



# RESTON COMMUNITY CENTER



## **Governance Reference Documents**

- 1.) Policy Framework
- 2.) Enabling Legislation
- 3.) Board Indemnification Resolution
- 4.) Virginia State Code – Conflict of Interest
- 5.) Virginia State Code – Governmental Frauds Act
- 6.) Virginia Freedom of Information Act



## **Reston Community Center Policy Framework**

*Adopted 9-10-12/Affirmed 9-8-14/Updated May 2015*

This Policy Framework will supersede all prior Reston Community Center Board of Governors adopted policies. It was adopted at the Board of Governors meeting of September 10, 2012, and affirmed following Fairfax County Attorney review in its meeting of September 8, 2014. The "Policy and User Manual" described in this Policy Framework is compiled by staff and reviewed as a referenced document in the context of the Policy Framework.

### **Governance**

**RESTON COMMUNITY CENTER BOARD OF GOVERNORS** - Reston Community Center's Board of Governors shall at all times conduct itself and take actions that are consistent with the current Memorandum of Understanding with Fairfax County Government and the Board of Governors By-Laws.

**RESTON COMMUNITY CENTER EMPLOYEES** - Reston Community Center's Executive Director serves at the pleasure of the Board of Governors and functions as the Agency Head. All Reston Community Center employees and volunteers shall at all times conduct themselves and RCC's business in a manner consistent with the policies and procedures of Fairfax County Government. RCC and Fairfax County policies and procedures govern how RCC employees conduct agency business, as well as how patrons are treated. They are routinely reviewed and updated at the Fairfax County Government and RCC and Board levels.

### **Executive Director**

**SELECTION** - Reston Community Center's Board of Governors shall be presented with the recommendation of its Selection Committee when seeking a new Executive Director. The selection of the Executive Director shall be made by simple majority vote of the Board of Governors. A majority of the entire Board of Governors shall approve the Executive Director's employment contract and execution of the contract shall be accomplished by the Chairperson in accord with provisions of the MOU and By-Laws and Fairfax County Department of Human Resources.

**PERFORMANCE REVIEW** - Reston Community Center's Board of Governors members shall be consulted by the Chairperson of the Board for their input when the annual evaluation of the Executive Director is conducted.

**TERMINATION OF EMPLOYMENT** - Termination of the employment contract for the Executive Director shall be consistent with that contract's terms and only after approval by a simple majority vote of the Board.

### **Programs and Services**

**OFFERINGS** - Reston Community Center programs and services shall be consistent with its mission, vision, values and purpose, providing for diverse interests and perspectives. RCC programs and services shall be responsive to community concerns with which its mission and purpose intersect. Programs and services shall be delivered in ways that maximize the impact of RCC resources. Reston Community Center shall review programs and services regularly in a manner consistent with its governance policies as outlined in the Memorandum of Understanding and By-Laws and as directed by the Board of Governors Strategic Plan.

**PATRONS AND USERS** - Reston Community Center makes available to patrons and users documentation of their rights, responsibilities and the legal, procedural and process requirements that govern their interaction with RCC. RCC's Policy and User Manual, prepared and maintained by the staff, shall cover use of RCC facilities and/or resources, participation in programs, obtaining RCC services, and any other aspect of interaction with RCC that is relevant to the user experience. RCC practices shall be consistent with the agency mission, vision, values and purpose as well as all applicable law and regulations.

### **Finance**

**BUDGET** - Internally generated revenues shall account for no more than twenty-five percent (25%) of the expenses of the Reston Community Center. The balance of expenses shall be offset through tax revenues, interest and/or utilization of Managed Reserve funds as directed by the Board. Reston Community Center complies with Fairfax County Government budgeting requirements. To appropriately manage resources for future needs, RCC has established Managed Reserves. These reserve funds shall be allocated to four categories: 1) Maintenance Reserves equal to 12 percent of total projected annual revenues; 2) Feasibility Study Reserves equal to 2 percent of total annual revenues; 3) Capital Project Reserves of up to \$3 million and the balance in 4) Economic and Program Contingency Reserves.

**FEES FOR PATRONS** - Reston Community Center pricing, fee structures for facility rentals, and procedures for refunds, discounts, and similar financial issues shall be consistent with the mission and purpose of RCC and Fairfax County Government and the practices of similar agencies, including but not limited to Fairfax County Park Authority and McLean Community Center. RCC staff shall conduct regular reviews of pricing for facility rentals, programs and services, and make recommendations to the Board of Governors for major changes to existing RCC fees. Reston-qualified users shall be those people living and/or working within the boundaries of Small District 5 and members of their immediate family who reside with them. Reston-qualified patrons shall have a period of priority access to registered programs, the CenterStage Professional Touring Artist series ticketing, and the annual opening of facility rentals to patrons and organizations. Non-Reston users of RCC programs, services and facilities shall be charged higher rates than Reston users. The use and pricing procedures applicable to both Reston and Non-Reston users shall be detailed in the Policy and User Manual and other RCC publications.

**FINANCIAL ACCESSIBILITY** - Reston Community Center established a Fee Waiver program to permit access to all Reston-qualified individuals to programs and services offered by RCC and administered with equitable standards of qualification based on Federal poverty guidelines. The program shall be offered with allocations on an individual and/or family basis of a prescribed and published fee waiver amount to permit broad choice on the part of qualified participants and full access, in particular, to summer youth program opportunities. Utilization of the Fee Waiver program resources shall be documented as a function of regular Board Finance Committee reporting and in the RCC Annual Report.

**RESOLUTION OF THE BOARD OF SUPERVISORS OF FAIRFAX COUNTY,  
VIRGINIA, TO AMEND HUNTER MILL SMALL DISTRICT NO. 5**

Approved November 20, 2006

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium of the County Government Center at 12000 Government Center Parkway in Fairfax, Virginia, on Monday, November 20, 2006, at which a quorum was present and voting, the following resolution was adopted in public session, after giving notice by publication and after conducting a public hearing in accordance with Virginia Code § 15.2-858, to amend the boundaries of Small District No. 5, a special tax district that was created originally as a small district within the Centreville District on March 24, 1975, and amended thereafter on August 1, 1988, and March 24, 2006, for the purpose of providing a community center and other recreational facilities in that district.

WHEREAS, on March 24, 1975, after having given notice as required by Virginia law, the Board of Supervisors adopted a resolution to establish a small district, known as Small District No. 5, for the purpose of acquiring, constructing, maintaining, or operating, or contracting for such acquisition, construction, maintaining, or operating, of a community center, including a community building and other recreational facilities within said small tax district for the citizens who reside therein; and

WHEREAS, on August 1, 1988, the Board of Supervisors adopted a resolution to expand the purposes of Small District No. 5; and

WHEREAS, on March 27, 2006, the Board of Supervisors adopted a resolution to amend the purposes and to change the boundary of Small District No. 5; and

WHEREAS, Small District No. 5 has been used to finance, operate, and maintain the Reston Community Center and its various community and recreational

activities in accordance with the purposes set forth in the original resolution, as amended; and

WHEREAS, the County Executive has recommended that the Board of Supervisors amend the boundary of Small District No. 5 to remove certain areas from the District, so that the boundaries of the District would be as described below and in the accompanying map that is provided as Exhibit No. 1 to this Resolution, which is incorporated herein by reference; and

WHEREAS, the Board of Supervisors has concluded that the present boundary should be amended to more closely conform Small District No. 5 to the County Reston Master Plan; and

WHEREAS, the Board of Supervisors has the authority to take such actions pursuant to Virginia Code § 15.2-858, which permits the Board of Supervisors to enlarge, contract, and modify such small districts; now, therefore, be it

RESOLVED, that Small District No. 5, as described in the Resolution adopted by the Board of Supervisors on March 24, 1975, as amended, is hereby reconstituted and continued in effect within the area described as follows:

The boundary of Small District No. 5 begins at the intersection of Baron Cameron Avenue (Route 606) and Lake Fairfax Drive (Route 1212) and continues from that point in a southeast direction along Lake Fairfax Drive to its intersection with the northern boundary of parcel 18-1-01-0007 with the address 1400 Lake Fairfax Drive, then continuing in an easterly direction and then southerly direction along the boundary of said parcel and then again in an easterly direction to where said parcel boundary intersects with the eastern bank Colvin Run (stream); thence with the

meanders of Colvin Run in a westerly direction for a distance of approximately 255 feet to its intersection with an unnamed stream, thence with the meanders of this unnamed stream in a generally southern direction, excluding all residences numbered on Hunter Mill Road, to the northern boundary of the Bachman Property Subdivision; then following in a westerly direction and then a southeastern direction of said subdivision boundary to the northern boundary of the Equestrian Park Subdivision; thence continuing in a westerly direction along the northern boundary of said subdivision until meeting the northern boundary of the Lake Fairfax Business Center Subdivision boundary, then following said boundary in a westerly, then southwesterly, and then southeasterly direction to the southeastern corner of the Reston Section 909 Subdivision; thence following in a southwesterly direction the Reston Section 909 Subdivision boundary to the southernmost corner of said subdivision; then turning in a southeasterly direction along the northeastern boundary of parcel 28-3-01-0051 to the intersection of Sunset Hills Road (Route 675); then continuing eastward along Sunset Hills Road to the intersection with Hunter Mill Road (Route 674); thence following Hunter Mill Road in a southerly direction, and the Reston Master Plan boundary, to its intersection with Sunrise Valley Drive (Route 5320), thence in a southeastern direction following the eastern boundary of Reston Subdivision Section 22 to its intersection with Snakeden Branch (stream) thence following along the meanders of Snakeden Branch, and the Reston Master Plan boundary, to the intersection of Snakeden Branch with the eastern boundary of property identified as Tax Map 27-1 ((12)) Parcel 3, and thence continuing along the Reston Master Plan boundary and along the eastern boundary of Reston Subdivision Section 33 to the intersection with Hunter Station

Road (Route 677) and Lawyers Road (Route 673); thence from the intersection of Hunter Station Road and Lawyers Road, west along Lawyers Road, and the Reston Master Plan boundary, until the eastern boundary of Reston Subdivision Section 18 and thence along the eastern and southern boundary of Section 18 until the eastern boundary of Reston Subdivision Section 16, and thence in a southwestern direction and then a northwestern and northeastern direction to follow the boundary of Section 16 and the Reston Master Plan boundary back to Lawyers Road; thence from that point west along Lawyers Road, and not following the Reston Master Plan boundary, to Reston Subdivision Section 4A and thence in a southwestern direction along southern and eastern boundary Section 4A, and the Reston Master Plan boundary, until its intersection with Fox Mill Road (Route 665); thence from that point on Fox Mill Road in a northeast direction along Fox Mill Road, through its intersection with Reston Parkway (Route 602), and on to its intersection with Monroe Street (Route 666), and thence from that intersection in a northeast direction along Monroe Street to its intersection with the Washington Dulles Access and Toll Road; thence in a northeast direction along the Fairfax County Parkway (Route 7100) past its intersection with Elden Street (Route 606) to the southern boundary of Reston Subdivision Section 49, and thence west along the southern boundary of Section 49, and following the Reston Master Plan boundary, to the eastern boundary of the Town of Herndon, and thence north along the Town boundary and a projection of that Town boundary to the northernmost part of Reston Subdivision Section 51 and from that point southeast to Stuart Road (Route 880); thence north along Stuart Road and following the Reston Master Plan to the northern boundary of Reston Subdivision Section 51 and from that

point east along the northern boundary of Section 51 and Reston Subdivision Section 53 and a projection of that line for a distance of approximately 2,000 linear feet to its intersection with the northwestern boundary of Reston Subdivision Section 59, and then northeast along that boundary for a distance of approximately 750 linear feet and thence southeast along the boundary of Section 59 for a distance of approximately 900 linear feet and then northeast again along the boundary of Section 59 for a distance of approximately 1,650 linear feet to the northernmost part of Section 59 and thence in a southeast direction to Reston Avenue (Route 602), then south along Reston Avenue until its intersection with Wiehle Avenue (Route 828), and thence northeast from the intersection of Reston Avenue and Wiehle Avenue following the western boundary of Reston Subdivision Section 75, and the Reston Master Plan boundary, until Leesburg Pike, and thence in a southeast direction on Leesburg Pike to the easternmost corner of 11268 Stones Throw Drive, then in a southern direction along the eastern boundary of the Estates at Wyndham Hills Subdivision to the northern boundary of the Reston Section 77 Subdivision; then continuing in an eastward direction and then turning to the south along said subdivision boundary to the intersection with the northern boundary of parcel 11-2-01-0033A; and then eastward to the western boundary of Piney Run Meadow Subdivision; thence following in a southern direction along said subdivision boundary to the northwest corner of the Brandermill Subdivision and continuing southward along the Brandermill Subdivision boundary to the southern corner, then continuing in an eastern direction along the southern boundary of said subdivision to the western boundary of the Ascot Subdivision; then southward following said subdivision boundary to the northwest



corner of the Crippen's Corner Subdivision and continuing in a southwest direction along the Crippen's Corner subdivision boundary to the northernmost point of the Hunter's End Subdivision; thence following in a southwesterly direction and then turning in a southeasterly direction along said subdivision boundary to the intersection with Baron Cameron Avenue (Route 606); thence in an easterly direction along Baron Cameron Avenue until returning to the beginning at the intersection of Baron Cameron Avenue and Lake Fairfax Drive (Route 1212); and be it

RESOLVED FURTHER that in the event that there is any discrepancy between the boundary of Small District No. 5, as described above, and boundary of Small District No. 5, as shown on Exhibit No. 1, then the description provided in Exhibit No. 1 shall prevail; and be it

RESOLVED FINALLY that the new boundaries of Small District No. 5, as described herein, shall become effective on and after January 1, 2007.

GIVEN under my hand this 20<sup>th</sup> day of November 2006.

By: Nancy Vehr  
Nancy Vehr  
Clerk to the Board of Supervisors

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Room in the Massey Building at Fairfax, Virginia, on Monday, March 24, 1975, at which meeting a quorum was present and voting, the following resolution was adopted:

WHEREAS, Article VII, Chapter 15, Title 15.1, of the Code of Virginia, 1950, as amended, provides for, among other things, the creation by the Board of Supervisors of Fairfax County, Virginia, a small District, by resolution; and

WHEREAS, the Board of Supervisors has been presented with facts and information upon consideration of which the said Board, finding the property embraced in the proposed small District will be benefited by creating a small District for the purpose of acquiring, constructing, maintaining or operating, or contracting for such acquisition, construction, maintenance or operation of a community center, including a community building and other recreational facilities, within said small district for the citizens who reside therein.

NOW, THEREFORE, BE IT RESOLVED, That there is hereby created by the Board of Supervisors of Fairfax County, Virginia, pursuant to Section 15.1-791 (d) of the Code of Virginia, 1950, as amended, a small District to be known as Small District 5 within Centreville District, Fairfax County, Virginia, which said small District shall be described as follows:

"Beginning at a point, said point marking the intersection of the western right-of-way line of Hunter Mill Road (State Route 674) and the southern right-of-way line of Baron Cameron Avenue (State Route 606);

Thence in a southeast direction along the western right-of-way line of Hunter Mill Road, crossing Colvin Run and the Dulles Airport Access Road to its intersection with the southern right-of-way line of Hunter Mill Road (State Route 674), said intersection being approximately 1,650 linear feet south of the Dulles Airport Access Road and in addition, said intersection also being on the common line separating Parcels 1 and 3, further described in the following:

Thence in a southeast direction from said intersection on the southern right-of-way line of Hunter Mill Road, along the aforementioned property line separating the parcels identified on the attached Fairfax County Tax Map 27-1, double circle one, Lot one (Deed Book 2750, Page 560) and parcel identified on the attached Fairfax County Tax Map 27-2, double circle one, Lot 3 (Deed Book P-11, Page 288) an approximate distance of 2,250 linear feet to a point on the western boundary line of Tamarack Subdivision, Section Three as duly dedicated and platted in Deed Book 4031, Page 187;

Thence in a southwest direction along the western boundary line of Tamarack Subdivision, Section Three to its intersection with a point on the northern right-of-way line of the Virginia Electric and Power Company right-of-way (abandoned Washington and Old Dominion Railroad);

Thence continuing in a southwest direction crossing the Virginia Electric and Power Company right-of-way (abandoned Washington and Old Dominion Railroad) to its intersection with the western property line of the parcel identified on the attached Fairfax County Tax Map 27-2, double circle one, Lot 23 (Deed Book 3326, Page 561), crossing Snakeden Branch, and continuing in a southwest direction along the western property line of parcel identified on the attached Fairfax County Tax Map 27-2, double circle one, Parcel 24, further described as 10600 Hunter Station Road, to its intersection with the northern right-of-way line of Hunter Station Road (State Route 677);

Thence in a northeast direction along the northern right-of-way line of Hunter Station Road to its intersection with the western right-of-way line of Hunter Mill Road (State Route 674);

Thence in a southwest direction along the western right-of-way line of Hunter Mill Road to its intersection with the northern right-of-way line of Lawyers Road (State Route 673);

Thence in a northwest direction along the northern right-of-way line of Lawyers Road, crossing Difficult Run to its intersection with the northern extended southeastern boundary line of The Glade Subdivision, as duly dedicated and platted in Deed Book 3454, Page 263;

Thence in a southwest direction along the northern extended southeastern boundary line of The Glade Subdivision, crossing Lawyers Road, to its intersection with southwestern boundary line of The Glade Subdivision, said line also being the northeastern boundary line of the Twin Mill Subdivision, as duly dedicated and platted in Deed Book 3867, Page 375;

Thence in a northwest direction along the aforementioned northeastern boundary line of the Twin Mill Subdivision to its intersection with the northwestern boundary line of the Twin Mill Subdivision;

Thence in a southwest direction along the northwestern boundary line of the Twin Mill Subdivision to its intersection with the eastern right-of-way line of Birdfoot Lane (State Route 671);

Thence in a southwest direction along the eastern right-of-way line of Birdfoot Lane and continuing in southwest direction, crossing Stuart Mill Road (State Route 671) to its intersection with the southern right-of-way line of Stuart Mill Road (State Route 669);

Thence in a southwest direction along the southern right-of-way line of Stuart Mill Road (State Route 669) to its intersection with the eastern right-of-way line of Fox Mill Road (State Route 665);

Thence in a northwest direction along the eastern right-of-way line of Fox Mill Road (State Route 665), crossing Stuart Mill Road (State Route 669), Steeple Chase Drive (State Route 4703), Lawyers Road (State Route 673), Reston Avenue (State Route 602) and Pinecrest Road (State Route 667) to its intersection with the eastern right-of-way line of Monroe Street (State Route 666);

Thence in a northeast direction along the eastern right-of-way line of Monroe Street to its intersection with the southern right-of-way line of Dulles Airport Access Road;

Thence in an easterly direction along the southern right-of-way line of Dulles Airport Access Road to its intersection with the southern boundary line of the Town of Herndon;

Thence in a southeasterly direction along the said southern boundary line of the Town of Herndon to its intersection with the eastern boundary line of the Town of Herndon;

Thence in a northeast direction along the eastern boundary line of the Town of Herndon to its intersection with the eastern right-of-way line of Stuart Road (State Route 680), said intersection also being the northern right-of-way line of Baron Cameron Avenue (State Route 606), and continuing in a northeast direction along the eastern right-of-way line of Stuart Road (State Route 680) approximately 7,000 linear feet to its intersection with the property lines separating the parcel identified on the attached Fairfax County Tax Map 11-3, double circle one, Lot two (Deed Book 1455, Page 434) from parcel identified on the attached Fairfax County Tax Map 11-3, double circle one, Lot three (Deed Book 2750, Page 560);

Thence in an easterly direction along the aforementioned property line separating Parcels two and three approximately 2,000 linear feet to its intersection with the eastern property line of the aforementioned Lot two;

Thence in a northeast direction along the eastern property line of the aforementioned Lot two approximately 750 linear feet to its intersection with the property line separating the parcel identified on the attached Fairfax County Tax Map 11-2, double circle 1, Lot 50 (Deed Book 2712, Page 599) from the parcel identified on the attached Fairfax County Tax Map 11-3, double circle 1, Lot 8 (Deed Book 2750, Page 560);

Thence in a southeast direction crossing the Colonial Gas Pipeline approximately 900 linear feet then in a northeast direction approximately 1,670 linear feet along the aforementioned property line separating the aforementioned Lot 50 from Lot 8 to its intersection with the southern property line of Parcel 47, as identified on the attached Fairfax County Tax Map 11-2, double circle 1, Parcel 47 (Deed Book 809, Page 249) further described as 1246 Reston Avenue (State Route 602);

Thence in a southeast direction along the aforementioned southern property line of Parcel 47 (1246 Reston Avenue) crossing Reston Avenue (State Route 602) to the western property line of the parcel identified on the attached Fairfax County Tax Map 11-2, double circle 1, Parcel 33A;

Thence in a northeast direction along the western property line of the aforementioned Parcel 33A, crossing the Atlantic Seaboard Corporation Gasline to the southern right-of-way line of Leesburg Pike (State Route 7);

Thence in a southeast direction along the southern right-of-way line of Leesburg Pike (State Route 7) to its intersection with the northerly right-of-way line of Baron Cameron Avenue (State Route 606) and continuing in a southeast direction across Baron Cameron Avenue to its intersection with the southerly right-of-way line of Baron Cameron Avenue;

Thence in a southwest direction along the southerly right-of-way line of Baron Cameron Avenue, crossing Hunter Mill Road (State Route 674) to the point of the beginning."

Containing 10,392 acres more or less.

AND BE IT FURTHER RESOLVED That the Board of Supervisors of Fairfax County, Virginia, declares its intention to implement the purpose for which said Small District 5 within Centreville District is hereby created, to-wit:

To provide for the purpose of acquiring, constructing, maintaining or operating, or contracting for such acquisition, construction, maintenance or operation of a community center, including a community building and other recreational facilities, within said small district for the citizens who reside therein.

A Copy - Teste:

Catherine A. Grubbs, for  
Ethel Wilcox Register  
Clerk to the Board

Westlaw

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Office of the Attorney General  
Commonwealth of Virginia

\*1 August 30, 1983

**COUNTIES. BOARDS OF SUPERVISORS. INSURANCE. ECONOMIC DEVELOPMENT AUTHORITIES. PARK AUTHORITIES. LIBRARIES. SANITARY DISTRICTS. COUNTY BOARD OF SUPERVISORS MAY PROVIDE LIABILITY INSURANCE OR SELF-INSURANCE FOR SANITARY DISTRICT EMPLOYEES; MAY NOT PROVIDE INSURANCE FOR EMPLOYEES OF ECONOMIC DEVELOPMENT AUTHORITY, PARK AUTHORITY OR LIBRARY BOARD.**

The Honorable **David T. Stitt**  
County Attorney for Fairfax County

This is in reply to your request for my opinion concerning the applicability of § 15.1-506.1 of the Code of Virginia, relating to provision of liability insurance or self-insurance for the public officers and employees of the Fairfax County Economic Development Authority, the Fairfax County Park Authority, the Fairfax County Library Board and the Reston and McLean Community Centers. In each case you ask, first, whether the Board of Supervisors of Fairfax County may provide liability insurance or self-insurance for officers and employees of the named entities, and, in the alternative, whether the entities themselves may provide insurance or self-insurance for their officers and employees.

Section 15.1-506.1 provides as follows:

“The board of supervisors of any county and the governing body of any political or governmental subdivision may provide liability insurance, or may provide self-insurance, for certain or all of its officers and employees and volunteers who are not employees of the governing body and members of commissions and boards recognized by the local governing body to cover the costs and expenses incident to liability, including those for settlement, suit or satisfaction of judgment, arising from the conduct of its officials, employees, volunteers and board and commission members in the discharge of their duties. The liability insurance coverage shall be placed with insurance companies authorized to do business in this State by the State Corporation Commission.”

The related inquiries which must be made in each instance are whether the officers and employees of the entity may be considered as county officers and employees, and whether the entity may be considered as a separate “political or governmental subdivision.” I will discuss each entity in order.

1. Fairfax County Economic Development Authority. This authority was created by Ch. 643, Acts of Assembly of 1964 [FN1] as “a political subdivision of the Commonwealth with such public and corporate powers as are granted in this Act....” See § 1 of Ch. 643. Section 3 provides that the authority is to be governed by a commission appointed by the county governing body, which shall exercise and perform all powers and duties of the au-



thority. Section 6 confers certain listed powers upon the authority, among which are included, in subsection (e) thereof, the power "[t]o employ a director and such other agents and employees as may be necessary, to serve at the pleasure of the commission," and to fix their compensation and prescribe their duties.

\*2 It is clear from the above recited declarations of the General Assembly that the Fairfax County Economic Development Authority is a "political or governmental subdivision" separate from the county, with a separate governing body. I am of the opinion that, for purposes of § 15.1-506.1, the authority's officers and employees are not officers and employees of the county board of supervisors and, accordingly, the board of supervisors may not provide liability insurance or self-insurance for those employees. Compare 1978-1979 Report of the Attorney General at 116 and 141 (employees of various authorities which are similarly separate and distinct legal entities). I am further of the opinion that, because the authority was created expressly as a separate political subdivision, it may itself provide insurance or self-insurance for its officers and employees pursuant to § 15.1-506.1.

2. Fairfax County Park Authority. A park authority created by local ordinance is a "public body politic and corporate." See § 15.1-1230. Once created, it is "deemed to be an instrumentality exercising public and essential governmental functions to provide for the public health and welfare" with, among other powers, the power to regulate its internal affairs and to do all things necessary to carry out the powers expressly granted to it. See § 15.1-1232. An authority's powers are exercised by its members, who are appointed by the county governing body. See § 15.1-1231. Prior Opinions of this Office have held similarly constituted and empowered entities to be political subdivisions. See, e.g., Reports of the Attorney General: 1980-1981 at 277 (Fairfax County Water Authority); 1974-1975 at 538 (James City Service Authority). Prior Opinions of this Office also have recognized park authorities as governmental entities independent of local governing bodies. See Reports of the Attorney General: 1977-1978 at 298; 1961-1962 at 51. [FN2] Accordingly, I am of the opinion that the Fairfax County Park Authority is a separate political subdivision for purposes of § 15.1-506.1, and, consistent with the conclusion stated above, the county board of supervisors may not provide insurance for the authority's employees. The authority itself may provide liability insurance or self-insurance for its officers and employees.

3. Fairfax County Library Board. I assume from the information provided with your letter that a county library board has been established which, pursuant to statute, has management and control of the free public library system. See §§ 42.1-35 and 42.1-36. Prior Opinions of this Office held that the library board's power of management and control over the free public library system includes the power to manage and control the personnel therein, and that employees of the county library board are not employees of the county board of supervisors. See Reports of the Attorney General: 1980-1981 at 227; 1978-1979 at 116; 1977-1978 at 233; 1975-1976 at 80. Consistent with the views expressed in those Opinions, I am of the opinion that a library board's officers and employees are not officers and employees of the board of supervisors for purposes of § 15.1-506.1, and that, therefore, the board of supervisors may not provide liability insurance or self-insurance for those employees.

\*3 The second inquiry to be made is whether the library board is a "political or governmental subdivision" which may itself provide such insurance for its officers and employees.

The term "political subdivision" is broad and comprehensive, may be used in more than one sense, and may include a governmental body of the State created for a single public purpose and authorized to exercise the sovereign power of the State only to a limited degree. See Reports of the Attorney General: 1980-1981 at 277; 1973-1974 at 217. A political subdivision is an entity created by law to aid in the administration of government,

and, as the recipient of sovereignty, it is independent from other governmental bodies and may act within its discretion to exercise those powers conferred by law without seeking approval of a superior authority. See 1978-1979 Report of the Attorney General at 305.

Operation of a free public library system as authorized by statute is held to constitute a governmental function. See § 42.1-32.1; 62 C.J.S. Municipal Corporations § 679 (1949). [FN3] Management and control of this function by statute in Virginia expressly is vested in the library board, whose members are empowered to “adopt such bylaws, rules and regulations for their own guidance and for the government of the free public library system as may be expedient” and who “shall have control of the expenditures of all moneys credited to the library fund.” Section 42.1-35. This Office has recognized that the library board, once established, has the policy-making power over the county library system, independent of any supervision by the county board of supervisors. See, e.g., 1975-1976 Report of the Attorney General at 80. I am of the opinion that, for purposes of § 15.1-506.1, the Fairfax County Library Board may be considered as the governing body of a “political or governmental subdivision” which may provide liability insurance or self-insurance for its officers and employees. [FN4]

4. Reston and McLean Community Centers. It is stated in the materials enclosed with your letter that these centers are operated as a function of the county sanitary districts created pursuant to §§ 15.1-787 and 15.1-791. The county board of supervisors is the governing body of each such district. See § 15.1-730. Section 15.1-791(b) provides that each district created under the provisions of § 15.1-787 “shall be a sanitary district with all the rights and powers conferred on sanitary districts by general law.” See § 21-112.22 et seq. A prior Opinion of this Office held that, because the county governing body has management and control of the personnel function of a sanitary district under general law, district employees may properly be considered employees of the county. See 1978-1979 Report of the Attorney General at 119. Consistent with that holding, and with the express provisions of § 15.1-730, I am of the opinion that the community center officers and employees are officers and employees of the Fairfax County Board of Supervisors for purposes of § 15.1-506.1, and, accordingly, the board of supervisors may provide liability insurance or self-insurance for them.

\*4 Gerald L. Baliles  
Attorney General

[FN1] Chapter 643 has been amended by the following acts: Chs. 70 and 508, Acts of Assembly of 1966; Ch. 322, Acts of Assembly of 1968; Ch. 592, Acts of Assembly of 1970; Ch. 853, Acts of Assembly of 1972; Chs. 145 and 516, Acts of Assembly of 1973; Ch. 436, Acts of Assembly of 1975; Ch. 235, Acts of Assembly of 1976; Ch. 87, Acts of Assembly of 1979; Ch. 92, Acts of Assembly of 1980; Ch. 210, Acts of Assembly of 1981.

[FN2] See, also, Makielski, The Special District Problem in Virginia, 55 Va. L. Rev. 1182 (1969) for a discussion of park authorities and other independent governmental authorities.

[FN3] Section 42.1-32.1 reads in part, “[i]t is hereby declared to be the policy of the Commonwealth, as part of its provision for public education, to promote the cooperation and networking of all public, academic, special and school libraries throughout the Commonwealth. It is the further intent of this article that none of its provisions shall be construed to interfere with the autonomy of the governing boards of institutions of higher education and the governing boards of public, special and school libraries.” See, also, § 42.1-46, wherein it is stated that “[i]t is hereby declared to be the policy of the Commonwealth, as part of its provision for public education,

1983-84 Va. Op. Atty. Gen. 78, 1983-84 Va. Rep. Atty. Gen. 78, 1983 WL 164875 (Va.A.G.)

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to promote the establishment and development of public library service throughout its various political subdivisions.”

[FN4] But cf. Opinion contained in 1954-1955 Report of the Attorney General at 216 which held that, for social security purposes under Title 51, a county free library system is not a separate juristic entity so as to constitute it a political subdivision of the State as defined in § 51-111.2(i). The same entity may be considered a political subdivision for some purposes and not a political subdivision for other purposes. Compare, e.g., 1976-1977 Report of the Attorney General at 319 (Virginia Port Authority is not a political subdivision but instead is an executive agency of the State “within the narrow delimitations of § 2.1-41.2”) with 1973-1974 Report of the Attorney General at 217 [Virginia Port Authority is a political subdivision for the purpose of the definitions in § 9-108 (now repealed—see § 9-169(2))].

1983-84 Va. Op. Atty. Gen. 78, 1983-84 Va. Rep. Atty. Gen. 78, 1983 WL 164875 (Va.A.G.)  
END OF DOCUMENT

TO: RCE BOARD

FYI - Request for  
Financial Committee  
9.18.94

FAIRFAX COUNTY, VIRGINIA

MEMORANDUM

October 17, 1994

TO: Agency Heads

FROM: Hal Sheikh, Risk Manager *16*  
Risk Management Division

SUBJECT: Risk Management Policies

REFERENCE: Board Indemnification Resolution

OCT 18 1994

The referenced resolution indemnifies Fairfax County officers and employees against claims/lawsuits that arise from job related duties. Copies of the resolution were distributed to all agencies in April of this year and should be a part of your copy of the Risk Management Manual.

Enclosed is a copy of the revised and updated resolution as approved by the Board of Supervisors. The revisions are primarily in the nature of agency name changes, and new agencies, boards and commission established in the preceding year. This copy of the resolution should be filed in the "General" section of the Risk Management Manual.

Questions regarding the resolution may be referred to Teri Flynn of my staff at 324-3040.

Enclosure

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium in the Fairfax County Government Center at Fairfax, Virginia, on Monday, September 26, 1994, at which meeting a quorum was present and voting, the following resolution was adopted:

Indemnification and Representation  
of Officers and Employees

WHEREAS, the defense of governmental immunity does not necessarily insulate County officers and employees from civil judgments rendered against them in their individual capacities, and

WHEREAS, County officers and employees may be liable for the payment of civil judgments arising out of actions which they took in furtherance of the County's interest and in their scope of authority and course of employment, and

WHEREAS, the County Attorney is authorized to represent the County and its Boards, departments and agencies, and officers and employees in litigation arising from their conduct in the discharge of official duties, and

WHEREAS, there have been several denials by the County's liability insurance carriers of their obligations to provide coverage and legal defense of claims presented and lawsuits filed against County officials and employees, the county liability insurance carriers have cancelled various policies of insurance, and

WHEREAS, certain liability claims and suits filed against the County, its officers and employees may not fall within the scope of coverage afforded by policies of insurance currently in effect, and

WHEREAS, the County may be obligated to provide legal defense for and indemnification of its officers and employees in certain cases where that obligation is denied by its liability insurance carrier,

NOW, THEREFORE, BE IT RESOLVED:

1. The Resolution adopted by the Board of Supervisors at its regular meeting on Monday, June 28, 1993, as subsequently amended, concerning "Indemnification and Representation of Officers and Employees" is hereby readopted as hereinafter amended. Any representation by the County Attorney or his designate commenced prior to the effective date of this amended Resolution under the authority of the 1993 Resolution continues to be authorized until a final order is entered in the pending action.

2. For purposes of this Resolution, the term "County officers, employees, volunteers and members of Boards and

Commissions" shall include only the following: the Board of Supervisors of Fairfax County, Virginia and its members, and those elected and appointed officers of the County of Fairfax, Virginia, and the Boards and Commissions and the members thereof and their employees as set forth in Appendix A, which is hereby incorporated by reference, and those volunteers listed in Appendix A.

3. The County Attorney shall represent, without charge, all County officers, employees, volunteers and members of Boards and Commissions with respect to any claim or cause of action arising from the conduct of such officers, employees, volunteers and members of Boards and Commissions in the discharge of their duties as officers, employees, volunteers and members of Boards and Commissions of the County of Fairfax, Virginia. Said conduct is hereby deemed to include administrative and professional malpractice, as well as acts committed or alleged to be committed which result in or are alleged to result in deprivations of rights, privileges, and immunities guaranteed by the United States or Virginia Constitutions, or of any statute affording a cause of action for damages or injunctive relief for such deprivations.

4. In the event of a real or potential conflict of interest involving the County Attorney's representation of the County and any of its officers, employees, volunteers and members of Boards and Commissions on any claim, lawsuit or combination of claims or lawsuits; and in the event that any such conflicts of interest or other ethical considerations might impede effective representation and legal defense by the County Attorney, the County Attorney shall be authorized to retain additional counsel, at his discretion, to represent any officers, employees, volunteers and members of Boards and Commissions who shall in his opinion require such counsel.

5. All officers, employees, volunteers and members of Boards and Commissions who become legally obligated to pay any claims, including but not limited to settlements, suits, satisfaction of judgments, costs of awards of attorney's fees, arising from the conduct of said officers, employees, volunteers and members of Boards and Commissions in the discharge of their duties, shall only be entitled to indemnification therefor where the claim shall have been determined by the County Executive, upon the recommendation of the County Attorney, to have resulted from actions which:

a. were done in good faith; and



b. were done in the reasonable belief that such activities were in the best interest of the County and in the furtherance of the official practices and policies of the County; and

c. were within the scope of authority of the person so acting; and

d. were within the course of employment of the person so acting; and

e. were not willful, malicious, or wanton.

The determination of the County Executive as to whether the conduct of any such officer, employee, volunteer or member of Boards and Commissions satisfies the requirements of subsections (a) - (e) shall be final.

6. The County Executive is authorized to purchase in accordance with established procedures and to continue in effect such liability insurance policies for County officers, employees, volunteers and members of Boards and Commissions, as he deems cost effective after the recommendation of the Risk Manager with legal defense of claims thereunder to be provided in accordance with the terms of the policies of insurance. The County Attorney shall represent County officers, employees, volunteers

and members of Boards and Commissions to the extent deemed necessary by him to supplement legal counsel provided under said liability insurance policies. The County Executive, on the recommendation of the Risk Manager, is authorized to purchase, in accordance with established procedures, personal liability, accidental death and dismemberment, and automobile insurance for those County volunteers not listed in Appendix "A". On recommendation of the Risk Management Committee, the County Executive may promulgate regulations prescribing criteria for eligibility for such coverage. The benefits conferred by this Resolution upon County volunteers not listed in Appendix "A" shall be limited to those contained in whatever policies of insurance are obtained by the County Executive.

7. In no event shall legal fees be paid on behalf of officers, employees, volunteers and members of Boards and Commissions, or legal counsel provided by the County Attorney for the defense of acts alleged to have been committed by officers, employees, volunteers and members of Boards and Commissions in violation of criminal laws, nor shall any fines or penalties imposed by criminal conduct be reimbursed by the County.

6. claims filed against the County may be settled for amounts of \$25,000 or less, including costs and expense incident to liability, compromise settlements, suits or satisfaction of judgments, arising from the conduct of its officers, employees, volunteers and members of Boards and Commissions in the discharge of their duties. Such settlements may be made at the discretion of the County Executive or such other officials as designated by the Board of Supervisors after appropriate investigation and recommendation by the County Attorney. The Board resolution of March 23, 1987, regarding Delegation of Settlement Authority is hereby incorporated by reference.

9. Nothing contained in this Resolution shall be construed to abrogate any statutory right of appeal from disallowance of claims, and any person may appeal the disallowance of a claim to the Board of Supervisors.

10. Nothing contained in this Resolution shall be construed to abrogate or waive any of governmental immunity on behalf of the County of Fairfax, Virginia, or of its officers, employees, volunteers and members of Boards and Commissions.

11. The authorization provided by this Resolution shall continue in effect until subsequently rescinded or amended. In the event that any provision of this Resolution is subsequently determined to be void by a court of competent jurisdiction, it shall be deemed severed and all other provisions shall continue in full force and effect.

A Copy Teste:

Nancy Vehr

Nancy Vehr  
Clerk to the Board of Supervisors

Solid Waste Disposal and Resource Recovery Division  
Solid Waste Collection and Recycling Division  
Department of Recreation and Community Development  
Department of Community Action  
Office for Children  
Police Department  
Fire and Rescue Department  
Department of Animal Control  
Department of Housing and Community Development  
Department of Human Development  
McLean Community Center  
Reston Community Center  
Court Services, Fairfax County Juvenile and Domestic  
Relations District Court  
Health Department\*  
Department of Information Technology

\*Note: Coverage restricted to County employees. State employees of the Health Department, as set forth in paragraph C of the agreement between the Board of Supervisors and the Virginia Department of Health, are provided legal defense by the Office of the County Attorney, but are indemnified by the State, not by the Board of Supervisors.

Representation and indemnification of multijurisdictional Boards and Supervisors, e.g., Fairfax-Falls Church Community Services Board, shall be determined by agreement among the respective jurisdictions. See, Board of Supervisors' Resolution Adoption of Joint Resolution dated June 10, 1986 (Community Services Board).



# Code of Virginia

## Chapter 31 - State and Local Government Conflict of Interests Act

§ 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.

This chapter shall be liberally construed to accomplish its purpose.

(1987, Sp. Sess., c. 1, § 2.1-639.1; 1990, c. 672; 2001, c. 844; 2003, c. 694; 2008, c. 532.)

§ 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 § 2.2-3116 shall 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.

(2004, cc. 134, 392.)

§ 2.2-3101. Definitions.

As used in this chapter:

"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-subsidary 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.

"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 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.

"Dependent" means a son, daughter, father, mother, brother, sister or other person, whether or not related by blood or marriage, if such person receives from the officer or employee, or provides to the officer or employee, more than one-half of his financial support.

"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 § 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" shall not include any offer of a ticket or other admission or pass unless the ticket, admission, or pass is used. "Gift" shall not include honorary degrees and presents from relatives. For the purpose of this definition, "relative" means the donee's spouse, child, uncle, aunt, niece, or nephew; a person to whom the donee is engaged to be married; the donee's or his spouse's parent, grandparent, grandchild, brother, or sister; or the donee's brother's or sister's spouse.

"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 residing in the same household as the officer or employee, who is a dependent of the officer or employee or of whom the officer or employee is a dependent.

"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, \$10,000 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, \$10,000 annually; (iv) ownership of real or personal property if the interest exceeds \$10,000 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 (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 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.

"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.

(1987, Sp. Sess., c. 1, § 2.1-639.2; 1988, c. 536; 1992, c. 865; 1993, c. 303; 1994, cc. 74, 724; 1995, c. 495; 1996, c. 77; 1997, c. 641; 2001, c. 844; 2003, c. 694; 2004, cc. 134, 392.)

#### § 2.2-3102. Application.

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

(1987, Sp. Sess., c. 1, § 2.1-639.3; 2001, c. 844.)

#### § 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; or
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.

(1987, Sp. Sess., c. 1, § 2.1-639.4; 1994, cc. 663, 815, 851; 2001, c. 844; 2006, cc. 787, 892.)

#### § 2.2-3104. Prohibited conduct for certain officers and employees of state government.

In addition to the prohibitions contained in § 2.2-3103, no state officer or employee shall, during the one year after the termination of his public employment or service, represent a client or 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 or employee.

For the purposes of this section, "state officer or employee" shall mean (i) the Governor, Lieutenant Governor, Attorney General, and officers appointed by the Governor, whether confirmation by the General Assembly or by either house thereof is required or not, who are regularly employed on a full-time salaried basis; those officers and employees of executive branch agencies who report directly to the agency head; and those at the level immediately below those who report directly to the agency head and are at a payband 6 or higher and (ii) the officers and professional employees of the legislative branch designated by the joint rules committee of the General Assembly. For the purposes of this section, the General Assembly and the legislative branch agencies shall be deemed one agency.

The prohibitions of this section shall apply only to persons engaged in activities that would require registration as a lobbyist under § 2.2-422.

Any person subject to the provisions of this section may apply to the Attorney General, 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.

(1994, cc. 727, 776, § 2.1-639.4:1; 2001, c. 844.)

§ 2.2-3104.01. Prohibited conduct; bids or proposals under the Virginia Public Procurement Act, Public-Private Transportation Act, and Public-Private Education Facilities and Infrastructure Act.

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 (§ 56-556 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. 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. The provisions of this section shall not apply to contracts awarded as the result of competitive sealed bidding as defined in § 2.2-4301.

C. 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. 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.

(2010, c. 732; 2011, c. 624.)

§ 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.

(2011, c. 591.)

§ 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.

(2001, c. 48, § 2.1-639.4:2; 2008, cc. 478, 497.)

#### § 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.

(2003, c. 694.)

#### § 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.

(1987, Sp. Sess., c. 1, § 2.1-639.5; 2001, c. 844; 2003, c. 694.)

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

A. No officer or employee of any governmental agency of state government or Eastern Virginia Medical School shall have a personal interest in a contract with the governmental 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 state government or Eastern Virginia Medical School shall have a personal interest in a contract with any other governmental agency of state government unless such contract is (i) awarded as a result of competitive sealed bidding or competitive negotiation as defined in § 2.2-4301 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 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 the employment or the employment activities of the member of his immediate family and the employee is not in a position to influence those activities;

2. The personal interest of an officer or employee of a state institution of higher education or the Eastern Virginia Medical School in additional contracts of employment with his own governmental agency that accrue to him because of a member of his immediate family, provided (i) the officer or employee and the immediate family member are engaged in teaching, research or administrative support positions at the educational institution or the Eastern Virginia Medical School, (ii) the governing board of the educational institution finds that it is in the best interests of the institution or the Eastern Virginia Medical School and the Commonwealth for such dual employment to exist, and (iii) after such finding, the governing board of the educational institution

or the Eastern Virginia Medical School ensures that the officer or employee, or the immediate family member, does not have sole authority to supervise, evaluate or make personnel decisions regarding the other;

3. An officer's or employee's personal interest in a contract of employment with any other governmental agency of state government;

4. Contracts for the sale by a governmental agency or the Eastern Virginia Medical School of services or goods at uniform prices available to the general public;

5. An employee's personal interest in a contract between a public institution of higher education in Virginia or the Eastern Virginia Medical School and a publisher or wholesaler of textbooks or other educational materials for students, which accrues to him solely because he has authored or otherwise created such textbooks or materials;

6. An employee's personal interest in a contract with his or her employing public institution of higher education to acquire the collections or scholarly works owned by the employee, including manuscripts, musical scores, poetry, paintings, books or other materials, writings, or papers of an academic, research, or cultural value to the institution, provided the president of the institution approves the acquisition of such collections or scholarly works as being in the best interests of the institution's public mission of service, research, or education;

7. Subject to approval by the board of visitors, an employee's personal interest in a contract between the Eastern Virginia Medical School or a public institution of higher education in Virginia that operates a school of medicine or dentistry and a not-for-profit nonstock corporation that operates a clinical practice within such public institution of higher education or the Eastern Virginia Medical School and of which such employee is a member or employee;

8. Subject to approval by the relevant board of visitors, an employee's personal interest in a contract for research and development or commercialization of intellectual property between a public institution of higher education in Virginia or the Eastern Virginia Medical School and a business in which the employee has a personal interest, if (i) the employee's personal interest has been disclosed to and approved by such public institution of higher education or the Eastern Virginia Medical School prior to the time at which the contract is entered into; (ii) the employee promptly files a disclosure statement pursuant to § 2.2-3117 and thereafter files such statement annually on or before January 15; (iii) the institution has established a formal policy regarding such contracts, approved by the State Council of Higher Education or, in the case of the Eastern Virginia Medical School, a formal policy regarding such contracts in conformity with any applicable federal regulations that has been approved by its board of visitors; and (iv) no later than December 31 of each year, the institution or the Eastern Virginia Medical School files an annual report with the Secretary of the Commonwealth disclosing each open contract entered into subject to this provision, the names of the parties to each contract, the date each contract was executed and its term, the subject of each contractual arrangement, the nature of the conflict of interest, the institution's or the Eastern Virginia Medical School's employee responsible for administering each contract, the details of the institution's or the Eastern Virginia Medical School's commitment or investment of resources or finances for each contract, and any other information requested by the Secretary of the Commonwealth; or

9. Subject to approval by the relevant board of visitors, an employee's personal interest in a contract between a public institution of higher education in Virginia or the Eastern Virginia Medical School and a business in which the employee has a personal interest, if (i) the personal interest has been disclosed to the institution or the Eastern Virginia Medical School prior to the time the contract is entered into; (ii) the employee files a disclosure statement pursuant to § 2.2-3117 and thereafter annually on or before January 15; (iii) the employee does not participate in the institution's or the Eastern Virginia Medical School's decision to contract; (iv) the president of the institution or the Eastern Virginia Medical School finds and certifies in writing that the contract is for goods and services needed for quality patient care, including related medical education or research, by the

institution's medical center or the Eastern Virginia Medical School, its affiliated teaching hospitals and other organizations necessary for the fulfillment of its mission, including the acquisition of drugs, therapies and medical technologies; and (v) no later than December 31 of each year, the institution or the Eastern Virginia Medical School files an annual report with the Secretary of the Commonwealth disclosing each open contract entered subject to this provision, the names of the parties to each contract, the date each contract was executed and its term, the subject of each contractual arrangement, the nature of the conflict of interest, the institution's or the Eastern Virginia Medical School's employee responsible for administering each contract, the details of the institution's or the Eastern Virginia Medical School's commitment or investment of resources or finances for each contract, and any other information requested by the Secretary of the Commonwealth.

D. Notwithstanding the provisions of subdivisions C 8 and C 9, if the research and development or commercialization of intellectual property or the employee's personal interest in a contract with a business is subject to policies and regulations governing conflicts of interest promulgated by any agency of the United States government, including the adoption of policies requiring the disclosure and management of such conflicts of interests, the policies established by the Eastern Virginia Medical School pursuant to such federal requirements shall constitute compliance with subdivisions C 8 and C 9, upon notification by the Eastern Virginia Medical School to the Secretary of the Commonwealth by January 31 of each year of evidence of their compliance with such federal policies and regulations.

E. The board of visitors may delegate the authority granted under subdivision C 8 to the president of the institution. If the board elects to delegate such authority, the board shall include this delegation of authority in the formal policy required by clause (iii) of subdivision C 8. In those instances where the board has delegated such authority, on or before December 1 of each year, the president of the relevant institution shall file a report with the relevant board of visitors disclosing each open contract entered into subject to this provision, the names of the parties to each contract, the date each contract was executed and its term, the subject of each contractual arrangement, the nature of the conflict of interest, the institution's or the Eastern Virginia Medical School's employee responsible for administering each contract, the details of the institution's or the Eastern Virginia Medical School's commitment or investment of resources or finances for each contract, the details of how revenues are to be dispersed, and any other information requested by the board of visitors.

(1987, Sp. Sess., c. 1, § 2.1-639.6; 1989, c. 74; 1991, c. 470; 1993, c. 876; 1995, c. 403; 1998, c. 838; 2001, c. 844; 2002, cc. 87, 478; 2003, c. 646; 2006, c. 839.)

§ 2.2-3107. Prohibited contracts by members of county boards of supervisors, city councils and town councils.

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 (i) any contract with his governing body, or (ii) any contract with any governmental agency that is a component part of his local government and which is subject to the ultimate control of the governing body of which he is a member, or (iii) any contract other than a contract of employment with any other governmental agency if such person's governing body appoints a majority of the members of the governing body of the second governmental agency.

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

1. A member's personal interest in a contract of employment provided (i) the officer or employee was employed by the governmental agency prior to July 1, 1983, in accordance with the provisions of the former Conflict of Interests Act, Chapter 22 (§ 2.1-347 et seq.) of Title 2.1 as it existed on June 30, 1983, or (ii) the employment first began prior to the member becoming a member of the governing body;

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 governing body as a result of competitive sealed bidding where the governing body 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 governing body. However, the member shall have no involvement in the preparation of the specifications for such contract, and the remaining members of the governing body, by written resolution, shall state that it is in the public interest for the member to bid on such contract.

(1987, Sp. Sess., c. 1, § 2.1-639.7; 2001, c. 844.)

§ 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.

(1996, c. 548, § 2.1-639.7:1; 2001, c. 844.)

§ 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 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 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 defined in § 2.2-4301 or is awarded as a result of a procedure embodying competitive principles as authorized by subdivisions A 10 or A 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.

(1987, Sp. Sess., c. 1, § 2.1-639.8; 1996, c. 548; 2001, c. 844; 2004, c. 530; 2009, c. 862.)

§ 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.

(1987, Sp. Sess., c. 1, § 2.1-639.9; 1990, c. 51; 1993, c. 303; 1994, cc. 450, 713; 1997, c. 641; 2001, c. 844; 2006, c. 839; 2010, cc. 301, 304.)

#### § 2.2-3111. Application.

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

(1987, Sp. Sess., c. 1, § 2.1-639.10; 2001, c. 844.)

#### § 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 § 2.2-3114 E or 2.2-3115 E 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 § 2.2-3114 F or 2.2-3115 G;

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 § 2.2-3114 G or 2.2-3115 H; 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.

(1987, Sp. Sess., c. 1, § 2.1-639.11; 2001, c. 844; 2003, c. 694; 2007, c. 613.)

#### § 2.2-3113. Application.

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

(1987, Sp. Sess., c. 1, § 2.1-639.12; 2001, c. 844.)

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

A. The Governor, Lieutenant Governor, Attorney General, Justices of the Supreme Court, judges of the Court of Appeals, judges of any circuit court, judges and substitute judges of any district court, members of the State Corporation Commission, members of the Virginia Workers' Compensation Commission, members of the Commonwealth Transportation Board, members of the Board of Trustees of the Virginia Retirement System, and members of the State Lottery Board and other persons occupying such offices or positions of trust or employment in state government, including members of the governing bodies of authorities, as may be designated by the Governor or, in the case of officers or employees of the legislative branch, by the Joint Rules Committee of the General Assembly, shall file, as a condition to assuming office or employment, a disclosure statement of their personal interests and such other information as is specified on the form set forth in § 2.2-3117 and thereafter shall file such a statement annually on or before January 15. When the filing deadline falls on a Saturday, Sunday, or legal holiday, the disclosure statement shall be filed on the next day that is not a Saturday, Sunday, or legal holiday.

B. Nonsalaried citizen members of all policy and supervisory boards, commissions and councils in the executive branch of state government, other than the Commonwealth Transportation Board, members of the Board of Trustees of the Virginia Retirement System, and the State Lottery Board, 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 January 15. When the filing deadline falls on a Saturday, Sunday, or legal holiday, the disclosure statement shall be filed on the next day that is not a Saturday, Sunday, or legal holiday. Nonsalaried citizen members of other boards, commissions and councils, including advisory boards and authorities, may be required to file a disclosure form if so designated by the Governor, in which case the form shall be that set forth in § 2.2-3118.

C. The disclosure forms required by subsections A and B shall be provided by the Secretary of the Commonwealth to each officer and employee so designated, including officers appointed by legislative authorities, not later than November 30 of each year. Disclosure forms shall be filed and maintained as public records for five years in the Office of the Secretary of the Commonwealth.

D. Candidates for the offices of Governor, Lieutenant Governor or Attorney General shall file a disclosure statement of their personal interests as required by § 24.2-502.

E. Any officer or employee of state 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 also 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 agency or advisory agency or, if the agency has a clerk, in the clerk's office.

F. An officer or employee of state 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.

G. An officer or employee of state 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.

(1987, Sp. Sess., c. 1, § 2.1-639.13; 1988, cc. 767, 849; 1992, c. 710; 1993, c. 303; 1997, c. 641; 2001, cc. 217, 844; 2003, c. 694; 2005, c. 169; 2006, c. 779.)

#### § 2.2-3114.1. Filings of statements of economic interests by General Assembly members.

The filing of a current statement of economic interests by a General Assembly member, member-elect, or candidate for the General Assembly pursuant to §§ 30-110 and 30-111 of the General Assembly Conflict of Interests Act (§ 30-100 et seq.) shall suffice for the purposes of this chapter (§ 2.2-3100 et seq.). The Secretary of the Commonwealth may obtain from the Clerk of the House of Delegates or the Senate, as appropriate, a copy of the statement of a General Assembly member who is appointed to a position for which a statement is required pursuant to § 2.2-3114. No General Assembly member, member-elect, or candidate shall be required to file a separate statement of economic interests for the purposes of § 2.2-3114.

(2002, c. 36.)

#### § 2.2-3115. 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 annually on or before January 15.

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 January 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.

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 annually on or before January 15.

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 annually on or before January 15.

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 January 15.

C. The disclosure forms required by subsections A and B shall be provided by the Secretary of the Commonwealth to the clerks of the governing bodies and school boards not later than November 30 of each year, and the clerks of the governing body and school board shall distribute the forms to designated individuals no later than December 10 of each year. 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.

D. 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.

E. 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.

F. 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 January 15. Such disclosures shall be filed and maintained as public records for five years. Forms for the filing of such reports shall be prepared and distributed by the Secretary of the Commonwealth to the clerk of each governing body.

G. 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 of 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.

H. 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.

(1987, Sp. Sess., c. 1, § 2.1-639.14; 1988, c. 849; 1995, c. 495; 1996, c. 526; 2000, c. 317; 2001, cc. 217, 844; 2003, c. 694.)

§ 2.2-3116. 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 deemed to be local officers and shall be required to file the Statement of Economic Interests set forth in § 2.2-3117. These officers shall file statements pursuant to § 2.2-3115 and candidates shall file statements as required by § 24.2-502.

(1988, c. 469, § 2.1-639.14:1; 2001, c. 844.)

# Code of Virginia

## Virginia Governmental Frauds Act

### § 18.2-498.1. Short title.

This article shall be known and cited as the Virginia Governmental Frauds Act.

(1980, c. 472.)

### § 18.2-498.2. Definitions.

When used in this article, the term:

1. "Person" includes any natural person, any trust or association of persons, formal or otherwise, or any corporation, partnership, company or other legal or commercial entity.
2. "Commercial dealing" shall mean any offer, acceptance, agreement, or solicitation to sell or offer to sell or distribute goods, services or construction, to the Commonwealth of Virginia, or any local government within the Commonwealth or any department or agency thereof.

(1980, c. 472.)

### § 18.2-498.3. Misrepresentations prohibited.

Any person, in any commercial dealing in any matter within the jurisdiction of any department or agency of the Commonwealth of Virginia, or any local government within the Commonwealth or any department or agency thereof, who knowingly falsifies, conceals, misleads, or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be guilty of a Class 6 felony.

(1980, c. 472.)

### § 18.2-498.4. Duty to provide certified statement.

A. The Commonwealth, or any department or agency thereof, and any local government or any department or agency thereof, may require that any person seeking, offering or agreeing to transact business or commerce with it, or seeking, offering or agreeing to receive any portion of the public funds or moneys, submit a certification that the offer or agreement or any claim resulting therefrom is not the result of, or affected by, any act of collusion with another person engaged in the same line of business or commerce; or any act of fraud punishable under this article.

B. Any person required to submit a certified statement as provided in subsection A above who knowingly makes a false statement shall be guilty of a Class 6 felony.

(1980, c. 472.)

### § 18.2-498.5. Actions on behalf of Commonwealth or localities.



The Attorney General on behalf of the Commonwealth, or the attorney for the Commonwealth, on behalf of the county or city as the case may be may institute actions and proceedings for any and all violations occurring within their jurisdictions.

(1980, c. 472.)



# County of Fairfax, Virginia

## MEMORANDUM

Office of the County Attorney  
Suite 549, 12000 Government Center Parkway  
Fairfax, Virginia 22035-0064  
Phone: (703) 324-2421; Fax: (703) 324-2665  
www.fairfaxcounty.gov

**DATE:** April 29, 2009

**TO:** Nancy Vehrs  
Clerk to the Board of Supervisors

**FROM:** David P. Bobzien, County Attorney  
Office of the County Attorney

**SUBJECT:** Preparation of Written Minutes for Boards, Authorities, and Commissions

**REF.:** Matter ID 104276

Past policy of the Board of Supervisors calls for County boards, authorities, and commissions to keep minutes of their meetings and to send those minutes to your office. Please note that the 2009 General Assembly passed legislation to amend the Virginia Freedom of Information Act to specify that the minutes of public bodies shall be in writing, but the new legislation provides that this change is declaratory of existing law. The Governor has approved this legislation, and it will become effective on and after July 1, 2009. Please advise the County staff coordinators of the County's boards, authorities, and commissions of this new legislation.

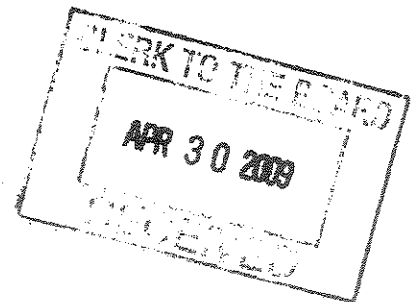
Also, please note that such minutes need to meet the requirements in Va. Code § 2.2-3707 as set forth in the attachment. More specifically, these minutes shall include (1) the date, time, and location of the meeting; (2) the members of the public body recorded as present and absent; and (3) a summary of the discussion on matters proposed, deliberated or decided, and a record of any votes taken.

If you have any questions, please feel free to contact me or Senior Assistant County Attorney Michael Long.

Attachment: 2009 Virginia Acts of Assembly, Chapter 628

cc: Anthony H. Griffin, County Executive  
Catherine A. Chianese, Assistant County Executive

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# VIRGINIA ACTS OF ASSEMBLY -- 2009 SESSION

## CHAPTER 628

*An Act to amend and reenact § 2.2-3707 of the Code of Virginia, relating to the Freedom of Information Act; meeting minutes.*

[S 1319]

Approved March 27, 2009

Be it enacted by the General Assembly of Virginia:

**1. That § 2.2-3707 of the Code of Virginia is amended and reenacted as follows:**

§ 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 §§ 2.2-3707.01 and 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, ~~2.2-3709~~ 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. Nothing in this chapter shall be construed to prohibit 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. 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.

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, but are not limited to, (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 identity 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. That the provisions of this act are declaratory of existing law.**



# County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

Office of the County Attorney  
Suite 549, 12000 Government Center Parkway  
Fairfax, Virginia 22035-0064  
Phone: (703) 324-2421; Fax: (703) 324-2665  
[www.fairfaxcounty.gov](http://www.fairfaxcounty.gov)

July 30, 2008

Re: The Virginia Freedom of Information Act and the Virginia Public Records Act

Dear Member of a Board, Authority, or Commission:

The Fairfax County Board of Supervisors recently appointed or reappointed you as a member of a board, authority, or commission. Virginia law generally requires that all such persons be provided with copies of the Virginia Freedom of Information Act ("FOIA") and the Virginia Public Records Act ("Public Records Act"). Enclosed are updated copies of both Acts. Please retain these copies for your use, but please note that the Virginia General Assembly frequently amends sections of these Acts, so you should be alert to future changes. These changes typically become effective on July 1 of each year. You may contact this Office if you have any questions concerning possible amendments to these Acts.

In regard to the FOIA, please note that boards, authorities, and commissions appointed by the Board of Supervisors are considered public bodies for the purposes of the FOIA. Please note that with some exceptions, the FOIA generally requires: (1) that all meetings of public bodies shall be conducted in public; (2) that every public body shall give notice of its meetings; (3) that every public body shall have minutes recorded of its open meetings; and (4) that public records shall be available for inspection and copying.

Except for those limited emergency situations described in Virginia Code § 2.2-3708.1, Board-appointed public bodies may not conduct their meetings electronically, and for that reason, no member may participate in a public meeting unless that person is physically present. Also, please note that an illegal electronic meeting would include a conference telephone call or simultaneous exchanges of e-mail between three or more members of a public body or between a quorum, if less than three members of the constituent body. Also, Board-appointed public bodies may not vote by secret ballot. Finally, Virginia Code § 2.2-3702 provides that all persons who are appointed to a public body are required to read and become familiar with the provisions of the FOIA.

You may find updated copies of the FOIA and related information on the Internet site of the Virginia Freedom of Information Advisory Council at <http://dls.state.va.us/foiacouncil.htm>. Also, the Virginia Freedom of Information Advisory Council has authority to issue advisory opinions concerning the FOIA, and Maria J. K. Everett, the Executive Director of the Freedom

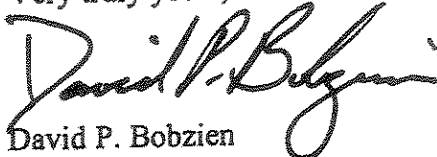
of Information Advisory Council, frequently issues such opinions on the FOIA. I think that you will find two recent opinions on electronic meetings and the use of e-mail to be of particular interest, so I am enclosing copies of those two opinions.

In regard to the Public Records Act, please note that Virginia Code § 42.1-76.1 provides that persons who are appointed to serve on the governing body of any agency of a political subdivision that is subject to the Public Records Act also are required to read and become familiar with the Public Records Act. The definition of the term "agency" is broad enough to include boards and commissions of political subdivisions.

Please note that persons appointed to serve on some other Board-appointed boards, authorities, and commissions are required to file annual financial statements, and for that reason, such persons are given copies of the Virginia State and Local Conflict of Interests Act ("Conflict Act"). Because you are not required to make an annual disclosure of such interests for this appointment, I am not providing you with a copy of the Conflict Act, but please know that there are state laws pertaining to such conflicts.<sup>1</sup> If you would like to have a copy of the Conflict Act, please contact the Clerk to the Board, and if you have any questions concerning any possible conflict, please feel free to contact this Office.

If you have any questions, please feel free to contact me, Deputy County Attorney Peter D. Andreoli, Jr., or Senior Assistant County Attorney Michael Long at (703) 324-2421.

Very truly yours,



David P. Bobzien  
County Attorney

Enclosures: FOIA (as effective July 1, 2008)  
Letter to Robin Lind from Maria J. K. Everett dated August 31, 2004  
Letter to Vonna L. Privett from Maria J. K. Everett dated November 12, 2002  
Public Records Act (as effective July 1, 2008)

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<sup>1</sup> Members of some Board-appointed boards, authorities, and commissions are required to file annual financial statements. If you have been appointed to serve on another Board-appointed board, authority, or commission that requires such annual financial statements, then by virtue of that other appointment, you are required to file an annual statement of financial interests.



VIRGINIA FREEDOM OF INFORMATION ADVISORY COUNCIL  
COMMONWEALTH OF VIRGINIA

AO-19-04

August 31, 2004

Mr. Robin Lind  
Goochland, Virginia

*The staff of the Freedom of Information Advisory Council is authorized to issue advisory opinions. The ensuing staff advisory opinion is based solely upon the information presented in your e-mail of May 17, 2004, and telephone conversation of May 20, 2004.*

Dear Mr. Lind:

You have asked a question concerning the application of the Virginia Freedom of Information Act (FOIA) to e-mails between members of an electoral board.

Pursuant to § 24.2-106 of the Code of Virginia, every locality in the Commonwealth has a three-member electoral board to administer and oversee the locality's elections. The electoral board is a public body, and § 24.2-107 explicitly states that meetings of local electoral boards are subject to the provisions of FOIA. FOIA defines a meeting at § 2.2-3701 as *work sessions, when sitting physically, or through telephonic video equipment pursuant to § 2.2-3708, 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*. Because the electoral board is comprised of only three members, a gathering of two members of the board constitutes a quorum, and thus a discussion of public business between two members of an electoral board would be a meeting under FOIA.

In light of this definition of a meeting, you ask if the exchange of e-mails between two members of the electoral board would constitute a meeting under FOIA. You indicate that last year, when you served as chairman of the Goochland Electoral Board, you directed that all e-mails between members of the board be copied to the local registrar for her to keep on file and open to public inspection. However, you now ask if in addition to being a public record, the use of the e-mail constitutes a meeting that should be noticed under FOIA.

The Supreme Court of Virginia recently had the opportunity to address the use of e-mail under FOIA and to determine whether use of e-mail between members of a public body might be subject to the meeting provisions of FOIA.<sup>1</sup> The Court held that use of e-mail did not constitute a meeting, because the definition of a "meeting" under FOIA entails a degree of simultaneity. The Court found that e-mail was more akin to traditional forms of written correspondence, such as a letter or a facsimile, and that there may be a significant delay between the time an e-mail communication is sent and received and when a response is sent. It is important to note that the Court stopped short of saying that use of e-mail could never be a meeting under FOIA. The dispositive determination in examining e-mail under the meeting provisions of FOIA is to examine how the e-mail was used. Members of public bodies need not refrain from using e-mail in a manner that is the equivalent of sending a letter; however, members of public bodies should be cautioned against using e-mail in a manner that appears to entail simultaneity.

In conclusion, members of a local electoral board are not violating FOIA by using e-mail to communicate with one another. As you noted in your question, however, e-mails relating to the transaction of public business are public records subject to access under FOIA. Therefore, while not mandated by FOIA, it is a good idea to continue to implement a system such as the one you have described where all e-mails are copied to the registrar and kept on file for public inspection. Furthermore, from a public relations standpoint, it is important to remember that the policy of FOIA at subsection B of § 2.2-3700 is to *afford every opportunity to citizens to witness the operations of government*. Members of public bodies are advised to keep this policy in mind when deciding to use e-mail to communicate with one another concerning substantive matters.

Thank you for contacting this office. I hope that I have been of assistance.

Sincerely,

Maria J.K. Everett  
Executive Director

<sup>1</sup>See *Beck v. Shelton*, No. 030723 (March 5, 2004).

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**Chapter 37 of Title 2.2**  
**The Virginia Freedom of Information Act**  
(Effective July 1, 2008)

2.2-3700.	Short title; policy.
2.2-3701.	Definitions.
2.2-3702.	Notice of 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.
2.2-3704.	Public records to be open to inspection; procedure for requesting records and responding to request; charges.
2.2-3704.1.	Posting of notice of rights and responsibilities by state public bodies; assistance by the Freedom of Information Advisory Council.
2.2-3705.	[Repealed].
2.2-3705.1.	Exclusions to application of chapter; exclusion of general application to public bodies.
2.2-3705.2.	Exclusions to application of chapter; records relating to public safety.
2.2-3705.3.	Exclusions to application of chapter; records relating to administrative investigations.
2.2-3705.4.	Exclusions to application of chapter; educational records and certain records of educational institutions.
2.2-3705.5.	Exclusions to application of chapter; health and social services records.
2.2-3705.6.	Exclusions to application of chapter; proprietary records and trade secrets.
2.2-3705.7.	Exclusions to application of chapter; records of specific public bodies and certain other limited exemptions.
2.2-3705.8.	Limitation on record exclusions.
2.2-3706.	Disclosure of criminal records; limitations.
2.2-3707.	Meetings to be public; notice of meetings; recordings; minutes.
2.2-3707.01.	Meetings of the General Assembly.
2.2-3707.1.	Posting of minutes for state boards and commissions.
2.2-3708.	Electronic communication meetings; applicability; physical quorum required; notice; report.
2.2-3708.1	Participation in meetings in event of emergency; certain disabilities; distance from meeting location for certain public bodies.
2.2-3709.	[Expired.]
2.2-3710.	Transaction of public business other than by votes at meetings prohibited.
2.2-3711.	Closed meetings authorized for certain limited purposes.
2.2-2712.	Closed meetings procedures; certification of proceedings.
2.2-3713.	Proceedings for enforcement of chapter.
2.2-3714.	Violations and penalties.

**§ 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 or 2.2-3708.1, 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. The gathering of employees of a public body shall not 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 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, photostating, 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.

"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 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 § 2.2-3704 and (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.

**§ 2.2-3704. Public records to be open to inspection; procedure for requesting records and responding to request; charges.**

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 subsections G and J, 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 topographical 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. Every public body of state government shall compile, and annually update, an index of computer databases that contains at a minimum those databases created by them on or after July 1, 1997. "Computer database" means a structured collection of data or records residing in a computer. Such index shall be a public record and shall include, at a minimum, the following information with respect to each database listed therein: a list of data fields, a description of the format or record layout, the date last updated, a list of any data fields to which public access is restricted, a description of each format in which the database can be copied or reproduced using the public body's computer facilities, and a schedule of fees for the production of copies in each available form. The form, context, language, and guidelines for the indices and the databases to be indexed shall be developed by the Virginia Information Technologies Agency in consultation with the Librarian of Virginia and the State Archivist. The public body shall not be required to disclose its software security, including passwords.

**§ 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 the Internet:

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 subdivision "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; and

3. Any policy the public body has concerning the type of public records it routinely withholds from release as permitted by this chapter.

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.**

Repealed by Acts 2004, c. 690.

#### **§ 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.

**§ 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, 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; and (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. The same categories of records of any governmental or nongovernmental person or entity submitted to a public body for the purpose of antiterrorism response planning 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 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, the Virginia National Defense Industrial Authority, 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, the Authority, or such organizations to prevent the closure or realignment of federal military installations located in Virginia, to limit the adverse economic effect of such realignment or closure, or to seek additional tenant activity growth from the Department of Defense or (ii) disclose trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), provided to the Council, the Authority, or such 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 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 for which records are sought.

**§ 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. Confidential records of all investigations of applications for licenses and permits, and of all licensees and permittees, made by or submitted to the Alcoholic Beverage Control Board, the State Lottery Department, 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 or to such personnel of any local public body, including local school boards as are responsible for conducting such investigations in confidence. 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 § 2.2-2638, 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 State Lottery Department 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 the (i) Auditor of Public Accounts; (ii) Joint Legislative Audit and Review Commission; (iii) Department of the State Internal Auditor with respect to an investigation initiated through the State Employee Fraud, Waste and Abuse Hotline; (iv) committee or the auditor with respect to an investigation or audit conducted pursuant to § 15.2-825; or (v) 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. Records of the Virginia Office for Protection and Advocacy consisting of documentary evidence received or maintained by the Office or its agents in connection with specific complaints or investigations, and records of communications between employees and agents of the Office and its clients or prospective clients concerning specific complaints, investigations or cases. Upon the conclusion of an investigation of a complaint, this exclusion shall no longer apply, but the Office may not at any time release the identity of any complainant or person with mental illness, mental retardation, developmental disabilities or other disability, unless (i) such complainant or person or his legal representative consents in writing to such identification or (ii) such identification is required by court order.

9. Information furnished in confidence to the Department of Employment Dispute Resolution with respect to an investigation, consultation, or mediation under Chapter 10 (§ 2.2-1000 et seq.) of this title, 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.

10. The names, addresses and telephone numbers of complainants furnished in confidence with respect to an investigation of individual zoning enforcement complaints made to a local governing body.

11. 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.

12. 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.

13. 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.

14. Records, notes and information provided in confidence and related to an investigation by the Attorney General under Article 5 (§ 3.1-336.1 et seq.) or Article 6 (§ 3.1-336.3 et seq.) of Chapter 18 of Title 3.1, 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 (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 (§ 23-38.75 et 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.

**§ 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 patient abuse as may be compiled by the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services shall be open to inspection and copying as provided in § 2.2-3704. No such summaries or data shall include any patient-identifying information.

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 §§ 2.2-706 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; and 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. 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.

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 Intervention 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 Chapter 3.1 (§ 51.5-12.1 et seq.) of Title 51.5, to the extent such records contain (i) medical or mental 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.

**§ 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 the Department of Business Assistance, the Virginia Economic Development Partnership, the Virginia Tourism Authority, the Tobacco Indemnification and Community Revitalization Commission, a nonprofit, nonstock corporation created pursuant to § 2.2-2240.1, or local or regional industrial or economic development authorities or organizations, used by the Department, the Partnership, the Authority, or such entities for business, trade and tourism development; and memoranda, working papers or other records related to businesses that are considering locating or expanding in Virginia, prepared by such entities, where competition or bargaining is

involved and where, if such records are made public, the financial interest of the governmental unit 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 § 2.2-4342 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 § 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 (§ 56-556 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, § 56-573.1:1 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 § 56-573.1:1 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 §§ 3.1-622 and 3.1-624.

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 application, or accompanying a grant application, to the Innovative Technology 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 (i) invoke the protections of this subdivision, (ii) identify with specificity the records or portions thereof for which protection is sought, and (iii) 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 Minority Business Enterprise as part of an application for (i) certification as a small, women- or minority-owned business in accordance with Chapter 14 (§ 2.2-1400 et seq.) of this title or (ii) a claim made by a disadvantaged business or an economically disadvantaged individual against the Capital Access Fund for Disadvantaged Businesses created pursuant to § 2.2-2311. In order for such trade secrets or financial records to be excluded from the provisions of this chapter, the business shall (a) invoke such exclusion upon submission of the data or other materials for which protection from disclosure is sought, (b) identify the data or other materials for which protection is sought, and (c) 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 § 32.1-276.5:1.

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 Inspector General of the Virginia Department of Transportation for the purpose of an audit, special investigation, or any study requested by the Inspector General's Office 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 Department:

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

**§ 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 or the Division of Legislative Services; 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:

"Office of the Governor" means the Governor; his chief of staff, counsel, director of policy, Cabinet Secretaries, and the Director of the Virginia Liaison Office; 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 § 15.2-2304 or 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 State Lottery Department 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, 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 provided to the retirement system 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 or the Rector and Visitors of the University of Virginia. 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.

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 State Lottery Department 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, where the parent or legal guardian of such person has requested in writing that such information not be disclosed. 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, 20 U.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.

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 or of a local retirement system acting pursuant to § 51.1-803 (hereinafter collectively referred to as the retirement system) relating to:

a. Internal deliberations of or decisions by the retirement system 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; 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, to the extent disclosure of such records would have an adverse impact on the financial interest of the retirement system.

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:

- (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 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.

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

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

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

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. As used in this section:

"Criminal incident information" means a general description of the criminal activity reported, the date and general location the alleged crime was committed, the identity of the investigating officer, and a general description of any injuries suffered or property damaged or stolen.

B. Law-enforcement agencies shall make available upon request criminal incident information relating to felony offenses. However, where the release of criminal incident information 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 this subsection shall be construed to prohibit the release of those portions of such information that are not likely to cause the above-referenced damage.

C. Information in the custody of law-enforcement agencies relative to the identity of any individual, other than a juvenile, who is arrested and charged, and the status of the charge or arrest shall be released.

D. The identity of any victim, witness or undercover officer, or investigative techniques or procedures need not but may be disclosed unless disclosure is prohibited or restricted under § 19.2-11.2.

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

F. 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. Complaints, memoranda, correspondence, case files or reports, witness statements, and evidence relating to a criminal investigation or prosecution, other than criminal incident information as defined in subsection A;
  2. Adult arrestee photographs 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;
  3. Reports submitted in confidence to (i) state and local law-enforcement agencies, (ii) investigators authorized pursuant to § 53.1-16 or § 66-3.1, and (iii) campus police departments of public institutions of higher education established pursuant to Chapter 17 (§ 23-232 et seq.) of Title 23;
  4. Portions of records of local government crime commissions that would identify individuals providing information about crimes or criminal activities under a promise of anonymity;
  5. 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;
  6. All records of persons imprisoned in penal institutions in the Commonwealth provided such records relate to the imprisonment;
  7. 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;
  8. 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; and
  9. 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.
- G. Records kept by law-enforcement agencies as required by § 15.2-1722 shall be subject to the provisions of this chapter except:
1. Those portions of noncriminal incident or other investigative reports or materials containing identifying information of a personal, medical or financial nature provided to a law-enforcement agency where the release of such information would jeopardize the safety or privacy of any person;



2. Those portions of any records containing information related to plans for or resources dedicated to undercover operations; or

3. Records of background investigations of applicants for law-enforcement agency employment or other confidential administrative investigations conducted pursuant to law.

H. 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 are excluded from the provisions of this chapter, 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.

I. 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 §§ 2.2-3707.01 and 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, 2.2-3709 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. Nothing in this chapter shall be construed to prohibit 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. 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.

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 include, but are not limited to, (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 identity 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; 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 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. State public bodies, however, may meet by electronic communication means without a quorum of the public body physically assembled at one location when (a) the Governor has declared a state of emergency in accordance with § 44-146.17, (b) the meeting is necessary to take action to address the emergency, and (c) the public body otherwise complies with the provisions of this section.

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

G. Any local governing body, school board, or any authority, board, bureau, commission, district, or agency of local government 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 local 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 local 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 and the fact that the meeting was held by electronic communication means shall be stated in the minutes.

**§ 2.2-3708.1. Participation in meetings in event of emergency; 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 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 and identifies with specificity the nature of the emergency, and the public body holding the meeting (a) approves such member's participation by a majority vote of the members present and (b) records in its minutes the specific nature of the emergency and the remote location from which the member participated.

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 (a) approves such member's participation by a majority vote of the members present and (b) records in its minutes the remote location from which the member participated.

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

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

2. 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.

**§ 2.2-3709.**

Expired.

**§ 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, 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 provisions 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 records excluded from this chapter pursuant to subdivision 1 of § 2.2-3705.5.
16. Deliberations of the State 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 State Lottery Department 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 and briefings by staff members, legal counsel, or law-enforcement or emergency service officials concerning actions taken to respond to such activity or a related threat to public safety; 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, 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 provided to the retirement system 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 or the Rector and Visitors of the University of Virginia. 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, and 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, and those portions of meetings in which individual death cases are discussed by family violence fatality review teams established pursuant to § 32.1-283.3.

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.

24. Those portions of the meetings of the Intervention 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 local jurisdiction, as those terms are defined in § 56-557, 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 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 Innovative Technology Authority or a grant allocation committee appointed to advise the Innovative Technology Authority on the grant applications.

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 F 1 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, or the Investment Advisory Committee appointed pursuant to § 51.1-124.26, or by any local retirement system, acting pursuant to § 51.1-803 of records excluded from this chapter pursuant to subdivision 25 of § 2.2-3705.7.

40. Discussion or consideration by the Department of Business Assistance, the Virginia Economic Development Partnership, the Virginia Tourism Authority, the Tobacco Indemnification and Community Revitalization Commission, a nonprofit, nonstock corporation created pursuant to § 2.2-2240.1, or local or regional industrial or economic development authorities or organizations 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 13 of § 2.2-3705.3.

42. Those portions of meetings of the Virginia Military Advisory Council, the Virginia National Defense Industrial Authority, 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.

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 Intervention Program Committee within 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 fifteen 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. 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.

H. 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. 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. The petition for mandamus or injunction shall be heard within seven days of the date when the same is made. However, any petition made outside of the regular terms of the circuit court of a county that is included in a judicial circuit with another county or counties, the hearing on the petition 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 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 members of public bodies 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 member in his individual capacity, whether a writ of mandamus or injunctive relief is awarded or not, a civil penalty of not less than \$250 nor more than \$1,000, which amount shall be paid into the State Literary Fund. For a second or subsequent violation, such civil penalty shall be not less than \$1,000 nor more than \$2,500.

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Chapter 7 of Title 42.1  
**The Virginia Public Records Act**  
(Effective July 1, 2008)

<b>42.1-76</b>	<b>Legislative intent; title of chapter.</b>
<b>42.1-76.1</b>	<b>Notice of Chapter.</b>
<b>42.1-77</b>	<b>Definitions.</b>
<b>42.1-78</b>	<b>Confidentiality safeguarded.</b>
<b>42.1-79</b>	<b>Records management function vested in The Library of Virginia.</b>
<b>42.1-82</b>	<b>Duties and powers of Library Board.</b>
<b>42.1-85</b>	<b>Records Management Program; agencies to cooperate; agencies to designate records officer.</b>
<b>42.1-86</b>	<b>Essential public records; security recovery copies; disaster plans.</b>
<b>42.1-86.1</b>	<b>Disposition of public records.</b>
<b>42.1-87</b>	<b>Archival public records.</b>
<b>42.1-88</b>	<b>Custodians to deliver all records at expiration of term; penalty for noncompliance.</b>
<b>42.1-89</b>	<b>Petition and court order for return of public records not in authorized possession.</b>
<b>42.1-90</b>	<b>Seizure of public records not in authorized possession.</b>
<b>42.1-90.1</b>	<b>Auditing.</b>

§ 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. (1976, c. 746.)

§ 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. (2006, c. 60.)

§ 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. (1976, c. 746; 1977, c. 501; 1981, c. 637; 1987, c. 217; 1990, c. 778; 1994, cc. 390, 955; 1998, cc. 427, 470; 2005, c. 787; 2006, c. 60.)

**§ 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. (1976, c. 746; 1979, c. 110; 1990, c. 778; 1994, c. 64; 2006, c. 60.)

**§ 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. (1976, c. 746; 1986, c. 565; 1990, c. 778; 1994, c. 64; 1998, c. 427; 2005, c. 787; 2006, c. 60.)

**§ 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. (1976, c. 746; 1977, c. 501; 1981, c. 637; 1990, c. 778; 1994, cc. 64, 955; 2003, cc. 914, 918; 2005, c. 787; 2006, c. 60.)

**§ 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. (1976, c. 746; 1990, c. 778; 1994, c. 64; 1998, c. 427; 2006, c. 60.)

**§ 42.1-86. Essential public records; security recovery copies; disaster plans.**

— A. 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. (1976, c. 746; 1980, c. 365; 1990, c. 778; 1994, c. 64; 1998, c. 427; 2005, c. 787; 2006, c. 60.)

**§ 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. (1990, c. 778; 1998, c. 427; 2005, c. 787; 2006, cc. 60, 909.)

**§ 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. (1976, c. 746; 1994, cc. 64, 955; 2005, c. 787; 2006, c. 60.)

**§ 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. (1976, c. 746; 1994, c. 64; 1998, c. 427.)

**§ 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. (1975, c. 180; 1976, c. 746; 1998, c. 427.)

**§ 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. (1975, c. 180; 1976, c. 746.)



**§ 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. (2006, c. 60.)

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# E-MAIL: USE, ACCESS & RETENTION

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The use of e-mail in the business place has become routine and is a preferred mode of communication. For state and local government officials and employees, the application of the Virginia Freedom of Information Act (FOIA) relating to access to records and the Virginia Public Records Act (the PRA) relating to the retention of records comes into play.

Government officials and employees frequently ask two key questions about the use of e-mail -- "**Can the public and media access my e-mail under FOIA?**" and "**Do I have to save my e-mail?**"

This document will attempt to answer these questions and provide guidance about the use and management of e-mail by state and local government.

## **The nature of e-mail**

E-mail generally refers to any communication that requires an electronic device for storage and/or transmission.<sup>1</sup> E-mail is a medium for correspondence -- essentially, e-mail is the "envelope" for the communication. For purposes of FOIA & the PRA, e-mail provides a medium for communication, much like a telephone or the U.S. Mail provides a means of communication. The fact that a communication is sent via e-mail is not alone conclusive of whether that e-mail must be accessible to the public under FOIA or retained pursuant to the PRA; one must look at the text and substance of the communication to determine whether it is indeed a public record.

## **The Virginia Freedom of Information Act**

FOIA addresses access to public records. Section 2.2-3701 of the Code of Virginia defines public records for purposes of FOIA to include "*all writings and recordings that consist of letters, words or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photography, magnetic impulse, optical or magneto-optical form, mechanical or electronic recording or other form of data compilation, however stored, 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.*"

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<sup>1</sup> Library of Virginia, Electronic Records Guidelines (effective June 10, 2002).



Clearly an e-mail would fall under this broad definition of a public record, because it applies to all writings and recordings...set down by...mechanical or electronic recording...however stored, regardless of physical form or characteristics. As noted above, e-mail is just the medium, or the envelope, used to convey the communication. Just as a letter sent via U.S. Mail from one public official to another concerning public business would be a public record under FOIA, so would that same communication sent via e-mail.

FOIA requires that unless subject to a statutory exemption, all public records must be open to inspection and copying. Therefore, an e-mail relating to public business would be accessible just like any other public record, and may be withheld from public disclosure only if a particular exemption applies to the content of the e-mail.

### **The Virginia Public Records Act**

While FOIA governs access to records held by state and local government, the PRA governs how long a government entity must retain certain records. The PRA defines "public record" for purposes of records retention, and like FOIA, the definition is fairly broad and would include e-mail as a public record. Section 42.1-77 defines a public record to include recorded information that documents a transaction or activity by or with any public officer, agency or employee of the state government or its political subdivisions. 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 PRA sets forth different retention schedules for different types of records. Several factors shape how long a record needs to be held. Many records are only kept for so long as business requires them to be kept, although if a record has historical significance or is created by an agency head or director, it may need to be kept longer. For example, certain records are required to be maintained permanently, such as records from standing committees of the General Assembly, annual reports of state agencies, and correspondence of agency directors. Other records need only be kept so long as they are administratively necessary, such as reminders of events like blood drives or fund raisers, courtesy copies of correspondence, or messages received from a listserv. Along the continuum, other records may be required to be retained for 30 days to ten years, depending on their content. After the retention time has expired for a particular document, then that record may be destroyed pursuant to the guidelines set forth by the Library of Virginia.<sup>2</sup>

In providing guidance for adhering to the PRA, the Library of Virginia notes that e-mail should be treated the same as paper correspondence. Again, e-mail is only the medium,

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<sup>2</sup> PRA is administered by the Library of Virginia. For more details on retention schedules for particular types of records or for a particular agency, or for information regarding the proper disposal of records, please contact the Library of Virginia. Records retention information and contact information is also available on the Library's website at <http://www.lva.lib.va.us/whatwedo/records/index.htm>.



or the envelope, by which the correspondence is sent; the retention schedule for a particular e-mail will depend on its content and should be preserved the same as its paper equivalent. Both incoming and outgoing e-mail should be retained, along with any attachments sent via e-mail.

### **Tips for using and managing e-mail**

All e-mails related to public business are subject to the provisions of FOIA and the PRA, and should be managed in the same manner as all other public records.

There is a tendency with e-mail to hit the delete button as soon as you are finished with a particular message. However, consideration must be given to whether that particular e-mail must be retained for purposes of the PRA -- you can't automatically delete your e-mail, just as you can't automatically throw away paper correspondence and records.

FOIA governs access to records. The PRA dictates how long you are required to keep certain records. If a government entity keeps an e-mail (or any other record) for longer than its retention schedule requires, that e-mail will still be subject to FOIA if requested. Conversely, if a government entity properly disposes of a record pursuant to a retention schedule, and a subsequent FOIA request is made for that record, FOIA does not require the government entity to recreate the record.

E-mail is often used as a substitute for a telephone call, and is quite informal. However, e-mail creates a record of that communication that must be retained pursuant to the PRA and will be available upon request to the public under FOIA. Consider the consequence of choice to use e-mail instead of the telephone -- it may not be in your best interest to be as informal on e-mail as you are on the telephone.

The Library of Virginia discourages the practice of maintaining permanent records solely in electronic format, without a paper or microfilm backup.<sup>3</sup> For records that do not need to be maintained permanently, these e-mails can be printed out and stored in a traditional, paper file (and the electronic copy can be deleted) or electronic folders can be created on the computer to organize e-mails based on functions, subjects or activities. The Library of Virginia suggests that these folders are assigned to your home directory on the computer, and not on the network. By way of example, at the FOIA Council we print a copy of all of the FOIA questions that we receive via e-mail, along with our corresponding response, and file the paper copy in a chronological file. After we have printed a copy to retain for our records, we delete the e-mail off of the computer.

Public officials and employees should not commingle personal and official e-mails. Private e-mails do not need to be retained; e-mails relating to the transaction of public business do. From an e-mail management perspective, it is probably not a good idea to mix personal and official business in the same e-mail. Official e-mails that need to be retained should be maintained with other public records that relate to the same content.

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<sup>3</sup> Library of Virginia, Electronic Records Guidelines (effective June 10, 2002).

