by them in the performance of their statutory duty.

§ 42.1-88 Custodians to deliver all records at expiration of term; penalty for noncompliance

Any custodian of any public records shall, at the expiration of his term of office, appointment or employment, deliver to his successor, or, if there be none, to The Library of Virginia, all books, writings, letters, documents, public records, or other information, recorded on any medium kept or received by him in the transaction of his official business; and any such person who shall refuse or neglect for a period of ten days after a request is made in writing by the successor or Librarian of Virginia to deliver the public records as herein required shall be guilty of a Class 3 misdemeanor.

§ 42.1-89 Petition and court order for return of public records not in authorized possession

The Librarian of Virginia or his designated representative such as the State Archivist or any public official who is the custodian of public records in the possession of a person or agency not authorized by the custodian or by law to possess such public records shall petition the circuit court in the city or county in which the person holding such records resides or in which the materials in issue, or any part thereof, are located for the return of such records. The court shall order

such public records be delivered to the petitioner upon finding that the materials in issue are public records and that such public records are in the possession of a person not authorized by the custodian of the public records or by law to possess such public records. If the order of delivery does not receive compliance, the plaintiff shall request that the court enforce such order through its contempt power and procedures.

§ 42.1-90 Seizure of public records not in authorized possession

A. At any time after the filing of the petition set out in § 42.1-89 or contemporaneous with such filing, the person seeking the return of the public records may by ex parte petition request the judge or the court in which the action was filed to issue an order directed at the sheriff or other proper officer, as the case may be, commanding him to seize the materials which are the subject of the action and deliver the same to the court under the circumstances hereinafter set forth.

B. The judge aforesaid shall issue an order of seizure upon receipt of an affidavit from the petitioner which alleges that the material at issue may be sold, secreted, removed out of this Commonwealth or otherwise disposed of so as not to be forthcoming to answer the final judgment of the court respecting the same; or that such property may be destroyed or materially damaged or injured if permitted to remain out of the petitioner's possession.

C. The aforementioned order of seizure shall issue without notice to the respondent and without the posting of any bond or other security by the petitioner.

§ 42.1-90.1 Auditing

The Librarian may, in his discretion, conduct an audit of the records management practices of any agency. Any agency subject to the audit shall cooperate and provide the Library with any records or assistance that it requests. The Librarian shall compile a written summary of the findings of the audit and any actions necessary to bring the agency into compliance with this chapter. The summary shall be a public record, and shall be made available to the agency subject to the audit, the Governor, and the chairmen of the House and Senate Committees on General Laws and the House Appropriations and Senate Finance Committees of the General Assembly.

Appendix A

Library of Virginia
Model Ordinance for A Locality Records Management Program

WHEREAS, the Virginia Public Records Act, Code of Virginia, Section 42.1-76 et seq., requires the City/County/Town of _____ to establish and maintain a program for the economical and efficient management of the records of its offices and departments, and

WHEREAS, the Virginia Public Records Act establishes a single body of law applicable to public officers and employees on the subject of public records management and preservation, and to ensure that the procedures used to manage and preserve public records will be uniform throughout the state, and

WHEREAS, the City/County/Town of _____ desires to adopt an ordinance to provide for an orderly and efficient system of records management on compliance with the provisions of the Virginia Public Records Act; NOW THEREFORE:

BE IT ORDAINED BY THE CITY/TOWN COUNCIL (or) BOARD OF SUPERVISORS OF _____

SECTION 1. DEFINITION OF CITY/COUNTY/TOWN RECORDS. All written books, papers, letters, documents, photographs, tapes, microfiche, photostats, sound recordings, maps, other documentary materials or information in any recording medium regardless of physical form or characteristics, including data processing devices and computers, made or received in pursuance of law or in connection with the transaction of public business by office or department of the City/County/Town government.

Nonrecord materials, meaning reference books and exhibit materials made or acquired and preserved solely for reference use or exhibition purposes, extra copies of documents preserved only for convenience or reference, and stocks of publications, shall not be included within the definition of City/County/Town records as used in this ordinance.

SECTION 2. CITY/COUNTY/TOWN RECORDS DECLARED PUBLIC PROPERTY. All City/County/Town records as defined in Section 1 of this ordinance are hereby declared to be the property of the City/County/Town of _____. No City/County/Town officials or employees have, by virtue of their position, any personal or property right to such records.

Any custodian of any public records shall, at the expiration of the term of office, appointment or employment, deliver to a successor, or if there be none, to the City/County/Town Records Manager, all books, writings, letters, documents, public records, or other information, recorded on any medium kept or received in the transaction of official business.

SECTION 3. CUSTODY AND PRESERVATION OF THE RECORDS OF THE GOVERNING BODY. The clerk to the local governing body shall retain the records of such body. The minutes of the meetings of the governing body shall be microfilmed for security purposes and the master microfilm copy shall be stored with the Library of Virginia.

SECTION 4. RECORDS MANAGEMENT PROGRAM ESTABLISHED; DUTY OF THE CITY/TOWN MANAGER, COUNTY ADMINISTRATOR. It is hereby declared to be the duty of the City/Town Manager, County Administrator, of the City/County/Town of _____ to develop a comprehensive records management program establishing procedures for the management of records from their creation to their ultimate disposition, to provide for the efficient and economical creation, distribution, maintenance, use, preservation and disposition of the City/County/Town records.

SECTION 5. POSITION OF RECORDS MANAGER ESTABLISHED; DUTIES OF THE RECORDS MANAGER. The City/Town Manager, County Administrator shall name a staff person to serve as City/County/Town Designated Records Manager. The Records Manager shall be responsible for implementing the records management program of the City/County/Town. The Records Manager shall implement the policies and procedures for a comprehensive records management program as approved by the City/Town Manager, County Administrator.

SECTION 6. RESPONSIBILITIES OF DEPARTMENT HEADS; RECORDS OFFICERS. It shall be the duty of all department heads to cooperate with the City/Town Manager, County Administrator, in implementing the provision of the records management ordinance. Nothing in this ordinance shall be construed to compel the removal of records from the custody of the department head when such records are deemed necessary in the performance of statutory duties.

Appendix B

Locality Retention Schedules

Under Code of Virginia **§ 42.1-85**, the Library of Virginia (LVA) has the authority to issue regulations governing the retention and disposition of state and local public records. In keeping with the Code's mandate, LVA has developed Records Retention & Disposition Schedules outlining the disposition of public records.

Under this policy, the LVA issues two types of schedules. General Schedules apply to the records of common functions performed by or for all localities and state agencies. Specific Schedules apply to records that are unique to an individual state agency. For a copy of your agency Specific Schedule, log into **Infolinx**.

Before a state agency or locality can destroy public records:

- A **records officer** for your organization must be designated in writing by completing and filing a Records Officer Designation and Responsibilities (RM-25 Form) with the Library of Virginia.
- Records to be destroyed must be covered by a Library of Virginia-approved General or Specific Records Retention & Disposition Schedule and the retention period for the records must have expired.
- All investigations, litigation, required audits, and Virginia Freedom of Information Act requests must be completed or fulfilled.
- The organization's designated records officer and an approving official must authorize records destruction by signing each **Certificate of Records Destruction** (**RM-3 Form**).

When a new schedule is approved, it supersedes all previously issued versions of the schedule.

Searchable Database for Locality General Schedules

General Administration

GS-19, Administrative Records (Dec 2012)

GS-02, Fiscal Records (June 2014) ***Updated cutoff for Fixed Assets Files***

GS-16, General Services (Nov 2011)

GS-33, Information Technology (Mar 2009)

GS-03, Personnel Records (Aug 2012)

Local Departments

GS-31, Airports (Sep 2003)

GS-05, Assessment Records (Dec 2007)

GS-14, County and Municipal Attorneys (May 2010)

GS-06, Land Use, Land Development and Public Works (Oct 2013) ***Updates to citations and cut-off events***

GS-11, Parks and Recreation (Dec 2013) ***Complete revision; cemetery series combined and other updates***

GS-22, Public Library (April 2013)

GS-21, Public School (Dec 2012)

GS-07, Public Utilities (Nov 2011)

GS-32, Redevelopment and Housing Authority (July 2007)

GS-28, Treasurer (April 2013)

GS-01, Voter Registration and Elections (May 2010)

Human Services

GS-18, Community Services Board (CSB) (April 2013)

GS-15, Social Services (Feb 2012)

Judiciary

GS-12, Circuit Court (Nov 2011)

GS-13, Commonwealth's Attorney (June 2014) ***Complete revision***

GS-27, Court Appointed Special Advocate (CASA) (July 2009)

GS-26, Pretrial Services (Sep 2005)

Public Safety

GS-25, Community Corrections Act Program (Sep 2006)

GS-29, Criminal Justice Training Academy (Dec 2007)

GS-10, Fire and Rescue (Feb 2004)

GS-24, Juvenile Residential Services (Nov 2003)

GS-17, Law Enforcement (Oct 2013) ***Several updates, most notably the addition of 200163, 200164, 200186***

GS-08, Local and Regional Jails (Dec 2013) ***All law enforcement series moved to GS-17***

GS-30, Virginia Alcohol Safety Action Program (VASAP) (Feb 2013)

* **Recent updates are highlighted in bold** *

The links on this Library of Virginia page are at **http://www.lva.virginia.gov/agencies/records/sched_local/index.htm**

Appendix C

LIBRARY OF VIRGINIA
Records Analysis Section
800 E. Broad St., Richmond VA 23219
(804) 692-3600

CERTIFICATE OF RECORDS DESTRUCTION

(Form RM-3 January 2013)

This form documents the destruction of public records in accordance with the *Virginia Public Records Act*, §§ 42.1-76 through 42.1-91 of the *Code of Virginia*.

SUBMIT FILLABLE FORM WITH ORIGINAL SIGNATURES

1. Agency / Locality / Regional Entity	2. Division / Department / Section	3. Person Completing Form

4. Address, City, St, & Zip	5a. Telephone Number & Extension	5b. E-mail Address

6. Records to Be Destroyed

a) Schedule and Records Series Number	b) Records Series Title	c) Date Range (mo/yr)	d) Location	e) Volume	f) Destruction Method

DESTRUCTION APPROVALS

NOTE: Public records may not be destroyed without receiving prior authorization from the agency or locality Approving Official and Designated Records Officer.

We certify that the records listed above have been retained for the scheduled retention period, required audits have been completed, and no pending or ongoing litigation or investigation involving these records is known to exist.

7. Approving Official (Type)	**Signature**	**Date**
8. Designated Records Officer (Type)	**Signature**	**Date**
9. Records Destruction Affirmed By:	**Signature**	**Date**

(No attachments accepted with the original RM-3)

Instructions for Completing the Certificate of Records Destruction (RM-3 Form)

Updated: July 2013

The RM-3 documents that records were destroyed properly and in accordance with the *Virginia Public Records Act*.

Before a state agency, locality, or regional entity (hereafter referred to as "agency") can destroy public records:

- A Records Officer must be designated in writing for your agency or department by completing a *RECORDS OFFICER DESIGNATION AND RESPONSIBILITIES* (RM-25 FORM) and filing it with the Library of Virginia.
- Records to be destroyed must be covered by a Library of Virginia-approved general or agency-specific *RECORDS RETENTION AND DISPOSITION SCHEDULE*, and the retention period for the records must have expired.
- All investigations (including requests under the *Freedom of Information Act*), litigation, and required audits must be completed, as no record can be destroyed if it is subject to one of these actions.
- The organization's designated Records Officer and an Approving Official must authorize the destruction by signing each RM-3 form.

After public records have been destroyed:

- A responsible person must affirm that the records were destroyed by signing and dating line 9 of the form. This may be the agency staff member or representative of the company who destroyed the records or it may be an official of the agency affirming that they have the knowledge that the records have been destroyed. Either way, this is the final signature that certifies the records have **actually been destroyed**. No vendor certificates or other attachments (such as lists of records destroyed) will be accepted with the RM-3.
- A copy of the signed RM-3 form must be retained by the organization pursuant to GS-19 for localities or GS-101 for state agencies.
- The RM-3 form, with all original signatures, must be mailed to the Library of Virginia where it will be retained for fifty (50) years.

  Mail forms to:

  Library of Virginia
  Att: Patrice Morgan
  800 E. Broad Street
  Richmond VA 23219-8000

For additional information on records destruction refer to the *Virginia Public Records Management Manual* (Chap. 8).

Instructions:

1. Type the full name of agency, locality, or regional entity.
2. Type the name of division, department, and/or section.
3. Type the name of individual completing the form (to whom any questions about the form or records may be directed).
4. Type the mailing address of the agency.
5. Type the
   a) Telephone number of the person completing the form including direct extension, if applicable.
   b) E-mail address of the person completing the form.
6. Records to be destroyed:
   a) Type both the retention schedule and series numbers that apply to the records to be destroyed. ENTER ONLY ONE SERIES NUMBER PER LINE.
   b) Type the exact records series title as listed on the approved retention schedule. You may add detail to this title if it is important to identifying the records.
   c) Type the date range of the records to be destroyed, from oldest to most recent. Indicate starting month/year and ending month/year.
   d) Type the location where the records are stored (optional).
   e) Type the total volume for each series of records to be destroyed in cubic feet (cf). Refer to the Volume Equivalency Table to convert boxes, drawers, open shelves, or even "piles" of paper or microform records to their cubic-footage equivalents. If it is electronic records being destroyed, then enter the approximate size of the files in some form of byte (kilo-, mega, - giga-, etc.). If needed, please use two lines to report destruction of electronic and paper records from the same series.
   f) Type the method used to destroy the records, i.e., trash, recycle, shred, burn, pulp, electronically shred, degaussed, etc.
7. Type the name of the individual responsible for the records or the work that the records support; sign and date.
8. Type name; apply signature of Records Officer attesting that the form is accurate and complete, and the date signed.
9. Typed or printed name and signature of individual or company representative who affirms that the records have been destroyed and the date they were destroyed. Do not attach anything to the original sent to the Library of Virginia.

If multiple RM-3 forms are submitted, all three required signatures must be on each page.

Do not modify the RM-3 form or print double-sided.

For an **example** of a completed RM-3, please see the Completed Sample RM-3.