

**REPORT OF THE
JOINT SUBCOMMITTEE
STUDYING**

**The Freedom of
Information Act and
Public Access to
Government Records
and Meetings**

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



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MEMBERS OF THE JOINT SUBCOMMITTEE

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Delegate Jay E. DeBoer
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STAFF

Legal and Research

Division of Legislative Services
Angela P. Bowser, Staff Attorney
Jane C. Lewis, Executive Secretary

Administrative and Clerical

Office of the Clerk, House of Delegates
Barbara H. Hanback

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Report of the Joint Subcommittee Studying the
Freedom of Information Act and
Public Access to Government Records and Meetings
Richmond, Virginia
April, 1989

TO: The Honorable Gerald L. Baliles, Governor of Virginia,
and
The General Assembly of Virginia

INTRODUCTION

House Joint Resolution No. 100, agreed to during the 1988 Session of the General Assembly, established a joint subcommittee to study the Virginia Freedom of Information Act and provisions of the Code of Virginia affecting public access to government records and meetings.

House Joint Resolution No. 100

Establishing a joint subcommittee to study provisions of the Code of Virginia relating to public access to governmental records and meetings, including the Freedom of Information Act.

Agreed to by the House of Delegates, February 16, 1988
Agreed to by the Senate, March 9, 1988

WHEREAS, the General Assembly enacted Virginia's Freedom of Information Act twenty years ago in recognition of the right of the people of the Commonwealth to have free access to the affairs of their government in the time-honored tradition of Thomas Jefferson, James Madison and other foresighted Virginians; and

WHEREAS, section 2.1-340.1 of the Freedom of Information Act states that: "It is the purpose of the General Assembly by providing this chapter to ensure to the people of this Commonwealth ready access to records in the custody of public officials and free entry to meetings of public bodies wherein the business of the people is being conducted. This chapter recognizes that the affairs of government are not intended to be conducted in an atmosphere of secrecy since at all times the public is to be the beneficiary of any action taken at any level of government. To the end that the purposes of this chapter may be realized, it 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 exception or exemption from applicability shall be narrowly construed in order that no thing which should be public may be hidden from any person"; and

WHEREAS, other provisions of the Code of Virginia provide exceptions and exemptions to public access to government records and meetings in addition to those contained in the Freedom of Information Act; and

WHEREAS, the Freedom of Information Act has been continually amended to add numerous exceptions and exemptions since it was first enacted in 1968; and

WHEREAS, the Code of Virginia has been further amended to add exceptions and exemptions to public access to government records and meetings; and

WHEREAS, as new technology is developed, methods of governmental operation and record keeping change to make government more efficient with the effect, on occasion, of limiting public access to governmental records and meetings to which the public should have access; and

WHEREAS, some provisions in the Code of Virginia appear to be inconsistent with both the letter and spirit of the Freedom of Information Act and the Commonwealth's commitment to open government; and

WHEREAS, there has been no comprehensive study of the Freedom of Information Act and related provisions and restrictions in the Code of Virginia regarding public access to government records and meetings in the twenty years since enactment of the Freedom of Information Act in 1968; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That a joint subcommittee is hereby established to study the Freedom of Information Act and provisions of the Code of Virginia affecting public access to government records and meetings in order to determine whether any revisions to the Code of Virginia or Freedom of Information Act are desirable.

The joint subcommittee shall be composed of ten members: five members from the House Committee on General Laws and one member of the general public to be appointed by the Speaker of the House of Delegates; and three members from the Senate Committee on General Laws and one member of the general public to be appointed by the Senate Committee on Privileges and Elections.

The joint subcommittee shall complete its work in time to submit its recommendations to the 1989 General Assembly.

The indirect costs of this study are estimated to be \$10,650; the direct costs of this study shall not exceed \$6,480.

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The resolution provided that the Subcommittee would be composed of five members of the General Laws Committee of the House of Delegates, three members of the General Laws Committee of the Senate and two citizen members. Legislative members appointed to serve on the Subcommittee were: Delegate Ralph L. Axselle, Jr., the sponsor of the resolution, Senator W. Onico Barker, Delegate Jay E. DeBoer, Senator R. Edward Houck, Delegate Alan E. Mayer, Delegate Frank Medico, Senator Emilie Miller and Delegate Clifton A. Woodrum. Mr. John B. Edwards and Mr. Edward W. Jones were appointed as citizen members of the Subcommittee.

Delegate Axselle was elected to serve as Chairman of the Subcommittee and Senator Houck, as Vice Chairman, at the Subcommittee's first meeting on June 14, 1988.

EXECUTIVE SUMMARY

The Subcommittee established by House Joint Resolution No. 100 (1988) made considerable progress in a full examination of the Virginia Freedom of Information Act. Issues pertaining to the effectiveness, deficiencies and the enforcement of the Act were explored.

Assertions were made to the Subcommittee that the policy of the Act as stated in § 2.1-340.1 of the Code of Virginia has effectively been reversed by public officials in that exemptions to the Act are construed too broadly and public access construed too narrowly. During some of the deliberations of the Subcommittee, specific concerns of the Virginia Press Association were addressed by state and local government officials. This exchange of perceptions and ideas proved to be a valuable resource to the Subcommittee in formulating some of its recommendations.

The Subcommittee sponsored a legislative package which included one bill and two resolutions. The bill, House Bill No. 1229, contained amendments to nine of the twelve sections which currently comprise the Virginia Freedom of Information Act. The specific amendments are discussed in the "Recommendations" portion of this report and in Appendix II.

House Joint Resolution No. 246 continued the study for one more year. Consideration of some concerns or proposals, such as the sufficiency of information released by law enforcement officials pertaining to investigations, justification of compelling rationales for all exemptions to the Freedom of Information Act and the possible consolidation of all exemptions and exclusions to public access of governmental meetings and records, was deferred.

House Joint Resolution No. 247 requested the Office of the Attorney General to conduct a series of educational seminars on the Virginia Freedom of Information Act and to consider the publication of a manual explaining the Act. The manual would contain responses to frequent inquiries regarding the Act, interpretations of various provisions of the law pertaining to public access, and case citations. The manual would be updated periodically as determined necessary by the Office of the Attorney General.

FINDINGS AND ACTIVITIES

The Subcommittee conducted six meetings during 1988 and one meeting in 1989 pursuant to House Joint Resolution No. 100. The meeting dates were June 14, 1988; August 3, 1988; September 14, 1988; October 13, 1988; November 17, 1988; December 9, 1988; and January 11, 1989. The meetings were well attended by members of the press, broadcasters, state government officials and employees, local government officials and employees and citizens. Many of the meetings included both morning and afternoon sessions.

The Subcommittee determined that there have been three previous studies conducted by legislative subcommittees pertaining to the issues of public information and the Virginia Freedom of Information Act.

I. BACKGROUND.

Study #1.

The Report of the House and Senate General Laws Committee on the Laws of the Commonwealth Dealing With Public Information, House Document No. 14 (1979), focused on the statutory conflicts between the Freedom of Information Act and the Privacy Protection Act. The joint subcommittee concluded that few actual conflicts existed. However, apparent conflicts were identified and were found to be the result of honest uncertainty, unfamiliarity or misapplication of the Act by public officials. Problems encountered in the utilization and application of the Freedom of Information Act and the Privacy Protection Act resulted from an inconsistent application of the Acts from agency to agency and locality to locality. The majority of the joint subcommittee recommended that the two legal conflicts between the Freedom of Information Act and the Privacy Protection Act be resolved by allowing individual access to (i) letters of recommendation and reference and (ii) medical and psychological records, with the proviso retained that allows doctors to make a notation that such records may be damaging to the patient and should therefore be kept confidential. The joint subcommittee also recommended the adoption of a resolution requesting the Department of Management Analysis and Systems Development, with the assistance of the Office of the Attorney General, to publish a manual setting forth guidelines for the conjunctive use of the Freedom of Information Act and the Privacy Protection Act. A minority report was filed pertaining to the access of an individual to letters of recommendation and reference.

Study #2.

A second study subcommittee, in its Report of the House Subcommittee Studying the Virginia Freedom of Information Act and Telecommunications, House Document No. 19 (1983), concluded that testimony presented to the subcommittee indicated little or no use of teleconferencing by local governments or Virginia public bodies at the time (1983). The subcommittee recognized that there was a growing use of teleconferencing for administrative purposes, such as training sessions for employees, staff briefings and interviews; however, since administrative teleconferences are not public meetings where public business is conducted, they are not subject to the Freedom of Information Act.

A 1983 review of the Freedom of Information and Open Meeting Acts of other states indicated that very few states referred to teleconference or electronic meetings in their statutes. Most states were silent on the issue, as was Virginia. Those states which did address teleconference or electronic meetings provided for one of the following: (i) allowed any meeting to be held through teleconferencing or electronic methods by specification in the definition of "meeting" (Montana, North Carolina, Oregon, Utah); (ii) allowed only emergency meetings to be held through teleconferencing or electronic methods (Nebraska); (iii) allowed emergency and "closed" session meetings to be held through teleconferencing or electronic methods (Iowa); or (iv) prohibited the use of teleconferencing or electronic methods for meetings (Oklahoma, Tennessee).

The report stated that the subcommittee would not submit any recommendations for amendments to the Freedom of Information Act pertaining to telecommunications because of a case that was pending before the Supreme Court of Virginia, Roanoke City School Board v. Times-World Corporation and John J. Chamberlain. The case was scheduled to be heard in the 1983 fall term and directly involved a conference call and its relation to the Act.

The subcommittee concluded, however, that any meeting held through teleconferencing by a public body in which the business of the citizens of the Commonwealth is discussed or conducted was subject to the Virginia Freedom of Information Act and should be conducted in a manner which would not violate that Act or any other provision of law. In recognizing the need for state agencies to utilize teleconferencing as an efficient and economical tool, the subcommittee supported the use of teleconferencing by state agencies for administrative purposes.

Study #3.

The third report involving the Freedom of Information Act is House Document No. 33 from the 1984 Session. The 1983 subcommittee was reconstituted due to the concern of the members on the interpretation of the decision in Roanoke City School Board v. Times-World Corporation and John J. Chamberlain, 307 SE 2d 256 (Virginia, 1983) -- that public bodies could conduct public meeting through teleconferencing without being in violation of

the Freedom of Information Act. The decision in that case was split four to three, with the majority holding that the School Board did not violate the Freedom of Information Act. The Court held that the teleconference held by the School Board did not constitute a "meeting" under the Freedom of Information Act since the members were not physically assembled. The Court reasoned that since there was no common-law right of the public or press to attend meetings of governmental bodies, there can be no legal or constitutional objection to a governmental body transacting business through a teleconference call in the absence of statutory prohibition. The Court concluded:

"that in its enactment of the Freedom of Information Act, it was not the intent of the General Assembly of Virginia that a telephone conference call between members of a public body be construed as a "meeting" of the members. If the legislature decides that such calls should be within the ambit of the Act, it will be a simple matter for the statute to be amended." Roanoke City School Board v. Times-World Corporation and John J. Chamberlain.

In a strong dissent three Justices indicated that the majority decision was "wholly inconsistent with public policy declared by the General Assembly." The Virginia Freedom of Information Act provides in the policy section, § 2.1-340.1 of the Code of Virginia, that the Act ensures that citizens of the Commonwealth enjoy access to records in the custody of public officials and entry to meetings of public bodies wherein the business of the people is conducted. The section further provides that the provisions of the Act "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 exception or exemption from applicability shall be narrowly construed in order that no thing which should be public may be hidden from any person." The dissent reasons that teleconferences by public bodies without prior notice are inconsistent with the stated purpose of the Freedom of Information Act.

In response to the majority opinion reasoning that the legislature intended to exempt teleconference meetings from the Act because there was not a reference to telephone conference calls in the Act, the dissent cited the subcommittee's 1983 report. In House Document No. 19 (1983), the subcommittee reported that "the Act should not be weakened by exempting conference calls from the provisions of the Act."

The subcommittee held public hearings and heard testimony from concerned citizens and special interest groups and organizations. The majority of those expressing their views did not want public bodies to conduct public meetings through teleconferencing. Although some speakers advocated the use of teleconferencing for emergency meetings, or executive or closed meetings, this approach was rejected. The subcommittee felt that the possibility of abuse would be too great.

The subcommittee agreed to sponsor legislation which would prohibit the conduction of any public meeting through telephonic, video, electronic or other communication

means for the discussion or transaction of public business. The use of teleconferencing by public bodies, agencies and institutions for administrative purposes was not affected by the legislation. The subcommittee supported the use of teleconferencing by public bodies, agencies and institutions for administrative purposes such as staff briefings and interviews. Administrative meetings are not public meetings and therefore are not subject to the Virginia Freedom of Information Act.

II. LEGISLATIVE HISTORY OF THE VIRGINIA FREEDOM OF INFORMATION ACT AND THE OPEN MEETING PRINCIPLE.

The Subcommittee considered the legislative history of the Virginia Freedom of Information Act and the open meeting principle.

Background of the Virginia Freedom of Information Act and the Open Meeting Principle.

The Virginia Freedom of Information Act (VFOIA) provides for accessibility to public records and governmental and agency meetings by the public. The Act makes disclosure the general rule and permits only the information specifically exempted to be withheld. The policy of the Act provides that disclosure requirements be construed broadly and the exemptions construed narrowly.

Governmental agencies are not required to meet in open sessions by common law, the United States Constitution or the Virginia Constitution; therefore, the establishment of the open meeting principle in the Freedom of Information Act was purely a creature of legislation.

The common law rule is best illustrated by the practice of the English Parliament. The Parliament denied nonmembers access to its proceedings for many decades. When the primary motive for the policy -- fear of Crown reprisal -- subsided in the late seventeenth century, Parliament continued to hold its sessions in secret because members preferred to conceal the debate and vote on crucial matters from their constituents. Not until the nineteenth century, but solely by custom, were the press and public granted entry to parliamentary debates.¹

Legislative secrecy was extended to the American Colonies by the English. The press was excluded from the meetings of colonial legislatures and prohibited from publishing accounts of proceedings they were permitted to attend. The sessions of the Constitutional Convention were conducted behind closed doors by resolution of the delegates. The United States Senate followed the tradition of secrecy, holding debate in private until 1794. Today, Congress regularly meets in sessions open to the public, but major decisions are sometimes reached in committees closed to the public.²

¹Note, The Minnesota Open Meeting Law After Twenty Years - A Second Look, 5 William Mitchell Law Review 378-9 (1979).

²Ibid., at pages 389-80.

The responsibility for providing greater access to government meetings passed to the state legislatures.³ In 1950 the state of Alabama had an open meeting statute. By 1962, the number of states having open meeting laws had expanded to twenty-eight.⁴ Virginia enacted the Virginia Freedom of Information Act in 1968 and included an open meeting provision in the original Act. In 1976 New York became the fiftieth state to enact an open meeting law.

Legislative History of the Virginia Freedom of Information Act.

As originally enacted in 1968, the Virginia Freedom of Information Act (VFOIA) encompassed both the "public record" and "open meeting" principles. The Act provided that official records would be open to inspection and copying by any citizen of Virginia, but cited five exclusions to the accessibility of public records:

(1) Memoranda, correspondence, evidence and complaints to criminal investigations, and reports submitted to the State Police in confidence.

(2) Applications for licenses to the Alcoholic Beverage Control Board and records of their investigations.

(3) State income tax returns, medical and mental records, scholastic records, welfare records, adoption records, illegitimate birth records and personnel records.

(4) Memoranda, working papers and correspondence held by the Governor or the mayor or other chief executive officers of any political subdivision of the State.

(5) Memoranda, working papers and records compiled specifically for use in litigation, and material furnished in confidence to said offices.

The Act also provided for public meetings and required that information as to the time and place of each meeting be furnished to any citizen of Virginia requesting such information. Seven stated purposes for the holding of an executive or closed meeting were included:

(1) Discussion or consideration of employment, assignment, appointment, promotion, demotion, salaries, disciplining or resignation of public officers, or appointees or employees of any public body.

(2) Discussion or consideration of the condition, acquisition or use of real property for public purpose, or of the disposition of publicly held property.

(3) The protection of the privacy of individuals in personal matters not related to public business.

³Ibid., at page 380.

⁴Matthew H. McCormick, News Media Access to Executive Session Under Oregon's Open Meeting Law, 58 Oregon Law Review 521 (1980).

(4) Discussion concerning a prospective business or industry where no previous announcement has been made of the business' or industry's interest in locating in the community.

(5) The investing of public funds where competition or bargaining is involved which would adversely affect the financial interest of the governmental unit if initially made public.

(6) Consultation with legal counsel pertaining to pending litigation or legal matters within the jurisdiction of the public body.

(7) Discussion of any matter which will be the topic of a public hearing prior to a final decision, provided that notice of every such public hearing is published generally in the community not less than ten days prior to such public hearing.

An affirmative vote by the public body holding the meeting must be recorded before the meeting becomes an executive or closed meeting. No resolution, rule, contract, regulation or motion adopted, passed or agreed to in an executive or closed meeting would become effective unless the public body reconvened in open meeting and a vote was taken on such resolution, ordinance, rule, contract, regulation or motion.

"Public body" was defined as the body or entity of any authority, board, bureau, commission or agency of the State or any political subdivision of the State, including cities, towns and counties, municipal councils, school boards and planning commissions and other organizations, corporations or agencies in the State supported wholly or principally by public funds. A chance meeting of two or more members of a public body was not to be construed as a "meeting" under the Act.

The provisions of the Virginia Freedom of Information Act (VFOIA) were not applicable to deliberations of standing and other committees of the General Assembly, although the Act did require that final votes on bills or other legislative measures be taken in open meeting. In addition the VFOIA did not apply to:

- legislative interim study commissions and committees
- meetings and committees of the State Board of Education
- boards of visitors or trustees of state-supported institutions of higher education
- parole boards
- petit juries and grand juries
- commissions or committees appointed by the governing bodies of counties, cities and towns.

The Act provided for its enforcement by allowing a petition for mandamus or injunction, supported by an affidavit showing good cause by the person denied the Act's rights and privileges. The petition would have to be addressed to the court of record having jurisdiction of such matters of the county or city in which such rights and privileges were denied. The petition regarding the denial of rights by a board, bureau, commission or an agency of the state government or by a committee of the General Assembly must be addressed to the Circuit Court for the City of Richmond. The petition must be heard within seven days of the date it is made.

1970

The VFOIA was amended slightly in 1970 by Senate Bill 474, which further defined and clarified the definitions of "meeting or meetings" and "official records." The bill also provided that conferences between two or more public bodies would be subject to the same regulations for holding executive or closed sessions as are applicable to any other public body.

1971

In 1971, the VFOIA was amended to provide that Article IV, Section 7 of the Constitution of Virginia, instead of Section 47 of the Constitution of Virginia, would pertain to the rules of the body of the General Assembly considering bills.

1973

Several amendments were made to the VFOIA during the 1973 Session with the passage of House Bill 1156. As originally enacted, the VFOIA provided that representatives of newspapers published in Virginia and representatives of radio and television stations located in Virginia could not be denied access to official records. This bill stipulated that representatives of magazines, in addition to representatives of newspapers, with circulation in the State could not be denied access to official records. Representatives of radio and television stations broadcasting in or into the State also could not be denied access.

Two amendments were made to the section pertaining to public records which were excluded from the Act. The second exclusion, regarding the Alcoholic Beverage Control Board, was rewritten to exempt confidential records of all investigations of applications for licenses and all licensees made by or submitted to the Alcoholic Beverage Control Board from the Act. The third exclusion, pertaining to state income tax returns, medical and mental records, scholastic records, personnel records, etc., was amended to delete welfare records, adoption records and illegitimate birth records from the exclusion and specifically maintained that access to said records (tax returns, medical and mental records, scholastic records, personnel records) would not be denied to the person who is the subject of the records.

This bill also required that minutes be recorded at all public meetings. Section 2.1-344, regarding executive or closed meetings, was amended by deleting the seventh purpose given for a closed meeting, so that discussion of any matter which would be the topic of a public hearing would not be a valid reason for holding a closed meeting. The bill also provided that the affirmative vote recorded to enable the convening of a closed meeting be accompanied by a motion which specifically stated the purpose and subject for the meeting.

Section 2.1-345 was amended to delete the meetings of committees of the Board of Education from the enumerated agencies to which the VFOIA would be inapplicable, and language was added which provided for the availability of announcements of the actions and the official minutes of the boards of institutions of higher education. The Virginia State Crime Commission was added to § 2.1-345 as an agency to which the VFOIA would not apply.

1974

In 1974 the VFOIA was amended by House Bill 3, which provided that custodians of official records take necessary precautions to ensure preservation and safekeeping of the records. Exclusion 4 of § 2.1-342 was amended to include memoranda, working papers and correspondence held by members of the General Assembly or by the Office of the Governor, Lieutenant Governor, Attorney General or the mayor or other chief executive officer of any political subdivision of the State or the president or other chief executive officer of any state supported institution of higher education. The bill further specified that the affirmative vote needed for an executive or closed meeting must be made in open meeting.

Section 2.1-345, regarding agencies not covered by the VFOIA, was rewritten as a list of previously exempted agencies.

1975

Two bills, Senate Bill 896 and House Bill 1482, amended the Act in 1975. A definition for "scholastic records" was added to § 2.1-341. Section 2.1-342(b), pertaining to records excluded from coverage under the Act, was amended by adding exemption 6, confidential letters and statements of recommendation placed in the records of educational agencies or institutions. Exemption 3, pertaining to medical and mental records, was amended to provide that the subject person's physician could personally review the record. Exemption 1, regarding criminal investigations, was amended to include all records of persons imprisoned in penal institutions in this State provided that the records relate to the imprisonment.

1976

During the 1976 Session three bills which amended the VFOIA, House Bill 135, House Bill 1032 and House Bill 1172, were passed. A new section which stated the Commonwealth's policy for enacting the Act, § 2.1-340.1, was added. Section 2.1-341.1 was also added and required that public officials covered by the Act be furnished a copy of the VFOIA within two weeks of their election, reelection, appointment or reappointment. Section 2.1-343 was amended to allow notification of meetings to be provided on a continual basis during the year, if the request for such notification was accompanied by a complete address and an adequate supply of stamped, self-addressed envelopes.

Section 2.1-342, pertaining to official records open for inspection, was amended to create a fourteen-calendar-day deadline for public bodies to make an initial response to a request for records. Subsection (b) of that section was amended to permit the subject person, in addition to the physician, to review medical and mental records. However, the records could not be reviewed if the subject person's treating physician had made a part of the person's record a written statement that a review of such records would be injurious to the physical or mental health of the subject person.

An amendment to § 2.1-344 regarding executive or closed meeting stipulated that a statement for the specific purpose of the executive or closed meeting must be included in the minutes of the meeting. In addition, the public body had to restrict the consideration of matters during closed portions of the meeting only to those purposes specifically exempted from the VFOIA.

Section 2.1-346, relating to enforcement proceedings of the Act, was amended to require that the petition alleging the denial of rights state the circumstances of the denial with reasonable specificity. Costs and reasonable attorney's fees could be allowed in certain instances. A new section, § 2.1-346.1, was added and provided for a civil penalty of not less than \$25 nor more than \$500 for public officials against whom proceedings had been commenced when the court found that the violation was willfully or knowingly made.

1977

There was only one bill during the 1977 Session pertaining to the VFOIA. House Bill 2164 expanded the definition of "meeting" in § 2.1-341 to include legislative bodies. The bill further provided that the notice provisions of the Act would not apply to informal meetings or gatherings of the General Assembly. Section 2.1-343 was amended to provide certain instances wherein minutes of public meetings would not have to be taken. Finally, the bill deleted several agencies from the list of agencies to which the VFOIA was inapplicable. Boards of visitors or trustees of state-supported institutions of higher education, parole boards, petit juries, grand juries and the Virginia State Crime Commission were left as the agencies exempt from the Act by § 2.1-345.

1978

Senate Bill 67, Senate Bill 126 and House Bill 277 amended the VFOIA during the 1978 Session. The definition of "official records" was modified to include materials prepared, owned or in the possession of a public body in the transaction of public business. Section 2.1-346 was amended to expand the enforcement privileges for violation of the Act to the Commonwealth's attorney acting in an official or individual capacity. An amendment further provided that the venue for filing a petition regarding a violation of the Act would be the court of record of the county or city from which the public body has been elected or appointed to serve and in which the rights were denied. Finally, the Act was amended to provide that neither the VFOIA nor the Privacy Protection Act of 1976 would deny public access to records pertaining to position, job classification, official salary, or records or reimbursements paid to any public officer, official or employee at any level of state, local or regional government.

1979

During the 1979 Session, six bills pertaining to the VFOIA were passed: Senate Bill 685, Senate Bill 924, House Bill 555, House Bill 1427, House Bill 1467 and House Bill 1661. "Meeting" was amended to provide that an informal assemblage of as many as three members of a public body, or a quorum, if there are less than three members of the public body, would constitute a meeting.

Section 2.1-342(b), pertaining to records excluded from the provisions of the Act, was amended to add the following exclusions:

(7) Library records which can be used to identify both the library patron and the material such patron borrowed.

(8) Any test or examination used, administered or prepared by any public body for the purposes of evaluating any student, employee or employment applicant, or applicants for licenses or certificates issued by any public body.

Exemption 1, pertaining to criminal records, was amended to provide that information relating to the identity of any individual (other than a juvenile), the arrest, charge and status of the charge of arrest would not be excluded from the VFOIA.

Section 2.1-344 was amended to add the following as purposes for an executive or closed meeting:

(1a) Discussion or consideration of any admission or disciplinary matters concerning any student of any state institution of higher education or any state school system. The student, legal counsel and parents (if the student is a minor) could be permitted in the closed meeting if a written request was submitted to the presiding officer of the appropriate board.

(7) In the case of boards of visitors of state 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.

(8) Discussion or consideration of honorary degrees.

Section 2.1-345 was further amended to limit the agencies exempt from the VFOIA to parole boards, petit juries, grand juries and the Virginia State Crime Commission.

1980

Senate Bill 143, Senate Bill 383, House Bill 958 and House Bill 1003, passed during the 1980 Session, made further changes to the VFOIA. Three more exclusions were added to § 2.1-342(b) which made the following exempt from the provisions of the Act:

(9) Applications for admission to examinations or for licensure and scoring records maintained by the Department of Health Regulatory Boards or any board in the Department. However, the subject of the applications could have access to the materials during normal working hours.

(10) Records of active investigations conducted by the Department of Health Regulatory Boards or any health regulatory board in the Commonwealth.

(11) Memoranda, working papers, and records recorded in or compiled exclusively for lawfully held executive or closed meetings.

Section 2.1-344, pertaining to executive or closed meetings, was amended to provide that the terms and conditions of gifts, bequests, grants and contracts made by a foreign government, a foreign legal entity or a foreign person and accepted by a state institution of higher education would be subject to public disclosure upon written request. Subsection (9c) of § 2.1-344 was changed to require that the substance of the action taken in closed or executive meeting be reasonably identified in open meeting before a vote on the action could be taken in a reconvened open meeting of the public body.

1981

During the 1981 Session five bills, Senate Bill 650, Senate Bill 793, Senate Bill 814, House Bill 899 and House Bill 1089, were passed pertaining to the Act. Three new exemptions were added to § 2.1-342(b):

(12) Reports, documentary evidence and other information as specified in §§ 2.1-373.2 and 63.1-55.4.

(13) Proprietary information gathered by or for the Virginia Port Authority.

(14) Contract cost estimates prepared for the confidential use of the Department of Highways and Transportation in awarding contracts for construction or the purchase of goods or services.

In § 2.1-344(a), discussion or consideration of matters relating to specific gifts, bequests and grants of the boards of trustees of the Virginia Museum of Fine Arts and the Science Museum of Virginia was added to the list of purposes for which an executive or closed meeting could be held. In addition, language was added which would allow a teacher to be present during an executive or closed meeting in which there was discussion or consideration of a disciplinary matter involving the teacher and students. A written request to be present at the meeting by the teacher would have to be submitted to the presiding officer of the appropriate board.

1982

Eight bills were passed during the 1982 Session which amended the VFOIA: Senate Bill 14, Senate Bill 46, Senate Bill 89, Senate Bill 162, House Bill 202, House Bill 382, House Bill 596 and House Bill 982.

Five of the bills amended § 2.1-342, pertaining to official records open for inspection and the exclusion of certain records from the provisions of the Act. Exclusion 1 under § 2.1-342(b) was amended to include reports submitted to campus police departments of public institutions of higher education. Exclusion 5 was amended to add memoranda, working papers and records compiled as a part of an active administrative investigation concerning a matter which is properly the subject of an executive or closed meeting. Three new exclusions were added:

(4a) Written opinions of the city and county attorneys of the cities, counties and towns in the Commonwealth and any other writing protected by the attorney-client privilege.

(15) Vendor proprietary information software which may be in the official records of a public body.

(16) Data, records or information of a proprietary nature produced or collected by or for faculty or staff of state institutions of higher learning in the conduct of or as a result of study or research on medical, scientific, technical or scholarly issues.

Section 2.1-344(a) was amended by adding a tenth purpose for which an executive or closed meeting could be held. Discussion, consideration or review by the appropriate House or Senate committee of possible disciplinary action against a member could be held in a closed meeting, although the member could request in writing that the committee meeting be open. Section 2.1-344(c) was amended to allow an industrial development authority to refuse to identify any business which it is considering and for which no previous announcement of the business' interest in locating in the community has been made, until 30 days prior to authorization of the sale or issuance of bonds.

The final amendment made to the VFOIA during the 1982 Session permitted school board and local governmental body study commissions or study committees to dispense with the taking of minutes at public meetings, unless the membership of the study commission or study committee includes a majority of members of the school board for the local governing body.

1983

House Bill 279, House Bill 729 and House Bill 734 amended the exemption provisions of the VFOIA in § 2.1-342. Exemption (3) in subsection (b) of § 2.1-342 was amended to exclude personal property tax returns from disclosure pursuant to the VFOIA. Subdivisions (17) and (18) of subsection (b) of § 2.1-342 were added to provide the following exemptions:

(17) Financial statements not publicly available filed with applications for industrial development financings.

(18) 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.

1984

Seven bills were enacted during the 1984 Session of the General Assembly amending the VFOIA. House Bill 24 amended §§ 2.1-341 and 2.1-346.1 of the Virginia Freedom of Information Act and added a section to the Act. It prohibited meetings conducted through telephonic, video, electronic or other communication means where members are not physically assembled to discuss or transact public business. An exception was provided for summary suspension of professional licenses as specifically provided in Title 54. This bill was sponsored by Delegate Axselle, who served as chairman of a special subcommittee studying telecommunications and the Freedom of Information Act.

House Bill 830 amended § 2.1-344, pertaining to executive or closed meetings. It provided that a meeting may be closed for discussion by the Governor and any economic advisory board reviewing forecasts of economic activity and estimating general and nongeneral fund revenues.

The remaining five bills amending the VFOIA in 1984 added additional exemptions from the Act or amended existing exemptions. House Bill 208, House Bill 524 and Senate Bill 170 amended subsection (b) of § 2.1-342 to add the following three exemptions:

(19) Confidential proprietary records, voluntarily provided by private business to the Division of Tourism of the Department of Conservation and Economic Development, used by that Division periodically to indicate to the public statistical information on tourism visitation to Virginia attractions and accommodations.

(20) Information which meets the criteria for being filed as confidential under the Toxic Substances Information Act (§ 32.1-239 et seq.) of Title 32.1, regardless of how or when it is used by authorized persons in regulatory processes.

(21) Documents as specified in § 10-186.9 B 1 [Virginia Hazardous Waste Facilities Siting Act].

House Bill 808 amended existing exemption (16) to exclude data, records or information of a proprietary nature produced or collected by or for faculty or staff of state institutions of higher learning, other than the institutions' financial or administrative records, in the conduct of or as a result of certain types of study or research. The amendment to exemption (16) struck the phrase ", other than financial or administrative," before "produced" and placed the phrase ", other than the institutions' financial or administrative records," after "learning."

House Bill 311 amended existing exemption (3) of § 2.1-342(b) pertaining to tax returns, scholastic records, personnel records and medical and mental records to provide that statistical summaries of incidents and statistical data concerning patient abuse as may be compiled by the Commissioner of the Department of Mental Health and Mental Retardation shall be open to inspection and releasable. Neither the summaries nor the data shall include any patient identifying information.

Senate Bill 170 also amended § 2.1-344 and added the discussion of matters exempted under § 10.1-186.9 B 1 as an item for an executive or closed meeting.

1985

Three new exemptions to the VFOIA in § 2.1-342(b) were enacted during the 1985 Session with the passage of House Bill 1375, House Bill 1493 and House Bill 1770. The added exemptions were:

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

(23) Computer software developed by or for a state agency, state-supported institution of higher education or political subdivision of the Commonwealth.

(24) 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 Personnel and Training. [The disclosure of information taken from inactive reports in a form which does not reveal the identity of charging parties, persons supplying the information or other individuals involved in the investigation is not prohibited.]

Senate Bill 608 amended existing exemption (21) in subsection (b) of § 2.1-342 by providing that documents specified in § 58.1-3 of the Code of Virginia would be exempted from the Act. (Section 58.1-3 pertains to the secrecy of certain information accessible to current or former commissioners of the revenue, treasurers or state or local tax or revenue officers or employees.) Senate Bill 623 amended subsection (b) of § 2.1-344 to provide that the notice provisions of the Act shall not apply to executive or 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 executive or closed meeting the public body would be required to announce in an open meeting that such executive or closed meeting will be held. The bill prohibited the public body from taking any action on matters discussed in such executive or closed meeting except at a public meeting for which notice was given.

1986

Five bills were enacted during the 1986 Session of the General Assembly amending the VFOIA. Senate Bill 19 amended subsection (c) of § 2.1-342 of the Act to clarify that the Freedom of Information Act did not prohibit the disclosure of contracts between a public official and a public body. However, contracts settling public employee employment disputes held confidential as personnel records pursuant to subdivision (b)(3) of § 2.1-342 would not be accessible to the public.

Senate Bill 112 and House Bill 581 were identical. They amended exemption (3) of subsection (b) of § 2.1-342 by providing that a noncustodial parent may assert the right of access of a minor child who is the subject of scholastic or medical or mental records, unless such parent's parental rights have been terminated or a court has restricted or denied access. The bills also clarified that when the subject of such records is an emancipated minor or student in a state-supported institution of higher education the right of access may be asserted by the emancipated minor.

House Bill 590 and House Bill 750 added three exemptions to the VFOIA:

(25) Fisheries data which would permit identification of any person or vessel, except when required by court order as specified in § 28.1-23.2.

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

(27) Documents 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 or of formulating advisory opinions to members on standards of conduct, or both.

1987

During the 1987 Session the VFOIA was amended by four bills. Senate Bill 511 amended subsection (a) of § 2.1-342 to authorize public bodies to 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 fifty acres.

House Bill 1045 added § 2.1-343.2 to the Act. The bill provided that no vote of the membership or any part of the public body shall be taken to authorize the transaction of any public business other than by vote taken at a meeting conducted in accordance with the provisions of the Freedom of Information Act.

Two exemptions from the VFOIA were added by the passage of House Bill 1164 and Senate Bill 581. Exemptions (28) and (29) follow:

(28) 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 utility service.

(29) 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. The distribution of information taken from inactive reports in a form which does not reveal the identity of the parties involved or other persons supplying information is not prohibited.

1988

There were six bills passed during the recent legislative session amending the Freedom of Information Act. House Bill 224, House Bill 342, House Bill 482, Senate Bill 356 and Senate Bill 374 all amended § 2.1-342. Senate Bill 239, the title revision bill for Title 10, amended §§ 2.1-342 and 2.1-344 of the VFOIA. The following exemptions were added by the 1988 legislation:

(30) 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 9 and 10 of Title 63.1. (Disclosure of information from records of completed investigations in a form that does not reveal the identity of the complainants, persons supplying information, or other individuals involved in the investigation is not prohibited.)

(31) Reports, manuals, specifications, documents, minutes or recordings of staff meetings or other information or materials of the Virginia Board of Corrections, the Virginia Department of Corrections or any institution thereof to the extent ... that disclosure or public dissemination of such materials would jeopardize the security of any correctional facility or institution

(32) The names, addresses and other client specific information for persons participating in or persons on the waiting list for federally funded rent-assistance programs, except that access to one's own information shall not be denied.

In addition, current exemptions were amended by the 1988 legislation. Exemption (1) of subsection (b) of § 2.1-342 was amended to exclude from disclosure reports submitted to investigators authorized pursuant to § 53.1-16 (police power of internal investigators appointed by the Director of the Department of Corrections). House Bill 482 amended exemption (14) of subsection (b) of § 2.1-342 to exempt from disclosure records, documents and automated systems prepared for the Department of Transportation's Bid Analysis and Monitoring Program. Senate Bill 374 amended exemption (3) of subsection (b) of § 2.1-342 to allow the administrator or chief medical officer of a state or local medical facility to obtain and review the medical records of a confined person if the administrator or chief medical officer has reasonable cause to believe that the person has an infectious disease or other medical condition from which other confined persons need to be protected.

Senate Bill 239 amended § 2.1-342 by striking a reference to § 10-294 in exemption (21) and adding a separate exemption to exclude the disclosure of documents 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 terms, conditions and provisions of the siting agreement. Section 2.1-344 was also amended to expand subdivision (11) in subsection (a) of that section to allow executive or closed meetings for discussion of strategy with respect to the negotiation of a siting agreement or to consider the terms, conditions, and provisions of a siting agreement if the governing body in open meeting finds that an open meeting will have a detrimental effect upon the negotiating position of the governing body or the establishment of terms, conditions and provisions of the siting agreement, or both.

In addition, several of these bills contained housekeeping measures which resulted in the renumbering of the exemptions in subsection (b) of § 2.1-342 and the subdivisions of subsection (a) of § 2.1-344 by deleting references to (4a) in § 2.1-342 and (1a) and (7a) in § 2.1-344. The designations of subsections were also capitalized.

III. OTHER FINDINGS AND ACTIVITIES.

When it was originally enacted in 1968, the Virginia Freedom of Information Act listed only five categories of materials which were exempt from the provisions of the Act. There were thirty-four categories of exempt records when the Subcommittee began its work on the study in June of 1988. The figure includes the amendments made to the Act during the 1988 Session which became effective on July 1 of 1988.

Likewise, in the original Act, there were seven purposes for which an executive or closed meeting could be held. As the work of the Subcommittee commenced, there were fourteen purposes for an executive or closed meeting pursuant to the Act.

Over the years amendments have reduced the number of public bodies exempted from the Act. Today, only parole boards, petit juries, grand juries and the Virginia State Crime Commission are exempted from the Act by a specific provision in the Act. However, during the study, the Subcommittee was made aware of references and exemptions to the Act or to public access of government meetings or records which are not referenced in the Virginia Freedom of Information Act. A computer search conducted on the Division of Legislative Automated Systems Oscar Program using twenty-six word phrases yielded more than 2,700 Code sections which were read to determine their relativity to the study. Approximately 360 Code sections were determined to have some relation to public access to government records and meetings. A majority of the statutes provide that certain records or reports of agencies are public documents and therefore accessible to the public for inspection or copying. A majority of these statutes were probably enacted prior to the passage of the Freedom of Information Act. Other statutes identified by the computer search require the holding of a public hearing after notice of the hearing has been publicized in a newspaper prior to the official action of the public body. However, there are some statutes which provide for the confidentiality of certain records and limit their access. Other statutes provide an exemption to the Virginia Freedom of Information Act, but are not cross-referenced in the Act.

It was determined that a manual search of the Code should be conducted to identify Code provisions which were not obtained through the computer search.

During the deliberations of the Subcommittee numerous complaints and concerns regarding the effectiveness of the Freedom of Information Act and examples of abuses of the Act were presented to the members of the Subcommittee. In a presentation on August 3, 1989, the Virginia Press Association submitted a list of fifty-two problems pertaining to the Freedom of Information Act that had been reported to the Association or experienced by members of the organization. The Association also presented seventeen proposals to make government user-friendly by strengthening, streamlining and improving the Freedom of Information Act and other public access statutes. Proposals, or problems for which the Virginia Press Association suggested solutions, are listed below by category:

Virginia Press Association's Proposals to Study Subcommittee

APPLICATION FOR INFORMATION; PROCESSING AND RESPONDING TO FOI REQUESTS.

1. Governmental bodies and agencies use intentionally tedious procedures to deter public access to government documents and records to which the public should have access.

VPA Proposed Solution: Amend the law to require disclosure of these documents and to shorten the time in which an agency must reply to an FOI request to 5 days. Make disclosure automatic if the agency does not reply in the prescribed period.

2. Inadequate filing systems deter public administration and efficient public access to government documents and readings.

VPA Proposed Solution: Require government agencies and public bodies to maintain systematic filing systems (whether paper or electronic information storage and retrieval systems) that clearly and carefully document categories of records maintained in the regular course of business by the public body.

3. Computerization of records should facilitate rather than deter public access. Computerization of records often deters public access to public information. Records are on different computer systems and it is impractical for an individual to learn each system to acquire information.

VPA Proposed Solution: There should be statewide standards for implementation of computerized record processing or a high technology information storage and retrieval system. Statewide requirements for computerization of record keeping systems should include a component in the hardware and the software design to facilitate public access to the information.

4. Local government officials won't release letters written to boards, to councils or to commissions.

VPA Proposed Solution: Require public release, not only of agendas and of minutes to meetings, but also of supplementary materials provided to board members and commission members that relate to subjects on the agenda of a given board meeting, including letters to the board.

5. Governmental agencies interpret "permission" to exempt records and meetings as mandatory.

VPA Proposed Solution: The statutes should make it clear that exempting records and meetings is allowed, but not required. Permission to close meetings or records should clearly not be construed as mandatory.

6. Current law allows 14 days and a virtually automatic 10-day extension to produce a document.

VPA Proposed Solution: Shorten response time to 5 business days, except under extraordinary, enumerated conditions.

7. Government agencies often deter public access to documents by charging exorbitant fees for searching and copying.

VPA Proposed Solution: Provide a waiver of all fees when release of the information is in the public interest. If the government entity decides that a waiver of fees is not in the public interest, that decision can be appealed to the Attorney General or to a special FOI Commission or Office.

8. School divisions refuse to release nonidentifiable data relating to discipline problems in schools.

VPA Proposed Solution: Require that exempt data be segregated from nonexempt data so that nonpersonally identifiable information can be released to the public.

9. Some agencies require the requesting person to personally inspect the records (the request may be called in from Roanoke, but the agency requires personal examination of the records in Richmond.) Agencies also require that the request be more specific and in writing.

VPA Proposed Solution: The FOI law and related public access statutes should be greatly strengthened to compel government agencies to make access to documents and records by the public as efficient and expeditious as possible.

10. State Corporation Commission records do not permit efficient public access to cross-checking and to cross-indexing of individual officer's and director's names in limited partnerships.

VPA Proposed Solution: Require that the State Corporation Commission's computer software be reprogrammed to permit automatic checking, cross-checking and cross-indexing for individual officer's and director's names in limited partnerships, not just company names.

11. State, local and federal election campaign finance reports are not computerized. In addition, the election law permits only a resident of a particular locality to have access to campaign finance reports in that locality. This makes it difficult for members of the general public to have access to this important information.

VPA Proposed Solution: Require computerization of state, local and federal election campaign finance reports to facilitate public access to this information.

INFORMATION WHICH SHOULD BE ACCESSIBLE TO THE PUBLIC AND SUGGESTED CODE AMENDMENTS FOR ACCESS TO GOVERNMENT INFORMATION AND MEETINGS.

1. Records of individually identifiable violations of the Motor Vehicles Code are not available for public access from the Central Criminal Information System. This information is available through court records in every city and every county court in Virginia.

VPA Proposed Solution: Amend the Motor Vehicle Code to remove DMV's discretionary power to close records at will so that these records, which are public in city and in county courthouses, will be easily accessible through DMV's computer system.

2. Investigation records of child day care, adult day care and nursing home facilities are not available for public inspection. At the present time the Department of Public Health and the Department of Social Services will only confirm that "a day care center in your area has been/is being investigated." Any further information is denied to the public.

VPA Proposed Solution: Lists of such facilities under investigation should always be available to the public. Once investigations are completed, the results of the investigations and the case files should be disclosed to the public.

3. Basic information regarding law enforcement investigation should be released to the public.

VPA Proposed Solution: Basic information regarding the crime and the investigation should be provided to the public, including time, date, location and nature of the crime reported; name, sex, age and address of the person arrested or the victim of a crime; time, date and location of the incident and arrest; the crime charged; documents given or required by law or agency rules to be given to the person arrested; and information and documents, particularly when the investigation involves serious violations of the law such as commissions of violent crimes or some other breach of the peace.

4. The public previously had access to presentencing reports following sentencing. Apparently a court ruling has sealed these reports.

VPA Proposed Solution: Presentencing reports should be made available to the public after sentencing.

5. Nonprofit, private hospitals which receive federal or state funds hold closed board meetings.

VPA Proposed Solution: Require that any hospital, or other private or semiprivate institution such as a hospital which receives state or federal funds, open all board meetings to the public except for those exemptions provided in the law for other public bodies and agencies.

6. Juveniles arrested and on trial for major crimes are not identified.

VPA Proposed Solution: Require the identification, regardless of age, of any individual charged with a major crime such as a homicide.

7. Resolution texts approved in executive session and repeated in open session are not released.

VPA Proposed Solution: Require that all motions and all resolutions voted upon be disclosed to the public and published in minutes.

8. Some court records are not covered by the FOI Act.

VPA Proposed Solution: Require public access to all civil and criminal court documents and records.

9. The Richmond Metropolitan Authority refused to release a consultant's preliminary report on the expansion and routing of the highway system through Richmond.

VPA Proposed Solution: Require that consultants' reports submitted to governing bodies become public information.

10. Legislative budget meetings have occasionally been closed to the public and to the press.

VPA Proposed Solution: Provide for changes in the House and Senate Rules to require that all committee meetings be open to the press and to the public, or include General Assembly committees under the provisions of the FOI law.

11. A county manager prevented public access to tape recordings of open meetings of the County Board of Supervisors. Even though recordings are described as public records under the Freedom of Information Act, the county manager used the "working papers" exemption to refuse public access to tape recordings of public board meetings. He stated that the tapes were "working papers" for his use in preparing minutes of the meetings.

VPA Proposed Solution: The law should be amended to specify that tape recordings of public meetings should be preserved for a period of time (perhaps 90 days) and made available for public access.

12. Pending warrants are sealed by certain district courts in the Commonwealth.

VPA Proposed Solution: Prohibit the sealing of pending warrants so the public can have access to other information besides the charge, the name and the address.

13. The Department of Social Services refused to release adult home records to a newspaper because those records are available only to those with a "bona fide interest" - adult home residents, staff members, potential residents or their designated representatives.

VPA Proposed Solution: Make adult home records, including inactive investigations, available to the public.

14. During a public hearing, a member of the planning staff summarized a letter and presented a copy of the letter to the board. The County Administrator instructed the staff that only he could authorize the release of the letter to the public.

VPA Proposed Solution: Require that any document presented to a government agency in a public meeting be automatically and immediately available to the public.

15. Current law regarding the filing of gubernatorial correspondence and papers, as interpreted by some persons, allows governors to withhold countless documents from the public by delaying their filing in the state library.

VPA Proposed Solution: Amend the law to permit incoming governors to keep outgoing governor's correspondence on "active matters" for a period not to exceed six months before requiring that the material be filed with the state library.

16. The Department of Motor Vehicles does not release information about titles and registration beyond the name of the buyer, the seller and the tag number.

VPA Proposed Solution: Amend the law regarding access to DMV titles and registration documents to permit access to mileage figures, purchase price data, and other similar material.

17. Local jurisdictions are not required to provide public access to personal property tax filings and payments.

VPA Proposed Solution: Require localities to produce records regarding personal property tax filings and payments.

18. A citizen researching the founder and president of a Richmond bank attempted to obtain access to the bank examiner's reports for the years 1910 and 1934. The SCC denied his request.

VPA Proposed Solution: Citizens should have access to a bank examiner's reports for financial institutions. Open bank records after a period of time, perhaps seven years.

MEETINGS AND NOTICES FOR MEETINGS.

1. Inadequate notice of special governmental meetings.

VPA Proposed Solution: There should be a minimum notification of at least 24 hours for emergency meetings with the requirement that the governmental body notify both the public and the press. In addition, require local and state agencies to publish notice of public meetings.

2. With only a two-day notice of the meeting, a housing authority met and approved a new loan. The city failed for six months to publish the default of a previous loan and provided only a short notice of the meeting to sign a new agreement liberalizing the terms of the financing.

VPA Proposed Solution: Require any governmental authority to notify the public of financial problems involving any private enterprise subsidized by taxpayer's money and require a seven to fourteen day public notice prior to any revision in financing terms for such projects.

3. Governing body members vote by secret ballot.

VPA Proposed Solution: Prohibit the casting of secret ballots in open sessions by governing body members.

4. The law does not specifically authorize audio or video tape recordings and photography of meetings.

VPA Proposed Solution: Amend the statute to clearly permit audio and video recordings of all public meetings as well as the use of any other information storage and retrieval system.

5. Many governmental bodies are comprised of a handful of members and the current definition of a public meeting (three members) permits those governing bodies with three, four or five members to permit subcommittees of two members to fall outside of the Freedom of Information Act, thereby denying public access to subcommittee deliberations.

VPA Proposed Solution: Redefine public meeting to have as few as two members rather than the current definition of three members.

6. State boards cannot meet through teleconferences.

VPA Proposed Solution: Teleconference meetings, as an experiment for two years, might be useful for state boards under certain limited, narrow and extraordinary circumstances with proper safeguards, such as notification of the public and the press, archiving of tapes of such meetings for at least a year and the technological ability for members of the public and the press to access such meetings.

7. Some public bodies play "musical chairs" to avoid the discussion of certain issues in open meetings.

VPA Proposed Solution: Require that any governing body comes under the FOI law when two or more members are gathered together to transact public business.

8. Members of a zoning appeals board conducted an open meeting in whispered tones before casting votes.

VPA Proposed Solution: Prohibit governing body members from conducting discussions in open, public meetings in whispered voices or in any other manner intended to prevent the public and the press from hearing the discussion.

9. Legislative subcommittees often do not post notice of subcommittee meetings and often do not meet in public.

VPA Proposed Solution: Change both House and Senate Rules to require that legislative subcommittees post meeting notices and that subcommittee meetings be open, or include the General Assembly under the provisions of the FOI Act.

10. VPA Proposal: In addition to current meeting notification requirements, local government entities shall post special, nonscheduled, nonemergency meetings in a prominent location within one week of the meeting and state agencies shall publish meeting notices in the Virginia Register. Advance notice of emergency meetings shall also be given. Each government entity shall publish at the beginning of each calendar year an annual listing of regularly scheduled meetings. Remove the provision allowing those requesting notice to supply self-addressed, stamped envelopes.

EXECUTIVE SESSIONS.

1. Local governmental bodies elect chairmen in executive sessions.

VPA Proposed Solution: The law should be clarified to prohibit election of any officials in executive session.

2. Too many broad exclusions to the open meetings provisions of the FOI law, and frequency and extensive length of executive sessions.

VPA Proposed Solution: Require specificity when boards meet in executive sessions, require one week's advance notice of all executive sessions, require that all votes on any matter be taken in public meetings (and immediately after reconvening in open sessions after executive sessions) and require that executive sessions be tape recorded and the tapes retained for at least 90 days so that in the event of a challenge to the legality of such executive sessions, a judge can listen to the tape to determine whether the governing body violated the FOI Act. In the event of a successful challenge, the nonexempt portions of the tape should be released to the public. There should be stiff civil and criminal penalties for intentional violation of the law.

3. "Potential litigation" is misused as the rationale for meeting in executive session.

VPA Proposed Solution: Clarify the FOI to prevent this specific abuse and to make it clear that if a case is actually filed, the governing body could meet to discuss the case behind closed doors, but if no suits have been filed at the time of the meeting or in the courthouse within a prescribed amount of time, the governing body cannot meet to discuss the situation in executive session. A more appropriate reason would be "pending" rather than "potential" litigation.

4. Lengthy executive session; sudden reconvening in open session.

VPA Proposed Solution: Require that governing bodies in lengthy executive sessions provide notice or a "time certain" at which time they will reconvene in public session to give the public reasonable time to return to the meeting.

5. A County Board of Supervisors convened in open session and then went into executive session, citing statutory exemptions. The Board discussed an issue which is not covered by the executive session provision. In addition, the finance subcommittee, consisting of two people, could meet without notice and without accountability. When the board reconvened in open session, the members proceeded with routine matters of business and did not discuss the executive session issue until 11 items of business later.

VPA Proposed Solution: Tighten up provisions restricting the topics which are legal rationales for engaging in closed, executive session meetings. Add criminal penalties for violations of the law.

6. A local governing body spent 45 minutes in executive session to determine whether it would be legal to hold an executive session concerning a joint committee discussion of a plan to extend water and sewer lines. The joint committee used the litigation exemption as a rationale for spending 45 minutes in executive session.

VPA Proposed Solution: Prohibit governing bodies from going into executive session to discuss whether it is legal to do so.

7. See number 4 in category "Other exemptions and exclusions" below.
8. **VPA Proposal:** Change exemption 6 under "Executive or Closed Meetings" to read as follows: "consultation with legal counsel pertaining to actual or threatened litigation or other consultations with counsel protected by attorney-client privilege."

OTHER EXEMPTIONS AND EXCLUSIONS.

1. The public was denied access to a study of public employee salaries paid for by public funds. The rationale for denying access was that the report contained information exempted under the personnel records clause of the FOI Act.

VPA Proposed Solution: Clarify that such studies are not exempt under the personnel records clause of the FOI Act, and if such studies contain individual and identifiable information, the information will be routinely deleted from the record by the public body and the substance of the report provided to the public.

2. Statutes regarding public access to government readings and documents are scattered throughout the Code of Virginia.

VPA Proposed Solution: Gather all of the public access-related provisions in the Code and place them in the FOI Act, and require future exemptions to be offered as amendments to the FOI Act and not to other parts of the Code. Or, specifically cite the other public access statutes in the Code within the FOI by numerical designation and by a brief description.

3. A newspaper requested access to records involving the investigation of a correctional center and its former warden. The Department of Corrections denied access, citing the "active investigation" exemption.

VPA Proposed Solution: While there is merit in keeping confidential many aspects of ongoing investigations of state agencies, there is no merit to denying access to this information once the investigation is completed. In addition, arbitrarily denying release of at least the basic details of such an investigation prevents the public from having access to information that demonstrates that the government is addressing particular problems.

4. Personnel exemptions. A city council held a hearing in the city manager's office to interview candidates for two openings on the school board and excluded the public and the press. County supervisors decided to appoint a "blue ribbon commission." The newspaper obtained and printed a list of the preliminary applicants. The board chairman objected to its publication, saying it came under the personnel exemption to the Act. Inquiries into the matter revealed that the chairman may have been correct.

VPA Proposed Solution: Any executive session called concerning personnel matters should specify the personnel involved, at least by job title, and the reason that the matter involved should be considered in executive rather than open session. Candidates for appointment to public office (boards and commissions) should be interviewed by governing bodies which make the appointments in open session.

5. **VPA Proposal:** Exemptions within the FOI Act and the Code should be narrowed. All exemptions should be presented to the Subcommittee, and challenged and evaluated with a decision to retain or repeal based on the merits of the particular exemption.

ENFORCEMENT PROCEDURES.

1. **Current civil penalties are insufficient deterrents to violations of the FOI law.**
VPA Proposed Solution: Amend the statute to provide for criminal penalties of not less than \$1,000 as well as 12-month jail sentences, or both, for violations of the law.

2. **See number 1 in Category entitled "Application for information, etc." above.**
VPA Proposed Solution: Make disclosure of requested information automatic if the agency does not reply within the time period prescribed in the FOI Act.

3. **There is not a specific "court of record" in which suits brought against violators of the statute can be heard.**
VPA Proposed Solution: Identify specific court of record in Richmond to hear suits brought against violators of the statute, in addition to courts in the local jurisdiction. The court should provide an expedited hearing and provide relief by injunction, mandamus, or declaratory judgment. The courts should also be allowed to invalidate the acts made in illegal meetings upon application within 90 days.

4. **VPA Proposal:** Provide for administrative review of denial of FOI requests for access to documents by involving the Attorney General, whose opinion will have statewide application. Upon failure to request an opinion within five days of the request, the government entity shall release the documents. Consideration could also be given to the establishment of a FOI Commission or an Office of Information Practices to arbitrate disputes regarding denial of public access to government meetings and documents.

5. VPA Proposal: Change the language in § 2.1-346 pertaining to enforcement of the FOI Act to read "if the court finds that a public body is in violation of the provisions of this chapter, the court shall award costs and reasonable attorney's fees to the petitioning citizen."

6. VPA Proposal: Any action taken in contravention of the Act is invalid.

7. VPA Proposal: In § 2.1-346, remove the language which provides that "The court may award costs and reasonable attorney's fees to the public body if the court finds that the petition was based upon a clearly inadequate case."

MISCELLANEOUS.

1. Although the law requires that public officials be provided with a copy of the FOI law, they are not provided with copies of other provisions of the Code affecting public access and they seem generally uninformed about the requirements of the law.

VPA Proposed Solution: State and local government should educate public officials and senior agency managers about the provisions and requirements of the FOI Act and other similar statutes beyond simply providing them with copies of the Act. Perhaps regional FOI seminars regarding public access statutes could be sponsored.

2. Police refuse access to accident sites by reporters and photographers.

VPA Proposed Solution: Prohibit both state and local police from restricting access to accident sites by reporters and photographers.

3. VPA Proposal: Define records to include all electronic information storage and retrieval systems and require statewide standards for all governments regarding hardware and software for such purposes to facilitate public access to records.

4. VPA Proposal: Redefine meetings (two-person committees or subcommittees) and public records (including audio, video or other information storage and retrieval documentation of any public meeting).

5. VPA Proposal: Require all government entities to provide a report to the Governor by January 1 of each year, detailing all requests for access to documents and meetings, including disposition of the request. In the event of denial of public access, a reason for denial shall be included in the report as well as the name of the individual who made the decision to deny access. The report shall be published in the Virginia Register.

The Subcommittee determined that some of the problems identified by the Virginia Press Association were obvious violations of current law. Other problems appeared to stem from a lack of understanding of the current law, while some problems clearly indicated that legislative action was warranted.

The Subcommittee considered each problem and proposal submitted by the Virginia Press Association, state and local government employees and officials, and citizens. In addition, staff reviewed more than two hundred Attorney General opinions pertaining to the Virginia Freedom of Information Act. The Subcommittee incorporated approximately thirteen of these opinions in the legislation recommended to the General Assembly in the 1989 Session.

The Subcommittee rejected proposals to (i) establish a specific court of record in Richmond for consideration of freedom of information cases, (ii) repeal the court's authority to award the public body costs and reasonable attorney's fees in inadequate cases, (iii) prohibit whispering in meetings, (iv) tape record executive sessions, and (v) provide criminal penalties for the violation of the Freedom of Information Act. Consideration of some proposals (sufficiency of information released by law-enforcement officials pertaining to investigations, justification of all exemptions to the Freedom of Information Act and possible consolidation of all exemptions and exclusions to public access of governmental meetings and records) was deferred since the Subcommittee will recommend that it be continued for one more year.

RECOMMENDATIONS

House Bill No. 1229 and House Joint Resolutions No. 246 and 247 sponsored by Chairman Axselle and the other legislative members of the Subcommittee during the 1989 Session contained the majority of the recommendations of the Subcommittee. Copies of the resolutions and the original and amended versions and chapterized version of House Bill No. 1229 are contained in this report as Appendix I.

Recommendation No. 1.

Introduction and passage of House Bill No. 1229.

House Bill No. 1229 as originally introduced by Chairman Axselle and the other legislative members of the Subcommittee contained the recommendations of the Subcommittee which required legislative action. Except for amendments to the Virginia Freedom of Information Act in response to Attorney General Opinions and housekeeping changes, the recommendations are discussed below by the Code section number in which the amendment appears. Citation of relevant Attorney General Opinions are included in comment notes found at the end of each section in the draft contained in Appendix II.

a. § 2.1-340.1.

(1) Unless the public body specifically elects to exercise an exemption provided by this chapter or any other statute, every meeting shall be open to the public and all reports, documents and other material shall be available for disclosure upon request.

The addition of this provision by the Subcommittee is to clarify that the exemptions contained in the Virginia Freedom of Information Act are discretionary in nature and not mandatory. This amendment is in response to complaints that many public bodies deny access to meetings and requested material simply because the exception exists and they believe that they have no discretion to allow access to the meeting or material.

b. § 2.1-342.

(1) Reduction of response time for freedom of information requests.

The Subcommittee heard testimony from media representatives that the current time limits in responding to freedom of information requests were being abused by some public bodies which routinely took the maximum time allowed by statute to respond to requests. Public body officials and employees indicated that responses to a majority of the requests were easily completed within the time limitations of the statute. Public body representatives noted that most responses were made within a few days of the request. However, the Subcommittee determined that the current time frame -- fourteen calendar days from the receipt of the request and an additional ten calendar days if the public body is unable to determine the availability of the requested records and informs the requestor -- should be shortened. The Subcommittee considered the following concerns regarding response time: (i) requests are not always directed to the correct agency and the rerouting causes delays; (ii) some state agencies have regional offices, but requests submitted to them often must be addressed by the main office in Richmond; (iii) not all agencies are automated, and information requested involves manual searches; (iv) the Office of the Attorney General or the local government attorney may have to review the information about to be released to prevent client-confidential information and other information protected by the Privacy Act from being released; (v) federal statutes and regulations dictate the information some agencies can release; and (vi) most agencies and public bodies do not have personnel employed specifically to answer FOI requests and most employees responding to FOI requests are pulled from other work. The Subcommittee decided to shorten the time period in which an agency may respond to a request to five workdays and an additional seven workdays if more time is needed to provide the requested records or to determine whether the records are available.

(2) If the public body determines that an exemption applies to a portion of the requested records, it may delete that portion, disclose the remainder and provide a written explanation as to why certain portions of the record are not available. The explanation shall make a specific reference to the applicable Code sections which make that portion exempt. Any reasonably segregatable portion of an official record shall be provided to any person requesting the record after the deletion of the exempt portion.

The Subcommittee determined that the statute should clearly indicate that a public body shall release official records unless it elects to exercise an exemption contained in the Freedom of Information Act. Testimony to the Subcommittee indicated that some public bodies refused to disclose information or records when the exemption pertained to only a small portion of the record. The Subcommittee believed that this amendment would clarify that whenever possible, records shall be released after the deletion of any exempt portion.

(3) *In any case where a public body determines in advance that search and copying charges for producing the requested documents are likely to exceed \$200, the public body may, prior to continuing to process the request, require the citizen requesting the information to agree to payment of an amount not to exceed the advance determination by five percent. The period within which the public body must respond shall be tolled for the amount of time that elapses between receipt of notification of the advance determination and the response of the requesting citizen.*

The Subcommittee inserted this provision to address concerns about the running of the time limitations while the public body waits for the advance payment of charges. As noted in Appendix II, the September 6, 1979, Attorney General Opinion to Delegate Bernard G. Barrow served as the source of the amendment to this section (§ 2.1-342) allowing advance payment of charges for completing freedom of information requests.

(4) *Official records maintained by a public body on a computer or other electronic data processing system which are available to the public under the provisions of this chapter shall be made reasonably accessible to the public at a reasonable cost.*

Public bodies shall not be required to create or prepare a particular requested record if it does not already exist. Public bodies may, but shall not be required to, abstract or summarize information from official records or convert an official record available in one form into another form at the request of the citizen.

The Subcommittee included this amendment to clarify that official records which are maintained by the public body on a computer or other electronic data processing system shall be available to the public at a reasonable cost. Such records are to be reasonably accessible to the public. The amendment further provides that the public body is not required to create a record and clarifies that the public body has the discretion to determine whether or not to abstract, summarize or convert official records. (See September 25, 1984, Attorney General Opinion to Mr. Warren E. Barry.)

(5) *Failure to make any response to a request for records shall be a violation of the Virginia Freedom of Information Act and deemed a denial of the request.*

The Subcommittee heard testimony during its meetings that some requests are ignored by public bodies. This amendment was included to address this problem. The Subcommittee believed that an affirmative statement making a "nonresponse" a violation of the Act would encourage response by any public bodies which may have a tendency to ignore requests. In addition, since the failure to respond will be deemed a denial of the request, the requestor may seek administrative review of the denial by the Office of the Attorney General. (Provisions pertaining to administrative review are contained in § 2.1-346.)

(6) *Records excluded from the provisions of the Freedom of Information Act may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law.*

This amendment further clarifies that release of records excluded in subsection B of § 2.1-342 is entirely in the discretion of the custodian. Public bodies are not required to limit or deny access to records excluded in subsection B of § 2.1-342 unless release of the records is prohibited by other law.

(7) *Amendments to subdivision 33 of subsection B of § 2.1-342 and the addition of subdivision 35.*

The changes in subsection B were included in the legislation sponsored by the subcommittee after state officials justified the need for the amendments.

c. § 2.1-343.

(1) *Notice, reasonable under the circumstance, of special or emergency meetings shall be given contemporaneously to the press and to members of the public body conducting the meeting.*

The standardization of notices for meetings, including notices for special, emergency and continued meetings, was considered by the Subcommittee. Testimony indicated that most local governments adopt annually a schedule of regular meeting dates pursuant to Title 15.1 of the Code of Virginia. Although few localities with representatives attending the meetings of the Subcommittee had many emergency or special meetings, those localities which had conducted such meetings contacted the press at the same time members of the public body were notified. The Subcommittee's decision to include in its legislation a requirement that notice as to the time and place for emergency or special meetings shall be simultaneous with the notice given to members of the public body provides a guideline to ensure that notice of emergency or special meetings is given to the press and as timely as possible.

(2) *Repeal of the requirement to submit an adequate supply of stamped self-addressed envelopes with requests for notice of meetings.*

The Subcommittee agreed to repeal the provision currently in the Code requiring persons to supply public bodies with self-addressed stamped envelopes for notices of meetings. It was suggested to the Subcommittee that this requirement discouraged citizens from requesting meeting notices. In addition, some public bodies indicated that few envelopes were submitted and often those that were did not conform to the size or postage of the correspondence which had to be mailed.

The Subcommittee discussed the complaints of the Virginia Press Association regarding the lack of notices for some legislative subcommittee meetings during the

session. The Subcommittee decided to refer to the Rules Committees of both houses the proposals pertaining to the posting of all subcommittee meeting notices. The Administrative Process Act (§ 9-6.14:1 et seq.) specifically excludes from the requirement to publish in the Virginia Register of Regulations notices for legislative subcommittee meetings held during regular and special sessions. It was noted that it would not be possible in most instances to schedule legislative subcommittee meetings during the session three weeks in advance in order to adhere to the publishing deadlines for the Register.

(3) Open meetings may be photographed, filmed, recorded or reproduced.

The Subcommittee agreed to clarify that the filming, recording and reproduction of open meetings were all allowed under the Freedom of Information Act by including a provision to that effect in its legislation. The legislation also contains a specific provision regarding the authority of the public body conducting the meeting to adopt rules governing the placement and use of equipment.

(4) Voting by secret ballot is a violation of the Freedom of Information Act.

The Subcommittee responded to complaints that some local public bodies were electing their officers by secret ballot by adding an amendment to clarify that voting by secret or written ballot in an open meeting violated the Freedom of Information Act.

d. § 2.1-343.1.

(1) Establishment of a two-year experimental program to allow certain state public bodies to conduct meetings pursuant to the Freedom of Information Act through telephonic or video means.

The Subcommittee received briefings during the course of the study from representatives of the Department of Information Technology, including a history of the development of the use of teleconferencing by the Commonwealth. Teleconferencing commenced at the state level in the Department in 1982 when primarily only audio teleconferencing was available. The technology currently ranges from audio only to full motion video and has evolved from one bridge, with a capacity to connect up to 14 specific locations at one time, to three bridges with the capacity to link 100 sites, with many people at any one site. The growth of teleconferencing has been phenomenal. It was reported that since 1982 there has been a 436% increase in administrative audio teleconferencing. Audio teleconferences grew from 373 in 1982-83 to a projected 2,000 in 1987-88. In 1982-83 there were only 2 video teleconferences, but a figure of 1,500 was estimated for 1987-88. Currently, approximately 70 agencies are conducting administrative meetings and educational training through teleconferencing.

Teleconference meetings now conducted by state agencies are administrative or educational (training) since any other type would violate the Freedom of Information Act. The Subcommittee members viewed tapes of video teleconferences involving portions of an administrative meeting and of a press conference with the Governor while he was in China. The Subcommittee was asked to consider amending the Code to allow boards composed of lay persons to use teleconferences for official business. Testimony asserted that teleconferencing could be made user-friendly and give the public more access to government meetings. However, certain safeguards would have to be made to protect the public interest. Teleconferencing for executive sessions was not supported.

The Subcommittee was also informed that audio teleconferencing would be very economical since long-distance telephone calls are made on the state's SCATS line. Video teleconferencing would be more expensive depending on whether state or private sector facilities were used.

The following elements were included in the legislation sponsored by the Subcommittee: (i) teleconferencing would not be used for executive or closed sessions or by local government public bodies for meetings pursuant to the Freedom of Information Act; (ii) public access would be guaranteed throughout the meeting at all locations, all locations for the meeting shall be made accessible to the public, and any interruption in public access (such as system failure, etc.) would result in the suspension of the meeting until access is restored; (iii) the public would be afforded the same opportunity for public comment as persons attending the primary location of the meeting; (iv) there would be an advance thirty-day notice setting the time, place and purpose of the meeting but this notice requirement would not apply to emergency or continued meetings; (v) the teleconferencing program would be on a two-year trial basis beginning on July 1, 1989, and ending on June 30, 1991; (vi) votes would be taken by name in roll call fashion; (vii) a record or tape of the meeting would be retained for three years by the public body conducting the meeting; (viii) no more than twenty-five percent of the meetings of the state public body may be through teleconferencing; and (ix) notices of the meetings will be sent to the Department of Information Technology and the Director of the Department will give a summary or assessment of the experimental program prior to January 1, 1992.

d. § 2.1-344.

(1) Public bodies are not required to conduct executive or closed meetings.

The Subcommittee included this amendment to clarify that public bodies had full discretion to determine whether a meeting would be conducted as a closed or open meeting when the purpose of the meeting is listed as an exclusion in subsection A of § 2.1-344.

e. § 2.1-344.1.

(1) *Establishment of a certification process for executive session meetings.*

The Subcommittee considered the merits and problems involved in a proposal supported by the Virginia Press Association pertaining to the taping of executive sessions. An argument was put forth that without a tape of the proceedings a judge would not be able to determine whether or not the statute had been violated. Opponents of the taping proposal pointed out that the taping of executive meetings would prohibit extensive discussion and have a detrimental effect on the meeting. Security of the tape was also an issue. A protective order would be needed to prevent the disclosure of a tape submitted as evidence in a suit since the tape would become a part of the public record.

Alternatives to the taping of executive sessions were discussed. They included certification by the clerk, public body members or legal counsel attending the meeting that no business or issues other than that stated as the reason for convening in executive session took place during the meeting. The problems involved with the certification by legal counsel were discussed and that option was tentatively eliminated as a solution. The Subcommittee considered three options: (i) not to endorse the taping of executive sessions, (ii) to tape executive sessions for a two-year trial period with the judge as the only person having access to the tape, or (iii) certification as to the discussion issues in the meeting by persons in attendance. The majority of the Subcommittee members initially agreed to the taping of executive sessions for a two-year trial period. Delegate Woodrum specifically requested that his opposition to the taping of executive sessions be noted.

The Subcommittee reconsidered its decision to allow recording of executive sessions and after considerable discussion and deliberation agreed to certification by roll call or other recorded vote of the proper calling of the executive or closed meeting and the proper conduct of the executive or closed meeting by members of the public body attending the meeting. Any member of the public body believing that there was a departure from the requirements of the statute regarding closed meetings would indicate the substance of the departure prior to his vote.

f. § 2.1-345.1.

(1) *The Freedom of Information Act shall not be applicable when the requested information or material is the specific subject of active litigation, the requestor is a party to the litigation and the request has been initiated by or for the benefit of a party to that litigation, and the information or material may be obtained through discovery procedures.*

This section was added to address a concern some of the Subcommittee members had regarding the possible abuse of the Freedom of Information Act in litigation.

g. § 2.1-346.

(1) Establishment of an administrative review by the Office of the Attorney General for persons denied access to official records or to public meetings by the action of a public body.

The Subcommittee received testimony that some alleged abuses of the Freedom of Information Act by public bodies went unchallenged due to the reluctance of citizens to pursue the matter in court. Many citizens do not have the funds or the time to devote to following a freedom of information case through the court system. The Virginia Press Association maintained that court as the first and only resort was unfair and that some public bodies would deny material which was public information to force the requesting party to take the matter to court. Local government officials and employees opposed the establishment of an administrative review process. Many local government representatives maintained that it would introduce another bureaucratic layer that would delay the process and that the courts are in the best posture to make decisions regarding freedom of information violations. Current law requires that cases regarding the Freedom of Information Act be heard within seven days. Problems were also anticipated in the collection of the relevant data the Office of the Attorney General would need to issue an equitable opinion. The Office would also be in a difficult position if asked to review the action taken by a state agency after it had been advised by an assistant attorney general.

The Subcommittee decided to include in its legislation a proposal for administrative review. The administrative review process would become effective on July 1, 1990. Time limitations were included for requesting the review and for the issuance of the opinion. In addition, the Office of the Attorney General could decline to issue an opinion under certain circumstances.

(2) The court shall award costs and reasonable attorney's fees to the petitioning citizen if the court finds denial to be in violation of the provisions of the Freedom of Information Act.

Current law provides that court costs and reasonable attorney's fees may be awarded by the judge to the petitioning citizen. Testimony to the Subcommittee indicated that more citizens would take advantage of the opportunity to challenge an alleged violation if they were assured of court costs and attorney's fees if they prevail.

h. § 2.1-346.1.

The cap on the civil penalty for violation of the Freedom of Information Act was raised from \$500 to \$1,000.

The Subcommittee decided that the current \$500 cap on the civil penalty for violation of the Freedom of Information Act was inadequate. Testimony presented during the course of the study indicated that an increase was necessary if the fine was to be considered a deterrent. The Subcommittee agreed to include in its legislation an amendment to provide a cap of \$1,000 for violation of the Act.

Members of the Virginia Press Association also proposed that a criminal penalty be included for violation of the Act. The Subcommittee rejected this proposal.

Recommendation No. 2.

Introduction and passage of House Joint Resolution No. 247.

Throughout the deliberations of the Subcommittee, it was made apparent that many violations which are occurring are due to a lack of understanding of the Virginia Freedom of Information Act by the public officials and employees who respond to requests. Although § 2.1-341.1 of the Code of Virginia provides that any person elected or appointed to any body not exempted from the Virginia Freedom of Information Act shall be furnished a copy of the Act within two weeks of his election or appointment, there is no requirement for an explanation of the provisions of the law.

House Joint Resolution No. 247 requests the Office of the Attorney General to conduct a series of educational seminars on the Freedom of Information Act and to consider the publication of a manual explaining the Act. The manual would contain responses to frequent inquiries, interpretations of various provisions of the law, and case citations. The manual would be updated periodically as determined necessary by the Office of the Attorney General.

Subcommittee members agreed that an increased emphasis on the education of the provisions in the Act would help in many situations in which violations are currently occurring.

Recommendation No. 3.

Introduction and passage of House Joint Resolution No. 246.

The Subcommittee agreed to sponsor a resolution which would continue the study for one year. Although the Subcommittee accomplished many of its goals during its work in 1988 and early 1989, the issue of exemptions was not explored to the full extent that the Subcommittee intended.

The Subcommittee examined the possibility of making the current exemptions to the Act "topic specific" instead of "agency specific." Subcommittee members expressed concern that many of the exemptions would be broadened since they are currently drawn to pertain to specific agencies. In addition, a prediction was made that amendments to the "generic exemptions" version would be made during the coming years to insert specific exemptions again. After review of draft legislation providing for "generic exemptions," the Subcommittee agreed to defer the issue until 1989.

CONCLUSION

The Subcommittee wishes to express its appreciation for the participation and cooperation of the Virginia Press Association, the Local Government Attorneys' Association, and state and local officials and employees in developing compromises to various proposals contained in the report. The recommendations included in this report were developed to address concerns, confusion and abuses relating to the Virginia Freedom of Information Act. The General Assembly's support of the Subcommittee's legislative package will improve the effectiveness of the Act.

Respectively submitted,

Ralph L. Axselle, Jr., Chairman
R. Edward Houck, Vice Chairman
W. Onico Barker
Jay E. DeBoer
John B. Edwards
Edward W. Jones
Alan E. Mayer
Frank Medico
Emilie Miller
Clifton A. Woodrum

#

APPENDICES

1989 SESSION

LD9018410

HOUSE JOINT RESOLUTION NO. 246

Offered January 12, 1989

Continuing the Joint Subcommittee Studying the Virginia Freedom of Information Act and Public Access to Governmental Records and Meetings.

Patrons—Axselle, Medico, DeBoer, Woodrum and Mayer; Senators: Houck, Barker and Miller, E. F.

Referred to the Committee on Rules

WHEREAS, House Joint Resolution No. 100, passed during the 1988 Session of the General Assembly, established a joint subcommittee to study the Virginia Freedom of Information Act and public access to governmental records and meetings; and

WHEREAS, the Joint Subcommittee held six meetings during 1988 and received testimony from citizens of the Commonwealth, state and local government officials and their employees, and representatives of the media; and

WHEREAS, proposals were made to the Joint Subcommittee regarding the Virginia Freedom of Information Act, including the clarification of certain provisions of the Act and the addition of further safeguards and requirements to enhance public access to government records and meetings; and

WHEREAS, the Joint Subcommittee is sponsoring legislation containing numerous amendments to the Virginia Freedom of Information Act to reflect its recommendations to the 1989 Session of the General Assembly; and

WHEREAS, the Joint Subcommittee has determined that ensuring the public's access to state and local governmental meetings and records and compliance with current statutory provisions by state and local governments demand further review and examination of the Virginia Freedom of Information Act and related public access laws; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Joint Subcommittee Studying the Virginia Freedom of Information Act and Public Access to Governmental Records and Meetings is hereby continued. The membership of the Joint Subcommittee shall remain the same, with any vacancy being filled in the same manner as the original appointment.

The Joint Subcommittee shall complete its study and submit its findings and recommendations to the 1990 Session of the General Assembly.

The indirect costs of this study are estimated to be \$13,045; the direct costs of this study shall not exceed \$9,000.

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1989 SESSION

LD5461410

HOUSE JOINT RESOLUTION NO. 247

Offered January 12, 1989

Requesting the Office of the Attorney General to conduct educational seminars on the Virginia Freedom of Information Act and to consider the feasibility of publishing a manual pertaining to the Act for distribution throughout the Commonwealth.

Patrons—Axselle, Medico, DeBoer, Woodrum and Mayer; Senators: Houck, Barker and Miller, E. F.

Referred to the Committee on Rules

WHEREAS, the Joint Subcommittee Studying the Virginia Freedom of Information Act and Public Access to Governmental Records and Meetings created pursuant to House Joint Resolution No. 100 during the 1988 Session of the General Assembly has conducted several meetings and public hearings; and

WHEREAS, throughout the deliberations of the Joint Subcommittee it was apparent that many of the current violations to the Virginia Freedom of Information Act are due to misinterpretations of the provisions of the Act by government officials and employees; and

WHEREAS, § 2.1-341.1 of the Code of Virginia provides that any person elected or appointed to any body not exempted from the Virginia Freedom of Information Act shall be furnished a copy of the Act within two weeks of his election or appointment; and

WHEREAS, although the statute requires the distribution of the Act to officials, there is no requirement for an explanation of the provisions of the law; and

WHEREAS, the Joint Subcommittee has determined that a better understanding of the Virginia Freedom of Information Act by government officials and their employees will enhance compliance with the Act by those persons who may be confused about certain requirements of the Act; and

WHEREAS, local governments and the Commonwealth of Virginia should provide better education and information to their officials and employees regarding compliance with the Act; and

WHEREAS, the Office of the Attorney General has indicated to the Joint Subcommittee that it plans to conduct educational and informational seminars on the Virginia Freedom of Information Act during 1989; and

WHEREAS, in addition to the seminars, the Office of the Attorney General should consider the feasibility of publishing a manual explaining the Virginia Freedom of Information Act and containing responses to frequent inquiries, interpretations of various provisions of the law and case citations, which would be updated periodically as determined necessary by the Office of the Attorney General; and

WHEREAS, the publication of similar manuals in other states has guided the public, the media and governmental officials and employees in interpreting public access statutes; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Office of the Attorney General is requested to conduct a series of educational seminars on the Virginia Freedom of Information Act throughout the Commonwealth of Virginia and to consider the feasibility of publishing a manual pertaining to the Act for distribution throughout the Commonwealth.

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1989 SESSION

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HOUSE BILL NO. 1229

Offered January 13, 1989

2 *A BILL to amend and reenact §§ 2.1-340.1, 2.1-341, 2.1-342, 2.1-343, 2.1-343.1, 2.1-344,*
3 *2.1-345, 2.1-346 and 2.1-346.1 of the Code of Virginia and to amend the Code of*
4 *Virginia by adding sections numbered 2.1-344.1 and 2.1-345.1, relating to the Virginia*
5 *Freedom of Information Act; penalty.*
6

7

8 Patrons—Axselle, Mayer, Woodrum, Medico and DeBoer; Senators: Houck, Miller, E. F. and
9 Barker

10

11 Referred to the Committee on General Laws

12

13

Be it enacted by the General Assembly of Virginia:

14

15 1. That §§ 2.1-340.1, 2.1-341, 2.1-342, 2.1-343, 2.1-343.1, 2.1-344, 2.1-345, 2.1-346 and 2.1-346.1
16 of the Code of Virginia is amended and reenacted and that the Code of Virginia is
17 amended by adding sections numbered 2.1-344.1 and 2.1-345.1 as follows:

18

19 § 2.1-340.1. Policy of chapter.— ~~It is the purpose of the General Assembly by providing~~
20 ~~By enacting this chapter to ensure to the General Assembly ensures~~ the people of this
21 Commonwealth ready access to records in the custody of public officials and free entry to
22 meetings of public bodies wherein the business of the people is being conducted. ~~This~~
23 ~~chapter recognizes that the Committees or subcommittees of public bodies created to~~
24 ~~perform delegated functions of a public body or to advise a public body shall also conduct~~
25 ~~their meetings and business pursuant to this chapter. The affairs of government are not~~
26 intended to be conducted in an atmosphere of secrecy since at all times the public is to be
27 the beneficiary of any action taken at any level of government. ~~To the end that the~~
28 ~~purposes of this Unless the public body specifically elects to exercise an exemption~~
29 ~~provided by this chapter or any other statute, every meeting shall be open to the public~~
30 ~~and all reports, documents and other material shall be available for disclosure upon~~
31 ~~request.~~

32

33 ~~This chapter may be realized, it shall be liberally construed to promote an increased~~
34 awareness by all persons of governmental activities and afford every opportunity to citizens
35 to witness the operations of government. Any exception or exemption from applicability
36 shall be narrowly construed in order that no thing which should be public may be hidden
37 from any person.

38

39 ~~Any ordinance adopted by a local governing body which conflicts with the provisions~~
40 ~~of this chapter shall be void.~~

41

42 § 2.1-341. Definitions.—The following terms, whenever used or referred to in this
43 chapter, shall have the following meanings ; ~~respectively~~ , unless a different meaning
44 clearly appears from the context:

45

46 “Executive meeting” or “closed meeting” means a meeting from which the public is
47 excluded.

48

49 (a) “Meeting” or “meetings” means the meetings including work sessions , when sitting
50 physically, or through telephonic or video equipment pursuant to § 2.1-343.1, as a body or
51 entity, or as an informal assemblage of (i) as many as three members, or (ii) a quorum, if
52 less than three, of the constituent membership, wherever held, with or without minutes
53 being taken, whether or not votes are cast, of any legislative body, authority, board,
54 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 state
institutions of higher education; and other organizations, corporations or agencies in the
Commonwealth, supported wholly or principally by public funds. The notice provisions of
this chapter shall not apply to the said informal meetings or gatherings of the members of
the General Assembly. Nothing in this chapter shall be construed to make unlawful the
gathering or attendance of two or more members of a body or entity at any place or

1 function where no part of the purpose of such gathering or attendance is the discussion or
2 transaction of any public business, and such gathering or attendance was not called or
3 prearranged with any purpose of discussing or transacting any business of the body or
4 entity. *The gathering of employees of a public body shall not be deemed a "meeting"*
5 *subject to the provisions of this chapter.*

6 No meeting shall be conducted through telephonic, video, electronic or other
7 communication means where the members are not physically assembled to discuss or
8 transact public business, except as *provided in § 2.1-343.1 or as may specifically be*
9 *provided in Title 54 54.1 for the summary suspension of professional licenses.*

10 ~~(b)~~ "Official records" means all written or printed books, papers, letters, documents,
11 maps and tapes, photographs, films, sound recordings, reports or other material, regardless
12 of physical form or characteristics, prepared, owned, or in the possession of a public body
13 or any employee or officer of a public body in the transaction of public business.

14 ~~(c)~~ "Executive meeting" or "closed meeting" means a meeting from which the public is
15 excluded.

16 ~~(d)~~ "Open meeting" or "public meeting" means a meeting at which the public may be
17 present.

18 ~~(e)~~ "Public body" means any of the groups, agencies or organizations enumerated in
19 subdivision ~~(a)~~ of the definition of "meeting" as provided in this section , including any
20 committees or subcommittees of the public body created to perform delegated functions of
21 the public body or to advise the public body .

22 ~~(f)~~ "Scholastic records" means those records, files, documents, and other materials
23 containing information about a student and maintained by a public body which is an
24 educational agency or institution or by a person acting for such agency or institution, but,
25 for the purpose of access by a student, does not include (i) financial records of a parent
26 or guardian nor (ii) records of instructional, supervisory, and administrative personnel and
27 educational personnel ancillary thereto, which are in the sole possession of the maker
28 thereof and which are not accessible or revealed to any other person except a substitute.

29 § 2.1-342. Official records to be open to inspection; procedure for requesting records
30 and responding to request; charges; exceptions to application of chapter.—A. Except as
31 otherwise specifically provided by law, all official records shall be open to inspection and
32 copying by any citizens of this Commonwealth during the regular office hours of the
33 custodian of such records. Access to such records shall not be denied to ~~any such citizen~~
34 *citizens* of this Commonwealth, ~~nor to representatives of newspapers and magazines with~~
35 *circulation in this Commonwealth, and representatives of radio and television stations*
36 *broadcasting in or into this Commonwealth. The custodian of such records shall take all*
37 *necessary precautions for their preservation and safekeeping. Any public body covered*
38 *under the provisions of this chapter shall make an initial response to citizens requesting*
39 *records open to inspection within fourteen calendar five work days from after the receipt*
40 *of the request by the public body which is the custodian of the requested records . Such*
41 *citizen request shall designate the requested records with reasonable specificity. If the*
42 *requested records or public body is excluded from the provisions of this chapter, the public*
43 *body to which the request is directed shall within fourteen calendar days from the receipt*
44 *of the request tender a written explanation as to why the records are not available to the*
45 *requestor. Such explanation shall make specific reference to the applicable provisions of*
46 *this chapter or other Code sections which make the requested records unavailable. In the*
47 *event a determination of the availability of the requested records may not be made within*
48 *the fourteen-calendar -day period, the public body to which the request is directed shall*
49 *inform the requestor as such , and shall have an additional ten calendar days in which to*
50 *make a determination of availability. A specific reference to this chapter by the requesting*
51 *citizen in his records request shall not be necessary to invoke the time limits for response*
52 *by the public body. The response by the public body within such five work days shall be*
53 *one of the following responses:*

54 1. *The requested records shall be provided to the requesting citizen.*

1 2. If the public body determines that an exemption applies to all of the requested
2 records, it may refuse to release such records and provide to the requesting citizen a
3 written explanation as to why the records are not available with the explanation making
4 specific reference to the applicable Code sections which make the requested records
5 exempt.

6 3. If the public body determines that an exemption applies to a portion of the
7 requested records, it may delete or excise that portion of the records to which an
8 exemption applies, disclose the remainder of the requested records and provide to the
9 requesting citizen a written explanation as to why these portions of the record are not
10 available to the requesting citizen with the explanation making specific reference to the
11 applicable Code sections which make that portion of the requested records exempt. Any
12 reasonably segregatable portion of an official record shall be provided to any person
13 requesting the record after the deletion of the exempt portion.

14 4. If the public body determines that it is practically impossible to provide the
15 requested records or to determine whether they are available within the five-work-day
16 period, the public body shall so inform the requesting citizen and shall have an additional
17 seven work days in which to provide one of the three preceding responses.

18 The public body may make reasonable charges for the copying and , search time and
19 computer time expended in the supplying of such records; however, ~~in no event~~ shall such
20 charges *shall not* exceed the actual cost to the public body in supplying such records,
21 except that the public body may charge, on a pro rata per acre basis, for the cost of
22 creating topographical maps developed by the public body, for such maps or portions
23 thereof, which encompass a contiguous area greater than fifty acres. Such charges for the
24 supplying of requested records shall be estimated in advance at the request of the citizen.
25 *The public body may require the advance payment of charges which are subject to*
26 *advance determination.*

27 *In any case where a public body determines in advance that search and copying*
28 *charges for producing the requested documents are likely to exceed \$200, the public body*
29 *may, before continuing to process the request, require the citizen requesting the*
30 *information to agree to payment of an amount not to exceed the advance determination*
31 *by five percent. The period within which the public body must respond under this section*
32 *shall be tolled for the amount of time that elapses between receipt of notification of the*
33 *advance determination and the response of the citizen requesting the information.*

34 *Official records maintained by a public body on a computer or other electronic data*
35 *processing system which are available to the public under the provisions of this chapter*
36 *shall be made reasonably accessible to the public at reasonable cost.*

37 *Public bodies shall not be required to create or prepare a particular requested record if*
38 *it does not already exist. Public bodies may, but shall not be required to, abstract or*
39 *summarize information from official records or convert an official record available in one*
40 *form into another form at the request of the citizen.*

41 *Failure to make any response to a request for records shall be a violation of this*
42 *chapter and deemed a denial of the request.*

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

46 1. Memoranda, correspondence, evidence and complaints related to criminal
47 investigations; reports submitted to the state and local police, to investigators authorized
48 pursuant to § 53.1-16 and to the campus police departments of public institutions of higher
49 education as established by Chapter 17 (§ 23-232 et seq.) of Title 23 in confidence; and all
50 records of persons imprisoned in penal institutions in this Commonwealth provided such
51 records relate to the said imprisonment. Information in the custody of law-enforcement
52 officials relative to the identity of any individual other than a juvenile who is arrested and
53 charged, and the status of the charge or arrest, shall not be excluded from the provisions
54 of this chapter.

1 2. Confidential records of all investigations of applications for licensees and all licenses
2 made by or submitted to the Alcoholic Beverage Control Board.

3 3. State income , *business, and estate* tax returns, personal property tax returns,
4 scholastic records and personnel records *containing information concerning identifiable*
5 *individuals* , except that such access shall not be denied to the person who is the subject
6 thereof, and medical and mental records, except that such records can be personally
7 reviewed by the subject person or a physician of the subject person's choice; however, the
8 subject person's mental records may not be personally reviewed by such person when the
9 subject person's treating physician has made a part of such person's records a written
10 statement that in his opinion a review of such records by the subject person would be
11 injurious to the subject person's physical or mental health or well-being.

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

22 For the purposes of this chapter such statistical summaries of incidents and statistical
23 data concerning patient abuse as may be compiled by the Commissioner of the Department
24 of Mental Health, Mental Retardation and Substance Abuse Services shall be open to
25 inspection and releasable as provided in subsection A of this section. No such summaries
26 or data shall include any patient identifying information. Where the person who is the
27 subject of scholastic or medical and mental records is under the age of eighteen, his right
28 of access may be asserted only by his guardian , or his parent, including a noncustodial
29 parent, unless such parent's parental rights have been terminated or a court of competent
30 jurisdiction has restricted or denied such access. In instances where the person who is the
31 subject thereof is an emancipated minor or a student in a state-supported institution of
32 higher education such right of access may be asserted by the subject person.

33 4. Memoranda, working papers and correspondence held or requested by members of
34 the General Assembly or by the office of the Governor or Lieutenant Governor, Attorney
35 General or the mayor or other chief executive officer of any political subdivision of the
36 Commonwealth or the president or other chief executive officer of any state-supported
37 institutions of higher education.

38 5. Written opinions of the city ~~and~~ , county *and town* attorneys of the cities, counties
39 and towns in the Commonwealth and any other writing protected by the attorney-client
40 privilege.

41 6. Memoranda, working papers and records compiled specifically for use in litigation or
42 as a part of an active administrative investigation concerning a matter which is properly
43 the subject of an executive or closed meeting under § 2.1-344 and material furnished in
44 confidence with respect thereto.

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

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

51 9. Any test or examination used, administered or prepared by any public body for
52 purposes of evaluation of (i) any student or any student's performance, (ii) any employee
53 or employment seeker's qualifications or aptitude for employment, retention, or promotion,
54 or (iii) qualifications for any license or certificate issued by any public body.

1 As used in this subdivision 9, "test or examination" shall include (i) any scoring key for
2 any such test or examination, and (ii) any other document which would jeopardize the
3 security of such test or examination. Nothing contained in this subdivision 9 shall prohibit
4 the release of test scores or results as provided by law, or limit access to individual
5 records as is provided by law. However, the subject of such employment tests shall be
6 entitled to review and inspect all documents relative to his performance on such
7 employment tests.

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

15 10. Applications for admission to examinations or for licensure and scoring records
16 maintained by the Department of Health ~~Regulatory Boards Professions~~ or any board in
17 that department on individual licensees or applicants. However, such material may be
18 made available during normal working hours for copying, at the requestor's expense, by the
19 individual who is subject thereof, in the offices of the Department of Health ~~Regulatory~~
20 ~~Boards Professions~~ or in the offices of any health regulatory board, whichever may possess
21 the material.

22 11. Records of active investigations being conducted by the Department of Health
23 ~~Regulatory Boards Professions~~ or by any health regulatory board in the Commonwealth.

24 12. Memoranda, legal opinions, working papers and records recorded in or compiled
25 exclusively for executive or closed meetings lawfully held pursuant to § 2.1-344.

26 13. Reports, documentary evidence and other information as specified in §§ 2.1-373.2
27 and 63.1-55.4.

28 14. Proprietary information gathered by or for the Virginia Port Authority as provided
29 in ~~§ 62.1-134.1~~ or § 62.1-132.4 or § 62.1-134.1 .

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

34 16. Vendor proprietary information software which may be in the official records of a
35 public body. For the purpose of this section, "vendor proprietary software" means computer
36 programs acquired from a vendor for purposes of processing data for agencies or political
37 subdivisions of this Commonwealth.

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

44 18. Financial statements not publicly available filed with applications for industrial
45 development financings.

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

49 20. Confidential proprietary records, voluntarily provided by private business to the
50 Division of Tourism of the Department of Economic Development, used by that Division
51 periodically to indicate to the public statistical information on tourism visitation to Virginia
52 attractions and accommodations.

53 21. Information which meets the criteria for being filed as confidential under the Toxic
54 Substances Information Act (§ 32.1-239 et seq.), regardless of how or when it is used by

1 authorized persons in regulatory processes.

2 22. Documents as specified in § 58.1-3.

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

5 24. Computer software developed by or for a state agency, state-supported institution of
6 higher education or political subdivision of the Commonwealth.

7 25. Investigator notes, and other correspondence and information, furnished in
8 confidence with respect to an active investigation of individual employment discrimination
9 complaints made to the Department of Personnel and Training; however, nothing in this
10 section shall prohibit the disclosure of information taken from inactive reports in a form
11 which does not reveal the identity of charging parties, persons supplying the information or
12 other individuals involved in the investigation.

13 26. Fisheries data which would permit identification of any person or vessel, except
14 when required by court order as specified in § 28.1-23.2.

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

17 28. Documents and writings furnished by a member of the General Assembly to a
18 meeting of a standing committee, special committee or subcommittee of his house
19 established solely for the purpose of reviewing members' annual disclosure statements and
20 supporting materials filed under § 2.1-639.40 or of formulating advisory opinions to
21 members on standards of conduct, or both.

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

26 30. Investigative notes and other correspondence and information furnished in
27 confidence with respect to an investigation or conciliation process involving an alleged
28 unlawful discriminatory practice under the Virginia Human Rights Act (§ 2.1-714 et seq.);
29 however, nothing in this section shall prohibit the distribution of information taken from
30 inactive reports in a form which does not reveal the identity of the parties involved or
31 other persons supplying information.

32 31. Investigative notes; proprietary information not published, copyrighted or patented;
33 information obtained from employee personnel records; personally identifiable information
34 regarding residents, clients or other recipients of services; and other correspondence and
35 information furnished in confidence to the Department of Social Services in connection with
36 an active investigation of an applicant or licensee pursuant to Chapters 9 (§ 63.1-172 et
37 seq.) and 10 (§ 63.1-195 et seq.) of Title 63.1; however, nothing in this section shall prohibit
38 disclosure of information from the records of completed investigations in a form that does
39 not reveal the identity of complainants, persons supplying information, or other individuals
40 involved in the investigation.

41 32. Reports, manuals, specifications, documents, minutes or recordings of staff meetings
42 or other information or materials of the Virginia Board of Corrections, the Virginia
43 Department of Corrections or any institution thereof to the extent, as determined by the
44 Director of the Department of Corrections or his designee, that disclosure or public
45 dissemination of such materials would jeopardize the security of any correctional facility or
46 institution, as follows:

47 (i) Security manuals, including emergency plans that are a part thereof;

48 (ii) Engineering and architectural drawings of correctional facilities, and operational
49 specifications of security systems utilized by the Department, provided the general
50 descriptions of such security systems, cost and quality shall be made available to the
51 public;

52 (iii) Training manuals designed for correctional facilities to the extent that they address
53 procedures for institutional security, emergency plans and security equipment;

54 (iv) Internal security audits of correctional facilities, but only to the extent that they

1 specifically disclose matters described in (i), (ii), or (iii) above or other specific
2 operational details the disclosure of which would jeopardize the security of a correctional
3 facility or institution;

4 (v) Minutes or recordings of divisional, regional and institutional staff meetings or
5 portions thereof to the extent that such minutes deal with security issues listed in (i), (ii),
6 (iii), and (iv) of this subdivision;

7 (vi) Investigative case files by investigators authorized pursuant to § 53.1-16; however,
8 nothing in this section shall prohibit the disclosure of information taken from inactive
9 reports in a form which does not reveal the identity of complainants or charging parties,
10 persons supplying information, confidential sources, or other individuals involved in the
11 investigation, or other specific operational details the disclosure of which would jeopardize
12 the security of a correctional facility or institution; nothing herein shall permit the
13 disclosure of materials otherwise exempt as set forth in *subdivision 1 of subsection B of §*
14 *2.1-342 (b) (1)* ;

15 (vii) Logs or other documents containing information on movement of inmates or
16 employees; and

17 (viii) Documents disclosing contacts between inmates and law enforcement personnel.

18 Notwithstanding the provisions of this subdivision, reports and information regarding the
19 general operations of the Department, including notice that an escape has occurred, shall
20 be open to inspection and copying as provided in this section.

21 33. ~~The names, addresses and other client specific information for Personal information,~~
22 ~~as defined in § 2.1-379 of the Code, (i) filed with the Virginia Housing Development~~
23 ~~Authority concerning individuals who have applied for or received loans or other housing~~
24 ~~assistance or who have applied for occupancy of or have occupied housing financed,~~
25 ~~owned or otherwise assisted by the Virginia Housing Development Authority, or (ii)~~
26 ~~concerning persons participating in or person persons on the waiting list for federally~~
27 ~~funded rent-assistance programs ; except that . However, access to one's own information~~
28 shall not be denied.

29 34. Documents regarding the siting of hazardous waste facilities, except as provided in §
30 10.1-1441, if disclosure of them would have a detrimental effect upon the negotiating
31 position of a governing body or on the establishment of the terms, conditions and
32 provisions of the siting agreement.

33 35. *Appraisals and cost estimates of real property subject to a proposed purchase, sale*
34 *or lease, prior to the completion of such purchase, sale or lease.*

35 C. Neither any provision of this chapter nor any provision of Chapter 26 (§ 2.1-377 et
36 seq.) of this title shall be construed as denying public access to contracts between a public
37 official and a public body, other than contracts settling public employee employment
38 disputes held confidential as personnel records under subdivision 3 of subsection B of this
39 section, or to records of the position, job classification, official salary or rate of pay of,
40 and to records of the allowances or reimbursements for expenses paid to any public
41 officer, official or employee at any level of state, local or regional government in this
42 Commonwealth. The provisions of this subsection, however, shall not apply to records of
43 the official salaries or rates of pay of public employees whose annual rate of pay is
44 \$10,000 or less.

45 § 2.1-343. Meetings to be public; notice of meetings; recordings; minutes; voting.—Except
46 as otherwise specifically provided by law and except as provided in §§ 2.1-344 and 2.1-345,
47 all meetings shall be public meetings , *including meetings and work sessions during which*
48 *no votes are cast or any decisions made . Notice including the time, date and place of*
49 *each meeting shall be furnished to any citizen of this Commonwealth who requests such*
50 *information. Requests to be notified on a continual basis shall be made at least once a*
51 *year in writing and include name, address, zip code and organization of the requestor.*
52 *Notice, reasonable under the circumstance, of special or emergency meetings shall be*
53 *given contemporaneously with the notice provided members of the public body conducting*
54 *the meeting.*

1 *Any person may photograph, film, record or otherwise reproduce any portion of a*
2 *meeting required to be open. The public body conducting the meeting may adopt rules*
3 *governing the placement and use of equipment necessary for broadcasting, photographing,*
4 *filming or recording a meeting to prevent interference with the proceedings.*

5 *Voting by secret or written ballot in an open meeting shall be a violation of this*
6 *chapter.*

7 Minutes shall be recorded at all public meetings. However, minutes shall not be
8 required to be taken at deliberations of (i) standing and other committees of the General
9 Assembly, (ii) legislative interim study commissions and committees, including the Virginia
10 Code Commission, (iii) ~~the Virginia Advisory Legislative Council and its committees,~~ (iv)
11 study committees or commissions appointed by the Governor, or ~~(v)~~ (iv) study commissions
12 or study committees , or any other committees or subcommittees appointed by the
13 governing bodies or school boards of counties, cities and towns, except where the
14 membership of any such study commission or study , committee or subcommittee includes
15 more than one member of a three member governing body or school board, more than two
16 members of a governing body or school board having four members or a majority of a the
17 governing body of the county, city or town or school board having more than four
18 members . Information as to the time and place of each meeting shall be furnished to any
19 citizen of this Commonwealth who requests such information. Requests to be notified on a
20 continual basis shall be made at least once a year in writing and include name, address,
21 zip code and organization if any, together with an adequate supply of stamped
22 self-addressed envelopes.

23 § 2.1-343.1. Electronic communication meetings prohibited; exception, experimental
24 program.— A. It is a violation of this chapter for any public political subdivision or any
25 governing body , authority, board, bureau, commission, district or agency of local
26 government to conduct a meeting wherein the public business is discussed or transacted
27 through telephonic, video, electronic or other communication means where the members
28 are not physically assembled.

29 B. Public bodies of the Commonwealth, as provided in the definition of "meeting" in §
30 2.1-341, but excluding any political subdivision or any governing body, authority, board,
31 bureau, commission, district or agency of local government, may conduct any meeting,
32 except executive or closed meetings held pursuant to § 2.1-344, wherein the public
33 business is discussed or transacted through telephonic or video means. For the purposes of
34 subsections B through G of this section, "public body" shall mean any state legislative
35 body, authority, board, bureau, commission, district or agency of the Commonwealth and
36 shall exclude those of local governments.

37 Meetings conducted through telephonic or video means shall be on an experimental
38 basis commencing on July 1, 1989, and ending on June 30, 1991. The Director of the
39 Department of Information Technology shall submit an evaluation of the effectiveness of
40 meetings by telephonic or video means by public bodies of the Commonwealth prior to
41 January 1, 1992, to the Governor and the General Assembly.

42 C. Notice of any meetings held pursuant to this section shall be provided at least
43 thirty days in advance of the date scheduled for the meeting. The notice shall include the
44 date, time, place and purpose for the meeting and shall identify the location or locations
45 for the meeting. All locations for the meeting shall be made accessible to the public. All
46 persons attending the meeting at any of the meeting locations shall be afforded the same
47 opportunity to address the public body as persons attending the primary or central
48 location. Any interruption in the telephonic or video broadcast of the meeting shall result
49 in the suspension of action at the meeting until repairs are made and public access
50 restored.

51 Thirty-day notice shall not be required for telephonic or video meetings continued to
52 address an emergency situation as provided in subsection F of this section or to conclude
53 the agenda of a telephonic or video meeting of the public body for which the proper
54 notice has been given, when the date, time, place and purpose of the continued meeting

1 are set during the meeting prior to adjournment.

2 The public body shall provide the Director of the Department of Information
3 Technology with notice of all public meetings held through telephonic or video means
4 pursuant to this section.

5 D. An agenda and materials which will be distributed to members of the public body
6 and which have been made available to the staff of the public body in sufficient time for
7 duplication and forwarding to all location sites where public access will be provided shall
8 be made available to the public at the time of the meeting. Minutes of all meetings held
9 by telephonic or video means shall be recorded as required by § 2.1-343. Votes taken
10 during any meeting conducted through telephonic or video means shall be recorded by
11 name in roll-call fashion and included in the minutes. In addition, the public body shall
12 make an audio recording of the meeting, if a telephonic medium is used, or an
13 audio/visual recording, if the meeting is held by video means. The recording shall be
14 preserved by the public body for a period of three years following the date of the meeting
15 and shall be available to the public.

16 E. No more than twenty-five percent of all meetings held annually, including meetings
17 of any ad hoc or standing committees, may be held by telephonic or video means. Any
18 public body which meets by telephonic or video means shall file with the Director of the
19 Department of Information Technology by July 1 of each year a statement identifying the
20 total number of meetings held during the preceding fiscal year, the dates on which the
21 meetings were held and the number and purpose of those conducted through telephonic or
22 video means.

23 F. Notwithstanding the limitations imposed by subsection E of this section, a public
24 body may meet by telephonic or video means as often as needed if an emergency exists
25 and the public body is unable to meet in regular session. As used in this subsection
26 "emergency" means an unforeseen circumstance rendering the notice required by this
27 section, or by § 2.1-343 of this chapter, impossible or impracticable and which
28 circumstance requires immediate action. Public bodies conducting emergency meetings
29 through telephonic or video means shall comply with the provisions of subsection D
30 requiring minutes, recordation and preservation of the audio or audio/visual recording of
31 the meeting. The basis for the emergency shall be stated in the minutes.

32 G. The provisions of this section establish a two-year experimental program designed to
33 evaluate the effectiveness of meetings by telephonic or video means by public bodies of
34 the Commonwealth. Meetings by telephonic or video means shall be prohibited on and
35 after July 1, 1991, unless the provisions of this section pertaining to the termination of
36 this experimental program are amended and reenacted by the General Assembly.

37 § 2.1-344. Executive or closed meetings.—A. ~~Executive~~ Public bodies are not required to
38 conduct executive or closed meetings may . However, should a public body determine that
39 an executive or closed meeting is desirable, such meeting shall be held only for the
40 following purposes:

41 1. Discussion or consideration of or interviews of prospective candidates for
42 employment, assignment, appointment, promotion, performance, demotion, salaries,
43 disciplining or resignation of *specific* public officers, appointees or employees of any public
44 body, and evaluation of performance of departments or schools of state institutions of
45 higher education where such matters regarding such *specific* individuals might be affected
46 by such evaluation. Any teacher shall be permitted to be present during an executive
47 session or closed meeting in which there is a discussion or consideration of a disciplinary
48 matter ; which involves the teacher and some student or students ; and the student or
49 students involved in the matter are present ; , provided the teacher makes a written
50 request to be present to the presiding officer of the appropriate board.

51 2. Discussion or consideration of admission or disciplinary matters concerning any
52 student or students of any state institution of higher education or any state school system.
53 However, any such student and legal counsel and, if the student is a minor, the student's
54 parents or legal guardians, shall be permitted to be present *during the taking of testimony*

1 *or presentation of evidence* at an executive or closed meeting, if such student, parents or
2 guardians so request in writing, and such request is submitted to the presiding officer of
3 the appropriate board.

4 3. Discussion or consideration of the condition, acquisition or use of real property for
5 public purpose, or of the disposition of publicly held property, or of plans for the future of
6 a state institution of higher education which could affect the value of property owned or
7 desirable for ownership by such institution.

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

10 5. Discussion concerning a prospective business or industry where no previous
11 announcement has been made of the business' or industry's interest in locating in the
12 community.

13 6. The investing of public funds where competition or bargaining is involved, where if
14 made public initially the financial interest of the governmental unit would be adversely
15 affected.

16 7. Consultation with legal counsel and briefings by staff members, consultants or
17 attorneys, pertaining to actual or ~~potential~~ *probable* litigation, or other *specific* legal matters
18 within the ~~jurisdiction of the public body, and discussions or consideration of such matters~~
19 ~~without the presence of counsel, staff, consultants, or attorneys requiring the provision of~~
20 *legal advice by counsel*.

21 8. In the case of boards of visitors of state institutions of higher education, discussion or
22 consideration of matters relating to gifts, bequests and fund-raising activities, and grants
23 and contracts for services or work to be performed by such institution. However, the terms
24 and conditions of any such gifts, bequests, grants and contracts made by a foreign
25 government, a foreign legal entity or a foreign person and accepted by a state institution of
26 higher education shall be subject to public disclosure upon written request to the
27 appropriate board of visitors. For the purpose of this subdivision, (i) "foreign government"
28 means any government other than the United States government or the government of a
29 state or a political subdivision thereof; (ii) "foreign legal entity" means any legal entity
30 created under the laws of the United States or of any state thereof if a majority of the
31 ownership of the stock of such legal entity is owned by foreign governments or foreign
32 persons or if a majority of the membership of any such entity is composed of foreign
33 persons or foreign legal entities, or any legal entity created under the laws of a foreign
34 government; and (iii) "foreign person" means any individual who is not a citizen or
35 national of the United States or a trust territory or protectorate thereof.

36 9. In the case of the boards of trustees of the Virginia Museum of Fine Arts and the
37 Science Museum of Virginia, discussion or consideration of matters relating to specific gifts,
38 bequests, and grants.

39 10. Discussion or consideration of honorary degrees or special awards.

40 11. Discussion or consideration of tests or examinations or other documents excluded
41 from this chapter pursuant to § 2.1-342 B 9.

42 12. Discussion, consideration or review by the appropriate House or Senate committees
43 of possible disciplinary action against a member arising out of the possible inadequacy of
44 the disclosure statement filed by the member, provided the member may request in writing
45 that the committee meeting not be conducted in executive session.

46 13. Discussion of strategy with respect to the negotiation of a siting agreement or to
47 consider the terms, conditions, and provisions of a siting agreement if the governing body
48 in open meeting finds that an open meeting will have a detrimental effect upon the
49 negotiating position of the governing body or the establishment of the terms, conditions and
50 provisions of the siting agreement, or both. All discussions with the applicant or its
51 representatives may be conducted in a closed meeting or executive session.

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

54 15. *Discussion or consideration of medical and mental records excluded from this*

1 *chapter pursuant to § 2.1-342 B 3.*

2 **B. No meeting shall become an executive or closed meeting unless there shall have**
3 **been recorded in open meeting an affirmative vote to that effect by the public body**
4 **holding the meeting, which motion shall state specifically the purpose or purposes**
5 **hereinabove set forth in this section which are to be the subject of the meeting and a**
6 **statement included in the minutes of the meeting which shall make specific reference to**
7 **the applicable exemption or exemptions as provided in subsection A of this section or §**
8 **2.1-345. A general reference to the provisions of this chapter or to the exemptions of**
9 **subsection A shall not be sufficient to satisfy the requirements for an executive or closed**
10 **meeting. The public body holding such an executive or closed meeting shall restrict its**
11 **consideration of matters during the closed portions only to those purposes specifically**
12 **exempted from the provisions of this chapter.**

13 **The notice provisions of this chapter shall not apply to executive or closed meetings of**
14 **any public body held solely for the purpose of interviewing candidates for the position of**
15 **chief administrative officer. The public body prior to any such executive or closed meeting**
16 **for the purpose of interviewing candidates shall announce in an open meeting that such**
17 **executive or closed meeting shall be held at a disclosed or undisclosed location within**
18 **fifteen days thereafter. In no event shall the public body take action on matters discussed**
19 **in such executive or closed meeting except at a public meeting for which notice was given**
20 **pursuant to § 2.1-343.**

21 **G. B. No resolution, ordinance, rule, contract, regulation or motion adopted, passed or**
22 **agreed to in an executive or closed meeting shall become effective unless the public body,**
23 **following the meeting, reconvenes in open meeting and takes a vote of the membership on**
24 **such resolution, ordinance, rule, contract, regulation or motion which shall have its**
25 **substance reasonably identified in the open meeting. Nothing in this section shall be**
26 **construed to require the board of directors of any authority created pursuant to the**
27 **Industrial Development and Revenue Bond Act (§ 15.1-1373 et seq.), or any public body**
28 **empowered to issue industrial revenue bonds by general or special law, to identify a**
29 **business or industry to which subdivision A 5 of this section applies. However, such**
30 **business or industry must be identified as a matter of public record at least thirty days**
31 **prior to the actual date of the board's authorization of the sale or issuance of such bonds.**

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

35 **D. Nothing in this section shall be construed to prevent the holding of conferences**
36 **between two or more public bodies, or their representatives, but these conferences shall be**
37 **subject to the same regulations for holding executive or closed sessions as are applicable to**
38 **any other public body.**

39 *§ 2.1-344.1. Call of closed or executive meetings; certification of proceedings.— A. No*
40 *meetings shall become an executive or closed meeting unless the public body proposing to*
41 *convene such meeting shall have taken an affirmative recorded vote in open session to*
42 *that effect, by motion stating specifically the purpose or purposes which are to be the*
43 *subject of the meeting, and reasonably identifying the substance of the matters to be*
44 *discussed. A statement shall be included in the minutes of the open meeting which shall*
45 *make specific reference to the applicable exemption or exemptions from open meeting*
46 *requirements provided in subsection A of § 2.1-344 or in § 2.1-345, and the matters*
47 *contained in such motion shall be set forth in those minutes. A general reference to the*
48 *provisions of this chapter or authorized exemptions from open meeting requirements shall*
49 *not be sufficient to satisfy the requirements for an executive or closed meeting.*

50 *B. The notice provisions of this chapter shall not apply to executive or closed meetings*
51 *of any public body held solely for the purpose of interviewing candidates for the position*
52 *of chief administrative officer. Prior to any such executive or closed meeting for the*
53 *purpose of interviewing candidates the public body shall announce in an open meeting*
54 *that such executive or closed meeting shall be held at a disclosed or undisclosed location*

1 *within fifteen days thereafter.*

2 *C. The public body holding an executive or closed meeting shall restrict its*
 3 *consideration of matters during the closed portions only to those purposes specifically*
 4 *exempted from the provisions of this chapter.*

5 *D. At the conclusion of any executive or closed meeting convened hereunder, the*
 6 *public body holding such meeting shall reconvene in open session immediately thereafter*
 7 *and shall take a roll call or other recorded vote to be included in the minutes of that*
 8 *body, certifying that (i) only public business matters lawfully exempted from open meeting*
 9 *requirements under this chapter, and (ii) only such public business matters as were*
 10 *identified in the motion by which such executive or closed meeting was convened, were*
 11 *discussed or considered in such meeting. Any member of the public body who believes*
 12 *that there was a departure from the requirements of subsections A and B above, shall so*
 13 *state prior to the vote, indicating the substance of the departure that, in his judgment,*
 14 *has taken place. The statement shall be recorded in the minutes of the public body.*

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

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

24 *G. In no event may any public body take action on matters discussed in any executive*
 25 *or closed meeting, except at a public meeting for which notice was given as required by §*
 26 *2.1-343.*

27 *H. Minutes may be taken during executive or closed sessions of a public body, but*
 28 *shall not be required. Such minutes shall not be subject to mandatory public disclosure.*

29 **§ 2.1-345. Public bodies to which chapter inapplicable.—The provisions of this chapter**
 30 **shall not be applicable to :**

31 ~~(1) to (5) [Repealed.]~~

32 ~~(6) Parole parole boards ; , petit juries ; , grand juries ; , and the Virginia State Crime~~
 33 ~~Commission.~~

34 ~~(7) [Repealed.]~~

35 **§ 2.1-345.1. Chapter inapplicable under certain circumstances.— The provisions of this**
 36 **chapter shall not be applicable when the requested information or material is the specific**
 37 **subject of active litigation , the requestor is a party to the litigation and the request has**
 38 **been initiated by or for the benefit of a party to that litigation and may be obtained**
 39 **through discovery procedures.**

40 **§ 2.1-346. Proceedings for enforcement of chapter.—Any person, including the**
 41 **Commonwealth's attorney acting in his or her official or individual capacity, denied the**
 42 **rights and privileges conferred by this chapter may proceed to enforce such rights and**
 43 **privileges (i) by filing a petition for mandamus or injunction, supported by an affidavit**
 44 **showing good cause, addressed to the court of record of the county or city from which the**
 45 **public body has been elected or appointed to serve and in which such rights and privileges**
 46 **were so denied , or (ii) effective July 1, 1990, by requesting an administrative review by**
 47 **the Office of the Attorney General . Failure by any person to request and receive notice of**
 48 **the time and place of meetings as provided in § 2.1-343 shall not preclude any person from**
 49 **enforcing his or her rights and privileges conferred by this chapter.**

50 *Effective July 1, 1990, any person who has been denied access to official records or*
 51 *public meetings by the action of a public body pursuant to any provision of this chapter*
 52 *may file a written request for an administrative review by the Office of the Attorney*
 53 *General within ten days of such denial. The administrative review request shall set forth*
 54 *with reasonable specificity (i) the rights and privileges conferred by this chapter which*

1 were denied, (ii) the pertinent facts pertaining to such denial, (iii) copies of relevant
 2 correspondence and (iv) the action taken by the public body. The person requesting
 3 administrative review shall forward a copy of the administrative review request to the
 4 public body which has denied access to its records or meetings contemporaneously with
 5 the request for administrative review filed with the Attorney General.

6 The Office of the Attorney General shall review the issues and facts pertaining to the
 7 action taken by the public body and issue an opinion to the individual requesting the
 8 review and the public body within thirty days as to whether the public body's action
 9 prompting the review was in compliance with the chapter. The Office of the Attorney
 10 General may decline to issue an opinion if it determines that a request lacks reasonable
 11 specificity or is materially inaccurate in any significant respect, or if the Office has
 12 rendered an opinion on the specific request within the attorney-client privilege. If the
 13 public body's action was not in compliance with the chapter, the Office of the Attorney
 14 General shall advise the public body on methods to conform its action. If the Office of the
 15 Attorney General determines that records or other documents have been withheld in
 16 violation of the provisions of this chapter, the public body withholding such records or
 17 documents shall provide them to the requesting party unless within seven days of receipt
 18 of such determination the public body files a petition in circuit court for review of the
 19 determination. The decision rendered by the Attorney General shall be admissible in
 20 evidence.

21 The Office of the Attorney General shall publish monthly a synopsis of each review
 22 conducted pursuant to this section. Copies of the synopsis shall be available upon request.

23 Persons denied the rights and privileges conferred by this chapter shall not be required
 24 to request an administrative review prior to filing a petition in circuit court. Any person
 25 who elects to request administrative review may file a petition in an appropriate circuit
 26 court only after the opinion by the Attorney General is rendered and the alleged violation
 27 of this chapter is not resolved to his satisfaction.

28 Any such petition alleging such denial of rights and privileges conferred by this chapter
 29 by a board, bureau, commission, authority, district or agency of the state government or by
 30 a standing or other committee of the General Assembly, shall be addressed to the Circuit
 31 Court of the City of Richmond. Such A petition for mandamus or injunction under this
 32 chapter shall be heard within seven days of the date when the same is made; provided, if
 33 such the petition is made outside of the regular terms of the circuit court of a county
 34 which is included in a judicial circuit with another county or counties, the hearing on such
 35 the petition shall be given precedence on the docket of such court over all cases which
 36 are not otherwise given precedence by law. Such The petition shall allege with reasonable
 37 specificity the circumstances of the denial of the rights and privileges conferred by this
 38 chapter. Any decision of the Office of the Attorney General issued pursuant to this section
 39 after July 1, 1990, shall be admissible in evidence. A single instance of denial of such the
 40 rights and privileges conferred by this chapter shall be sufficient to invoke the remedies
 41 granted herein. If the court finds the denial to be in violation of the provisions of this
 42 chapter, the court may shall award costs and reasonable attorney's fees to the petitioning
 43 citizen. However, the award shall be discretionary with the court if the public body relied
 44 upon an opinion of the Attorney General, or a decision of a court, with respect to such
 45 denial, and the court finds that such opinion substantially supports the public body's
 46 position. The burden of showing reliance and substantial support shall be on the public
 47 body. Such costs and fees shall be paid by the public body in violation of this chapter. The
 48 court may award costs and reasonable attorney's fees to the public body if the court finds
 49 that the petition was based upon a clearly inadequate case also impose appropriate
 50 sanctions as provided in § 8.01-271.1 .

51 § 2.1-346.1. Violations and penalties.—In a proceeding commenced against members of
 52 public bodies under § 2.1-346 for a violation of §§ 2.1-342, 2.1-343, 2.1-343.1 or § 2.1-344, the
 53 court, if it finds that a violation was willfully and knowingly made, shall impose upon such
 54 person or persons member in his or her individual capacity, whether a writ of mandamus

1 or injunctive relief is awarded or not, a civil penalty of not less than \$25 nor more than
2 \$500 \$1,000 , which amount shall be paid into the State Literary Fund.

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1989 SESSION

LD7301410

HOUSE BILL NO. 1229

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on General Laws

on January 26, 1989)

(Patron Prior to Substitute—Delegate Axelle)

A BILL to amend and reenact §§ 2.1-340.1, 2.1-341, 2.1-342, 2.1-343, 2.1-343.1, 2.1-344, 2.1-345, 2.1-346 and 2.1-346.1 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 2.1-344.1, relating to the Virginia Freedom of Information Act; penalty.

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.1-340.1, 2.1-341, 2.1-342, 2.1-343, 2.1-343.1, 2.1-344, 2.1-345, 2.1-346 and 2.1-346.1 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 2.1-344.1 as follows:

§ 2.1-340.1. Policy of chapter.— It is the purpose of the General Assembly by providing ~~By enacting this chapter to ensure to the General Assembly ensures~~ the people of this Commonwealth ready access to records in the custody of public officials and free entry to meetings of public bodies wherein the business of the people is being conducted. ~~This chapter recognizes that the Committees or subcommittees of public bodies created to perform delegated functions of a public body or to advise a public body shall also conduct their meetings and business pursuant to this chapter. 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. To the end that the purposes of this Unless the public body specifically elects to exercise an exemption provided by this chapter or any other statute, every meeting shall be open to the public and all reports, documents and other material shall be available for disclosure upon request.~~

~~This chapter may be realized,~~ it 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 exception or exemption from applicability shall be narrowly construed in order that no thing which should be public may be hidden from any person.

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

§ 2.1-341. Definitions.—The following terms, whenever used or referred to in this chapter, shall have the following meanings ; respectively , unless a different meaning clearly appears from the context:

“Executive meeting” or “closed meeting” means a meeting from which the public is excluded.

~~(a)~~ “Meeting” or “meetings” means the meetings including work sessions , when sitting physically, or through telephonic or video equipment pursuant to § 2.1-343.1, 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 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 state institutions of higher education; and other organizations, corporations or agencies in the Commonwealth, supported wholly or principally by public funds. The notice provisions of this chapter shall not apply to the said informal meetings or gatherings of the members of the General Assembly. Nothing in this chapter shall be construed to make unlawful the gathering or attendance of two or more members of a body or entity 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 body or

1 entity. *The gathering of employees of a public body shall not be deemed a "meeting"*
2 *subject to the provisions of this chapter.*

3 No meeting shall be conducted through telephonic, video, electronic or other
4 communication means where the members are not physically assembled to discuss or
5 transact public business, except as *provided in § 2.1-343.1 or as* may specifically be
6 provided in Title 54 54.1 for the summary suspension of professional licenses.

7 (b) "Official records" means all written or printed books, papers, letters, documents,
8 maps and tapes, photographs, films, sound recordings, reports or other material, regardless
9 of physical form or characteristics, prepared, owned, or in the possession of a public body
10 or any employee or officer of a public body in the transaction of public business.

11 (c) ~~"Executive meeting" or "closed meeting" means a meeting from which the public is~~
12 ~~excluded.~~

13 (d) "Open meeting" or "public meeting" means a meeting at which the public may be
14 present.

15 (e) "Public body" means any of the groups, agencies or organizations enumerated in
16 ~~subdivision (a) of the definition of "meeting" as provided in this section , including any~~
17 ~~committees or subcommittees of the public body created to perform delegated functions of~~
18 ~~the public body or to advise the public body .~~

19 (f) "Scholastic records" means those records, files, documents, and other materials
20 containing information about a student and maintained by a public body which is an
21 educational agency or institution or by a person acting for such agency or institution, but,
22 for the purpose of access by a student, does not include (i) financial records of a parent
23 or guardian nor (ii) records of instructional, supervisory, and administrative personnel and
24 educational personnel ancillary thereto, which are in the sole possession of the maker
25 thereof and which are not accessible or revealed to any other person except a substitute.

26 § 2.1-342. Official records to be open to inspection; procedure for requesting records
27 and responding to request; charges; exceptions to application of chapter.—A. Except as
28 otherwise specifically provided by law, all official records shall be open to inspection and
29 copying by any citizens of this Commonwealth during the regular office hours of the
30 custodian of such records. Access to such records shall not be denied to ~~any such citizen~~
31 ~~citizens~~ of this Commonwealth, ~~nor to~~ representatives of newspapers and magazines with
32 circulation in this Commonwealth, and representatives of radio and television stations
33 broadcasting in or into this Commonwealth. The custodian of such records shall take all
34 necessary precautions for their preservation and safekeeping. Any public body covered
35 under the provisions of this chapter shall make an initial response to citizens requesting
36 records open to inspection within ~~fourteen calendar~~ *five work days from after* the receipt
37 of the request by the public body *which is the custodian of the requested records* . Such
38 citizen request shall designate the requested records with reasonable specificity. ~~If the~~
39 ~~requested records or public body is excluded from the provisions of this chapter, the public~~
40 ~~body to which the request is directed shall within fourteen calendar days from the receipt~~
41 ~~of the request tender a written explanation as to why the records are not available to the~~
42 ~~requester. Such explanation shall make specific reference to the applicable provisions of~~
43 ~~this chapter or other Code sections which make the requested records unavailable. In the~~
44 ~~event a determination of the availability of the requested records may not be made within~~
45 ~~the fourteen-calendar-day period, the public body to which the request is directed shall~~
46 ~~inform the requester as such , and shall have an additional ten calendar days in which to~~
47 ~~make a determination of availability. A specific reference to this chapter by the requesting~~
48 ~~citizen in his records request shall not be necessary to invoke the time limits for response~~
49 ~~by the public body. The response by the public body within such five work days shall be~~
50 ~~one of the following responses:~~

51 1. *The requested records shall be provided to the requesting citizen.*

52 2. *If the public body determines that an exemption applies to all of the requested*
53 *records, it may refuse to release such records and provide to the requesting citizen a*
54 *written explanation as to why the records are not available with the explanation making*

1 *specific reference to the applicable Code sections which make the requested records*
 2 *exempt.*

3 *3. If the public body determines that an exemption applies to a portion of the*
 4 *requested records, it may delete or excise that portion of the records to which an*
 5 *exemption applies, disclose the remainder of the requested records and provide to the*
 6 *requesting citizen a written explanation as to why these portions of the record are not*
 7 *available to the requesting citizen with the explanation making specific reference to the*
 8 *applicable Code sections which make that portion of the requested records exempt. Any*
 9 *reasonably segregatable portion of an official record shall be provided to any person*
 10 *requesting the record after the deletion of the exempt portion.*

11 *4. If the public body determines that it is practically impossible to provide the*
 12 *requested records or to determine whether they are available within the five-work-day*
 13 *period, the public body shall so inform the requesting citizen and shall have an additional*
 14 *seven work days in which to provide one of the three preceding responses.*

15 *The public body may make reasonable charges for the copying and , search time and*
 16 *computer time expended in the supplying of such records; however, in no event shall such*
 17 *charges shall not exceed the actual cost to the public body in supplying such records,*
 18 *except that the public body may charge, on a pro rata per acre basis, for the cost of*
 19 *creating topographical maps developed by the public body, for such maps or portions*
 20 *thereof, which encompass a contiguous area greater than fifty acres. Such charges for the*
 21 *supplying of requested records shall be estimated in advance at the request of the citizen.*
 22 *The public body may require the advance payment of charges which are subject to*
 23 *advance determination.*

24 *In any case where a public body determines in advance that search and copying*
 25 *charges for producing the requested documents are likely to exceed \$200, the public body*
 26 *may, before continuing to process the request, require the citizen requesting the*
 27 *information to agree to payment of an amount not to exceed the advance determination*
 28 *by five percent. The period within which the public body must respond under this section*
 29 *shall be tolled for the amount of time that elapses between notice of the advance*
 30 *determination and the response of the citizen requesting the information.*

31 *Official records maintained by a public body on a computer or other electronic data*
 32 *processing system which are available to the public under the provisions of this chapter*
 33 *shall be made reasonably accessible to the public at reasonable cost.*

34 *Public bodies shall not be required to create or prepare a particular requested record if*
 35 *it does not already exist. Public bodies may, but shall not be required to, abstract or*
 36 *summarize information from official records or convert an official record available in one*
 37 *form into another form at the request of the citizen.*

38 *Failure to make any response to a request for records shall be a violation of this*
 39 *chapter and deemed a denial of the request.*

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

43 *1. Memoranda, correspondence, evidence and complaints related to criminal*
 44 *investigations; reports submitted to the state and local police, to investigators authorized*
 45 *pursuant to § 53.1-16 and to the campus police departments of public institutions of higher*
 46 *education as established by Chapter 17 (§ 23-232 et seq.) of Title 23 in confidence; and all*
 47 *records of persons imprisoned in penal institutions in this Commonwealth provided such*
 48 *records relate to the said imprisonment. Information in the custody of law-enforcement*
 49 *officials relative to the identity of any individual other than a juvenile who is arrested and*
 50 *charged, and the status of the charge or arrest, shall not be excluded from the provisions*
 51 *of this chapter.*

52 *2. Confidential records of all investigations of applications for licensees and all licenses*
 53 *made by or submitted to the Alcoholic Beverage Control Board.*

54 *3. State income , business, and estate tax returns, personal property tax returns,*

1 scholastic records and personnel records *containing information concerning identifiable*
2 *individuals* , except that such access shall not be denied to the person who is the subject
3 thereof, and medical and mental records, except that such records can be personally
4 reviewed by the subject person or a physician of the subject person's choice; however, the
5 subject person's mental records may not be personally reviewed by such person when the
6 subject person's treating physician has made a part of such person's records a written
7 statement that in his opinion a review of such records by the subject person would be
8 injurious to the subject person's physical or mental health or well-being.

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

19 For the purposes of this chapter such statistical summaries of incidents and statistical
20 data concerning patient abuse as may be compiled by the Commissioner of the Department
21 of Mental Health, Mental Retardation and Substance Abuse Services shall be open to
22 inspection and releasable as provided in subsection A of this section. No such summaries
23 or data shall include any patient identifying information. Where the person who is the
24 subject of scholastic or medical and mental records is under the age of eighteen, his right
25 of access may be asserted only by his guardian , or his parent, including a noncustodial
26 parent, unless such parent's parental rights have been terminated or a court of competent
27 jurisdiction has restricted or denied such access. In instances where the person who is the
28 subject thereof is an emancipated minor or a student in a state-supported institution of
29 higher education such right of access may be asserted by the subject person.

30 4. Memoranda, working papers and correspondence held or requested by members of
31 the General Assembly or by the office of the Governor or Lieutenant Governor, Attorney
32 General or the mayor or other chief executive officer of any political subdivision of the
33 Commonwealth or the president or other chief executive officer of any state-supported
34 institutions of higher education.

35 5. Written opinions of the city ~~and~~ , county *and town* attorneys of the cities, counties
36 and towns in the Commonwealth and any other writing protected by the attorney-client
37 privilege.

38 6. Memoranda, working papers and records compiled specifically for use in litigation or
39 as a part of an active administrative investigation concerning a matter which is properly
40 the subject of an executive or closed meeting under § 2.1-344 and material furnished in
41 confidence with respect thereto.

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

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

48 9. Any test or examination used, administered or prepared by any public body for
49 purposes of evaluation of (i) any student or any student's performance, (ii) any employee
50 or employment seeker's qualifications or aptitude for employment, retention, or promotion,
51 or (iii) qualifications for any license or certificate issued by any public body.

52 As used in this subdivision 9, "test or examination" shall include (i) any scoring key for
53 any such test or examination, and (ii) any other document which would jeopardize the
54 security of such test or examination. Nothing contained in this subdivision 9 shall prohibit

1 the release of test scores or results as provided by law, or limit access to individual
2 records as is provided by law. However, the subject of such employment tests shall be
3 entitled to review and inspect all documents relative to his performance on such
4 employment tests.

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

12 10. Applications for admission to examinations or for licensure and scoring records
13 maintained by the Department of Health ~~Regulatory Boards Professions~~ or any board in
14 that department on individual licensees or applicants. However, such material may be
15 made available during normal working hours for copying, at the requestor's expense, by the
16 individual who is subject thereof, in the offices of the Department of Health ~~Regulatory~~
17 ~~Boards Professions~~ or in the offices of any health regulatory board, whichever may possess
18 the material.

19 11. Records of active investigations being conducted by the Department of Health
20 ~~Regulatory Boards Professions~~ or by any health regulatory board in the Commonwealth.

21 12. Memoranda, legal opinions, working papers and records recorded in or compiled
22 exclusively for executive or closed meetings lawfully held pursuant to § 2.1-344.

23 13. Reports, documentary evidence and other information as specified in §§ 2.1-373.2
24 and 63.1-55.4.

25 14. Proprietary information gathered by or for the Virginia Port Authority as provided
26 in § ~~62.1-134.1~~ or § 62.1-132.4 or § 62.1-134.1 .

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

31 16. Vendor proprietary information software which may be in the official records of a
32 public body. For the purpose of this section, "vendor proprietary software" means computer
33 programs acquired from a vendor for purposes of processing data for agencies or political
34 subdivisions of this Commonwealth.

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

41 18. Financial statements not publicly available filed with applications for industrial
42 development financings.

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

46 20. Confidential proprietary records, voluntarily provided by private business to the
47 Division of Tourism of the Department of Economic Development, used by that Division
48 periodically to indicate to the public statistical information on tourism visitation to Virginia
49 attractions and accommodations.

50 21. Information which meets the criteria for being filed as confidential under the Toxic
51 Substances Information Act (§ 32.1-239 et seq.), regardless of how or when it is used by
52 authorized persons in regulatory processes.

53 22. Documents as specified in § 58.1-3.

54 23. Confidential records, including victim identity, provided to or obtained by staff in a

1 rape crisis center or a program for battered spouses.

2 24. Computer software developed by or for a state agency, state-supported institution of
3 higher education or political subdivision of the Commonwealth.

4 25. Investigator notes, and other correspondence and information, furnished in
5 confidence with respect to an active investigation of individual employment discrimination
6 complaints made to the Department of Personnel and Training; however, nothing in this
7 section shall prohibit the disclosure of information taken from inactive reports in a form
8 which does not reveal the identity of charging parties, persons supplying the information or
9 other individuals involved in the investigation.

10 26. Fisheries data which would permit identification of any person or vessel, except
11 when required by court order as specified in § 28.1-23.2.

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

14 28. Documents and writings furnished by a member of the General Assembly to a
15 meeting of a standing committee, special committee or subcommittee of his house
16 established solely for the purpose of reviewing members' annual disclosure statements and
17 supporting materials filed under § 2.1-639.40 or of formulating advisory opinions to
18 members on standards of conduct, or both.

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

23 30. Investigative notes and other correspondence and information furnished in
24 confidence with respect to an investigation or conciliation process involving an alleged
25 unlawful discriminatory practice under the Virginia Human Rights Act (§ 2.1-714 et seq.);
26 however, nothing in this section shall prohibit the distribution of information taken from
27 inactive reports in a form which does not reveal the identity of the parties involved or
28 other persons supplying information.

29 31. Investigative notes; proprietary information not published, copyrighted or patented;
30 information obtained from employee personnel records; personally identifiable information
31 regarding residents, clients or other recipients of services; and other correspondence and
32 information furnished in confidence to the Department of Social Services in connection with
33 an active investigation of an applicant or licensee pursuant to Chapters 9 (§ 63.1-172 et
34 seq.) and 10 (§ 63.1-195 et seq.) of Title 63.1; however, nothing in this section shall prohibit
35 disclosure of information from the records of completed investigations in a form that does
36 not reveal the identity of complainants, persons supplying information, or other individuals
37 involved in the investigation.

38 32. Reports, manuals, specifications, documents, minutes or recordings of staff meetings
39 or other information or materials of the Virginia Board of Corrections, the Virginia
40 Department of Corrections or any institution thereof to the extent, as determined by the
41 Director of the Department of Corrections or his designee, that disclosure or public
42 dissemination of such materials would jeopardize the security of any correctional facility or
43 institution, as follows:

44 (i) Security manuals, including emergency plans that are a part thereof;

45 (ii) Engineering and architectural drawings of correctional facilities, and operational
46 specifications of security systems utilized by the Department, provided the general
47 descriptions of such security systems, cost and quality shall be made available to the
48 public;

49 (iii) Training manuals designed for correctional facilities to the extent that they address
50 procedures for institutional security, emergency plans and security equipment;

51 (iv) Internal security audits of correctional facilities, but only to the extent that they
52 specifically disclose matters described in (i), (ii), or (iii) above or other specific
53 operational details the disclosure of which would jeopardize the security of a correctional
54 facility or institution;

1 (v) Minutes or recordings of divisional, regional and institutional staff meetings or
 2 portions thereof to the extent that such minutes deal with security issues listed in (i), (ii),
 3 (iii), and (iv) of this subdivision;

4 (vi) Investigative case files by investigators authorized pursuant to § 53.1-16; however,
 5 nothing in this section shall prohibit the disclosure of information taken from inactive
 6 reports in a form which does not reveal the identity of complainants or charging parties,
 7 persons supplying information, confidential sources, or other individuals involved in the
 8 investigation, or other specific operational details the disclosure of which would jeopardize
 9 the security of a correctional facility or institution; nothing herein shall permit the
 10 disclosure of materials otherwise exempt as set forth in *subdivision 1 of subsection B of §*
 11 *2.1-342 (b) (1)* ;

12 (vii) Logs or other documents containing information on movement of inmates or
 13 employees; and

14 (viii) Documents disclosing contacts between inmates and law enforcement personnel.

15 Notwithstanding the provisions of this subdivision, reports and information regarding the
 16 general operations of the Department, including notice that an escape has occurred, shall
 17 be open to inspection and copying as provided in this section.

18 **33. The names, addresses and other client specific information for Personal information,**
 19 *as defined in § 2.1-379 of the Code, (i) filed with the Virginia Housing Development*
 20 *Authority concerning individuals who have applied for or received loans or other housing*
 21 *assistance or who have applied for occupancy of or have occupied housing financed,*
 22 *owned or otherwise assisted by the Virginia Housing Development Authority, or (ii)*
 23 *concerning persons participating in or person persons on the waiting list for federally*
 24 *funded rent-assistance programs ; except that . However, access to one's own information*
 25 *shall not be denied.*

26 **34. Documents regarding the siting of hazardous waste facilities, except as provided in §**
 27 **10.1-1441, if disclosure of them would have a detrimental effect upon the negotiating**
 28 **position of a governing body or on the establishment of the terms, conditions and**
 29 **provisions of the siting agreement.**

30 **35. Appraisals and cost estimates of real property subject to a proposed purchase, sale**
 31 **or lease, prior to the completion of such purchase, sale or lease.**

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

38 **37. Official records, memoranda, working papers, graphics, video or audio tapes,**
 39 **production models, data and information of a proprietary nature produced by or for or**
 40 **collected by or for the State Lottery Department relating to matters of a specific lottery**
 41 **game design, development, production, operation, ticket price, prize structure, manner of**
 42 **selecting the winning ticket, manner of payment of prizes to holders of winning tickets,**
 43 **frequency of drawings or selections of winning tickets, odds of winning, advertising, or**
 44 **marketing, where such official records have not been publicly released, published,**
 45 **copyrighted or patented. Whether released, published or copyrighted, all game-related**
 46 **information shall be subject to public disclosure under this chapter upon the first day of**
 47 **sales for the specific lottery game to which it pertains.**

48 **38. Official records of studies and investigations by the State Lottery Department of (i)**
 49 **lottery agents, (ii) lottery vendors, (iii) lottery crimes under §§ 58.1-4014 through 58.1-4018,**
 50 **(iv) defects in the law or regulations which cause abuses in the administration and**
 51 **operation of the lottery and any evasions of such provisions, or (v) use of the lottery as a**
 52 **subterfuge for organized crime and illegal gambling where such official records have not**
 53 **been publicly released, published or copyrighted. All studies and investigations referred to**
 54 **under subdivisions (iii), (iv) and (v) shall be subject to public disclosure under this chapter**

1 *upon completion of the study or investigation.*

2 C. Neither any provision of this chapter nor any provision of Chapter 26 (§ 2.1-377 et
3 seq.) of this title shall be construed as denying public access to contracts between a public
4 official and a public body, other than contracts settling public employee employment
5 disputes held confidential as personnel records under subdivision 3 of subsection B of this
6 section, or to records of the position, job classification, official salary or rate of pay of,
7 and to records of the allowances or reimbursements for expenses paid to any public
8 officer, official or employee at any level of state, local or regional government in this
9 Commonwealth. The provisions of this subsection, however, shall not apply to records of
10 the official salaries or rates of pay of public employees whose annual rate of pay is
11 \$10,000 or less.

12 § 2.1-343. Meetings to be public; notice of meetings; recordings; minutes; voting.—Except
13 as otherwise specifically provided by law and except as provided in §§ 2.1-344 and 2.1-345,
14 all meetings shall be public meetings , *including meetings and work sessions during which*
15 *no votes are cast or any decisions made . Notice including the time, date and place of*
16 *each meeting shall be furnished to any citizen of this Commonwealth who requests such*
17 *information. Requests to be notified on a continual basis shall be made at least once a*
18 *year in writing and include name, address, zip code and organization of the requestor.*
19 *Notice, reasonable under the circumstance, of special or emergency meetings shall be*
20 *given contemporaneously with the notice provided members of the public body conducting*
21 *the meeting.*

22 *Any person may photograph, film, record or otherwise reproduce any portion of a*
23 *meeting required to be open. The public body conducting the meeting may adopt rules*
24 *governing the placement and use of equipment necessary for broadcasting, photographing,*
25 *filming or recording a meeting to prevent interference with the proceedings.*

26 *Voting by secret or written ballot in an open meeting shall be a violation of this*
27 *chapter.*

28 Minutes shall be recorded at all public meetings. However, minutes shall not be
29 required to be taken at deliberations of (i) standing and other committees of the General
30 Assembly, (ii) legislative interim study commissions and committees, including the Virginia
31 Code Commission, (iii) ~~the Virginia Advisory Legislative Council and its committees,~~ (iv)
32 study committees or commissions appointed by the Governor, or ~~(v)~~ (iv) study commissions
33 or study committees , *or any other committees or subcommittees* appointed by the
34 governing bodies or school boards of counties, cities and towns, except where the
35 membership of any such study commission ~~or study~~ , committee *or subcommittee* includes
36 ~~more than one member of a three member governing body or school board, more than two~~
37 ~~members of a governing body or school board having four members or a majority of a~~ *the*
38 *governing body of the county, city or town or school board having more than four*
39 *members . Information as to the time and place of each meeting shall be furnished to any*
40 *citizen of this Commonwealth who requests such information. Requests to be notified on a*
41 *continual basis shall be made at least once a year in writing and include name, address,*
42 *zip code and organization if any, together with an adequate supply of stamped*
43 *self-addressed envelopes.*

44 § 2.1-343.1. Electronic communication meetings prohibited; exception, experimental
45 program.— A. It is a violation of this chapter for any public political subdivision or any
46 governing body , authority, board, bureau, commission, district or agency of local
47 government to conduct a meeting wherein the public business is discussed or transacted
48 through telephonic, video, electronic or other communication means where the members
49 are not physically assembled.

50 B. *Public bodies of the Commonwealth, as provided in the definition of "meeting" in §*
51 *2.1-341, but excluding any political subdivision or any governing body, authority, board,*
52 *bureau, commission, district or agency of local government, may conduct any meeting,*
53 *except executive or closed meetings held pursuant to § 2.1-344, wherein the public*
54 *business is discussed or transacted through telephonic or video means. For the purposes of*

1 subsections B through G of this section, "public body" shall mean any state legislative
2 body, authority, board, bureau, commission, district or agency of the Commonwealth and
3 shall exclude those of local governments.

4 Meetings conducted through telephonic or video means shall be on an experimental
5 basis commencing on July 1, 1989, and ending on June 30, 1991. The Director of the
6 Department of Information Technology shall submit an evaluation of the effectiveness of
7 meetings by telephonic or video means by public bodies of the Commonwealth prior to
8 January 1, 1992, to the Governor and the General Assembly.

9 C. Notice of any meetings held pursuant to this section shall be provided at least
10 thirty days in advance of the date scheduled for the meeting. The notice shall include the
11 date, time, place and purpose for the meeting and shall identify the location or locations
12 for the meeting. All locations for the meeting shall be made accessible to the public. All
13 persons attending the meeting at any of the meeting locations shall be afforded the same
14 opportunity to address the public body as persons attending the primary or central
15 location. Any interruption in the telephonic or video broadcast of the meeting shall result
16 in the suspension of action at the meeting until repairs are made and public access
17 restored.

18 Thirty-day notice shall not be required for telephonic or video meetings continued to
19 address an emergency situation as provided in subsection F of this section or to conclude
20 the agenda of a telephonic or video meeting of the public body for which the proper
21 notice has been given, when the date, time, place and purpose of the continued meeting
22 are set during the meeting prior to adjournment.

23 The public body shall provide the Director of the Department of Information
24 Technology with notice of all public meetings held through telephonic or video means
25 pursuant to this section.

26 D. An agenda and materials which will be distributed to members of the public body
27 and which have been made available to the staff of the public body in sufficient time for
28 duplication and forwarding to all location sites where public access will be provided shall
29 be made available to the public at the time of the meeting. Minutes of all meetings held
30 by telephonic or video means shall be recorded as required by § 2.1-343. Votes taken
31 during any meeting conducted through telephonic or video means shall be recorded by
32 name in roll-call fashion and included in the minutes. In addition, the public body shall
33 make an audio recording of the meeting, if a telephonic medium is used, or an
34 audio/visual recording, if the meeting is held by video means. The recording shall be
35 preserved by the public body for a period of three years following the date of the meeting
36 and shall be available to the public.

37 E. No more than twenty-five percent of all meetings held annually by a public body,
38 including meetings of any ad hoc or standing committees, may be held by telephonic or
39 video means. Any public body which meets by telephonic or video means shall file with
40 the Director of the Department of Information Technology by July 1 of each year a
41 statement identifying the total number of meetings held during the preceding fiscal year,
42 the dates on which the meetings were held and the number and purpose of those
43 conducted through telephonic or video means.

44 F. Notwithstanding the limitations imposed by subsection E of this section, a public
45 body may meet by telephonic or video means as often as needed if an emergency exists
46 and the public body is unable to meet in regular session. As used in this subsection
47 "emergency" means an unforeseen circumstance rendering the notice required by this
48 section, or by § 2.1-343 of this chapter, impossible or impracticable and which
49 circumstance requires immediate action. Public bodies conducting emergency meetings
50 through telephonic or video means shall comply with the provisions of subsection D
51 requiring minutes, recordation and preservation of the audio or audio/visual recording of
52 the meeting. The basis for the emergency shall be stated in the minutes.

53 G. The provisions of this section establish a two-year experimental program designed to
54 evaluate the effectiveness of meetings by telephonic or video means by public bodies of

1 *the Commonwealth. Meetings by telephonic or video means shall be prohibited on and*
2 *after July 1, 1991, unless the provisions of this section pertaining to the termination of*
3 *this experimental program are amended and reenacted by the General Assembly.*

4 § 2.1-344. Executive or closed meetings.—A. ~~Executive~~ *Public bodies are not required to*
5 *conduct executive or closed meetings may . However, should a public body determine that*
6 *an executive or closed meeting is desirable, such meeting shall be held only for the*
7 *following purposes:*

8 1. Discussion or consideration of *or interviews of prospective candidates for*
9 *employment, assignment, appointment, promotion, performance, demotion, salaries,*
10 *disciplining or resignation of specific public officers, appointees or employees of any public*
11 *body, and evaluation of performance of departments or schools of state institutions of*
12 *higher education where such matters regarding such specific individuals might be affected*
13 *by such evaluation. Any teacher shall be permitted to be present during an executive*
14 *session or closed meeting in which there is a discussion or consideration of a disciplinary*
15 *matter ; which involves the teacher and some student or students ; and the student or*
16 *students involved in the matter are present ; , provided the teacher makes a written*
17 *request to be present to the presiding officer of the appropriate board.*

18 2. Discussion or consideration of admission or disciplinary matters concerning any
19 student or students of any state institution of higher education or any state school system.
20 However, any such student and legal counsel and, if the student is a minor, the student's
21 parents or legal guardians, shall be permitted to be present *during the taking of testimony*
22 *or presentation of evidence* at an executive or closed meeting, if such student, parents or
23 guardians so request in writing ; and such request is submitted to the presiding officer of
24 the appropriate board.

25 3. Discussion or consideration of the condition, acquisition or use of real property for
26 public purpose, or of the disposition of publicly held property, or of plans for the future of
27 a state institution of higher education which could affect the value of property owned or
28 desirable for ownership by such institution.

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

31 5. Discussion concerning a prospective business or industry where no previous
32 announcement has been made of the business' or industry's interest in locating in the
33 community.

34 6. The investing of public funds where competition or bargaining is involved, where if
35 made public initially the financial interest of the governmental unit would be adversely
36 affected.

37 7. Consultation with legal counsel and briefings by staff members, consultants or
38 attorneys, pertaining to actual or ~~potential~~ *probable* litigation, or other *specific* legal matters
39 ~~within the jurisdiction of the public body, and discussions or consideration of such matters~~
40 ~~without the presence of counsel, staff, consultants, or attorneys requiring the provision of~~
41 *legal advice by counsel .*

42 8. In the case of boards of visitors of state institutions of higher education, discussion or
43 consideration of matters relating to gifts, bequests and fund-raising activities, and grants
44 and contracts for services or work to be performed by such institution. However, the terms
45 and conditions of any such gifts, bequests, grants and contracts made by a foreign
46 government, a foreign legal entity or a foreign person and accepted by a state institution of
47 higher education shall be subject to public disclosure upon written request to the
48 appropriate board of visitors. For the purpose of this subdivision, (i) "foreign government"
49 means any government other than the United States government or the government of a
50 state or a political subdivision thereof; (ii) "foreign legal entity" means any legal entity
51 created under the laws of the United States or of any state thereof if a majority of the
52 ownership of the stock of such legal entity is owned by foreign governments or foreign
53 persons or if a majority of the membership of any such entity is composed of foreign
54 persons or foreign legal entities, or any legal entity created under the laws of a foreign

1 government; and (iii) "foreign person" means any individual who is not a citizen or
2 national of the United States or a trust territory or protectorate thereof.

3 9. In the case of the boards of trustees of the Virginia Museum of Fine Arts and the
4 Science Museum of Virginia, discussion or consideration of matters relating to specific gifts,
5 bequests, and grants.

6 10. Discussion or consideration of honorary degrees or special awards.

7 11. Discussion or consideration of tests or examinations or other documents excluded
8 from this chapter pursuant to § 2.1-342 B 9.

9 12. Discussion, consideration or review by the appropriate House or Senate committees
10 of possible disciplinary action against a member arising out of the possible inadequacy of
11 the disclosure statement filed by the member, provided the member may request in writing
12 that the committee meeting not be conducted in executive session.

13 13. Discussion of strategy with respect to the negotiation of a siting agreement or to
14 consider the terms, conditions, and provisions of a siting agreement if the governing body
15 in open meeting finds that an open meeting will have a detrimental effect upon the
16 negotiating position of the governing body or the establishment of the terms, conditions and
17 provisions of the siting agreement, or both. All discussions with the applicant or its
18 representatives may be conducted in a closed meeting or executive session.

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

21 15. *Discussion or consideration of medical and mental records excluded from this*
22 *chapter pursuant to § 2.1-342 B 3.*

23 16. *Discussion, consideration or review of State Lottery Department matters related to*
24 *proprietary lottery game information and studies or investigations exempted from*
25 *disclosure under subdivisions 37 and 38 of subsection B of § 2.1-342.*

26 **B. No meeting shall become an executive or closed meeting unless there shall have**
27 **been recorded in open meeting an affirmative vote to that effect by the public body**
28 **holding the meeting, which motion shall state specifically the purpose or purposes**
29 **hereinabove set forth in this section which are to be the subject of the meeting and a**
30 **statement included in the minutes of the meeting which shall make specific reference to**
31 **the applicable exemption or exemptions as provided in subsection A of this section or §**
32 **2.1-345. A general reference to the provisions of this chapter or to the exemptions of**
33 **subsection A shall not be sufficient to satisfy the requirements for an executive or closed**
34 **meeting. The public body holding such an executive or closed meeting shall restrict its**
35 **consideration of matters during the closed portions only to those purposes specifically**
36 **exempted from the provisions of this chapter.**

37 **The notice provisions of this chapter shall not apply to executive or closed meetings of**
38 **any public body held solely for the purpose of interviewing candidates for the position of**
39 **chief administrative officer. The public body prior to any such executive or closed meeting**
40 **for the purpose of interviewing candidates shall announce in an open meeting that such**
41 **executive or closed meeting shall be held at a disclosed or undisclosed location within**
42 **fifteen days thereafter. In no event shall the public body take action on matters discussed**
43 **in such executive or closed meeting except at a public meeting for which notice was given**
44 **pursuant to § 2.1-343.**

45 **C. B. No resolution, ordinance, rule, contract, regulation or motion adopted, passed or**
46 **agreed to in an executive or closed meeting shall become effective unless the public body,**
47 **following the meeting, reconvenes in open meeting and takes a vote of the membership on**
48 **such resolution, ordinance, rule, contract, regulation or motion which shall have its**
49 **substance reasonably identified in the open meeting. Nothing in this section shall be**
50 **construed to require the board of directors of any authority created pursuant to the**
51 **Industrial Development and Revenue Bond Act (§ 15.1-1373 et seq.), or any public body**
52 **empowered to issue industrial revenue bonds by general or special law, to identify a**
53 **business or industry to which subdivision A 5 of this section applies. However, such**
54 **business or industry must be identified as a matter of public record at least thirty days**

1 prior to the actual date of the board's authorization of the sale or issuance of such bonds.

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

5 *D. Nothing in this section shall be construed to prevent the holding of conferences*
6 *between two or more public bodies, or their representatives, but these conferences shall be*
7 *subject to the same regulations for holding executive or closed sessions as are applicable to*
8 *any other public body.*

9 *§ 2.1-344.1. Call of closed or executive meetings; certification of proceedings.— A. No*
10 *meetings shall become an executive or closed meeting unless the public body proposing to*
11 *convene such meeting shall have taken an affirmative recorded vote in open session to*
12 *that effect, by motion stating specifically the purpose or purposes which are to be the*
13 *subject of the meeting, and reasonably identifying the substance of the matters to be*
14 *discussed. A statement shall be included in the minutes of the open meeting which shall*
15 *make specific reference to the applicable exemption or exemptions from open meeting*
16 *requirements provided in subsection A of § 2.1-344 or in § 2.1-345, and the matters*
17 *contained in such motion shall be set forth in those minutes. A general reference to the*
18 *provisions of this chapter or authorized exemptions from open meeting requirements shall*
19 *not be sufficient to satisfy the requirements for an executive or closed meeting.*

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

26 *C. The public body holding an executive or closed meeting shall restrict its*
27 *consideration of matters during the closed portions only to those purposes specifically*
28 *exempted from the provisions of this chapter.*

29 *D. At the conclusion of any executive or closed meeting convened hereunder, the*
30 *public body holding such meeting shall reconvene in open session immediately thereafter*
31 *and shall take a roll call or other recorded vote to be included in the minutes of that*
32 *body, certifying that to the best of the member's knowledge (i) only public business*
33 *matters lawfully exempted from open meeting requirements under this chapter, and (ii)*
34 *only such public business matters as were identified in the motion by which the executive*
35 *or closed meeting was convened were heard, discussed or considered in the meeting by*
36 *the public body. Any member of the public body who believes that there was a departure*
37 *from the requirements of subdivisions (i) and (ii) above, shall so state prior to the vote,*
38 *indicating the substance of the departure that, in his judgment, has taken place. The*
39 *statement shall be recorded in the minutes of the public body.*

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

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

49 *G. In no event may any public body take action on matters discussed in any executive*
50 *or closed meeting, except at a public meeting for which notice was given as required by §*
51 *2.1-343.*

52 *H. Minutes may be taken during executive or closed sessions of a public body, but*
53 *shall not be required. Such minutes shall not be subject to mandatory public disclosure.*

54 *§ 2.1-345. Public bodies to which chapter inapplicable.—The provisions of this chapter*

1 shall not be applicable to :

2 ~~(1) to (5) [Repealed.]~~

3 ~~(6) the Virginia Parole boards; Board, petit juries ; , grand juries , and the Virginia~~
4 State Crime Commission.

5 ~~(7) [Repealed.]~~

6 § 2.1-346. Proceedings for enforcement of chapter.—Any person, including the
7 Commonwealth's attorney acting in his or her official or individual capacity, denied the
8 rights and privileges conferred by this chapter may proceed to enforce such rights and
9 privileges (i) by filing a petition for mandamus or injunction, supported by an affidavit
10 showing good cause, addressed to the court of record of the county or city from which the
11 public body has been elected or appointed to serve and in which such rights and privileges
12 were so denied , or (ii) effective July 1, 1990, by requesting an administrative review by
13 the Office of the Attorney General . Failure by any person to request and receive notice of
14 the time and place of meetings as provided in § 2.1-343 shall not preclude any person from
15 enforcing his or her rights and privileges conferred by this chapter.

16 *Effective July 1, 1990, any person who has been denied access to official records or*
17 *public meetings by the action of a public body pursuant to any provision of this chapter*
18 *and who has not filed a petition for mandamus or injunction may file a written request*
19 *for an administrative review by the Office of the Attorney General within ten days of such*
20 *denial. The administrative review request shall set forth with reasonable specificity (i) the*
21 *rights and privileges conferred by this chapter which were denied, (ii) the pertinent facts*
22 *pertaining to such denial, (iii) copies of relevant correspondence and (iv) the action taken*
23 *by the public body. The person requesting administrative review shall forward a copy of*
24 *the administrative review request to the public body which has denied access to its*
25 *records or meetings contemporaneously with the request for administrative review filed*
26 *with the Office of the Attorney General.*

27 *Upon receipt of the administrative review request, the Office of the Attorney General*
28 *shall contact the affected public body and provide it with an opportunity to comment and*
29 *submit additional information. The Office of the Attorney General shall review the issues*
30 *and facts pertaining to the action taken by the public body and issue an opinion to the*
31 *individual requesting the review and the public body within thirty days as to whether the*
32 *public body's action prompting the review was in compliance with the chapter. The Office*
33 *of the Attorney General may decline to issue an opinion if it determines that a request*
34 *lacks reasonable specificity or is materially inaccurate in any significant respect, or if the*
35 *Office has provided legal advice on a specific request. If the public body's action was not*
36 *in compliance with the chapter, the Office of the Attorney General shall advise the public*
37 *body on methods to conform its action.*

38 *The Office of the Attorney General shall publish monthly a synopsis of each review*
39 *conducted pursuant to this section. Copies of the synopsis shall be available upon request.*

40 *Persons denied the rights and privileges conferred by this chapter shall not be required*
41 *to request an administrative review prior to filing a petition in circuit court. Any person*
42 *who elects to request administrative review may file a petition in an appropriate circuit*
43 *court only after the opinion by the Attorney General is rendered and the alleged violation*
44 *of this chapter is not resolved to his satisfaction.*

45 *Any such petition alleging such denial of rights and privileges conferred by this chapter*
46 *by a board, bureau, commission, authority, district or agency of the state government or by*
47 *a standing or other committee of the General Assembly, shall be addressed to the Circuit*
48 *Court of the City of Richmond. Such A petition for mandamus or injunction under this*
49 *chapter shall be heard within seven days of the date when the same is made; provided, if*
50 *such the petition is made outside of the regular terms of the circuit court of a county*
51 *which is included in a judicial circuit with another county or counties, the hearing on such*
52 *the petition shall be given precedence on the docket of such court over all cases which*
53 *are not otherwise given precedence by law. Such The petition shall allege with reasonable*
54 *specificity the circumstances of the denial of the rights and privileges conferred by this*

1 chapter. *Any opinion of the Office of the Attorney General issued pursuant to this section*
 2 *after July 1, 1990, shall be admissible in evidence.* A single instance of denial of such ~~the~~
 3 rights and privileges conferred by this chapter shall be sufficient to invoke the remedies
 4 granted herein. If the court finds the denial to be in violation of the provisions of this
 5 chapter, the court ~~may~~ shall award costs and reasonable attorney's fees to the petitioning
 6 citizen. *However, the award shall be discretionary with the court if the public body relied*
 7 *upon an opinion of the Attorney General, or a decision of a court, with respect to such*
 8 *denial, and the court finds that such opinion substantially supports the public body's*
 9 *position. The burden of showing reliance and substantial support shall be on the public*
 10 *body.* Such costs and fees shall be paid by the public body in violation of this chapter. The
 11 court may award costs and reasonable attorney's fees to the public body if the court finds
 12 that the petition was based upon a clearly inadequate case also impose appropriate
 13 sanctions as provided in § 8.01-271.1 .

14 § 2.1-346.1. Violations and penalties.—In a proceeding commenced against members of
 15 public bodies under § 2.1-346 for a violation of §§ 2.1-342, 2.1-343, 2.1-343.1 ~~or~~ § , 2.1-344 or
 16 2.1-344.1 , the court, if it finds that a violation was willfully and knowingly made, shall
 17 impose upon such ~~person or persons~~ member in his or her individual capacity, whether a
 18 writ of mandamus or injunctive relief is awarded or not, a civil penalty of not less than
 19 \$25 nor more than \$500 ~~\$1,000~~ , which amount shall be paid into the State Literary Fund.

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Official Use By Clerks	
<p style="text-align: center;">Passed By</p> <p>The House of Delegates</p> <p>without amendment <input type="checkbox"/></p> <p>with amendment <input type="checkbox"/></p> <p>substitute <input type="checkbox"/></p> <p>substitute w/amdt <input type="checkbox"/></p>	<p style="text-align: center;">Passed By The Senate</p> <p>without amendment <input type="checkbox"/></p> <p>with amendment <input type="checkbox"/></p> <p>substitute <input type="checkbox"/></p> <p>substitute w/amdt <input type="checkbox"/></p>
Date: _____	Date: _____
Clerk of the House of Delegates	Clerk of the Senate

1989 SESSION ENGROSSED

HOUSE BILL NO. 1229

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee on General Laws
on January 26, 1989)

(Patron Prior to Substitute--Delegate Axselle)
House Amendments in [] - January 31, 1989

A BILL to amend and reenact §§ 2.1-340.1, 2.1-341, 2.1-342, 2.1-343, 2.1-343.1, 2.1-344, 2.1-345, 2.1-346 and 2.1-346.1 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 2.1-344.1, relating to the Virginia Freedom of Information Act; penalty.

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.1-340.1, 2.1-341, 2.1-342, 2.1-343, 2.1-343.1, 2.1-344, 2.1-345, 2.1-346 and 2.1-346.1 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 2.1-344.1 as follows:

§ 2.1-340.1. Policy of chapter.— ~~It is the purpose of the General Assembly by providing~~ *By enacting this chapter to ensure to the General Assembly ensures* the people of this Commonwealth ready access to records in the custody of public officials and free entry to meetings of public bodies wherein the business of the people is being conducted. ~~This chapter recognizes that the Committees or subcommittees of public bodies created to perform delegated functions of a public body or to advise a public body shall also conduct their meetings and business pursuant to this chapter. 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. To the end that the purposes of this~~ *Unless the public body specifically elects to exercise an exemption provided by this chapter or any other statute, every meeting shall be open to the public and all reports, documents and other material shall be available for disclosure upon request.*

~~This chapter may be realized,~~ it 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 exception or exemption from applicability shall be narrowly construed in order that no thing which should be public may be hidden from any person.

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

§ 2.1-341. Definitions.—The following terms, whenever used or referred to in this chapter, shall have the following meanings, respectively, unless a different meaning clearly appears from the context:

"Executive meeting" or "closed meeting" means a meeting from which the public is excluded.

(a) "Meeting" or "meetings" means the meetings including work sessions, when sitting physically, or through telephonic or video equipment pursuant to § 2.1-343.1, 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 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 state institutions of higher education; and other organizations, corporations or agencies in the Commonwealth, supported wholly or principally by public funds. The notice provisions of this chapter shall not apply to the said informal meetings or gatherings of the members of the General Assembly. Nothing in this chapter shall be construed to make unlawful the gathering or attendance of two or more members of a body or entity 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

1 prearranged with any purpose of discussing or transacting any business of the body or
2 entity. *The gathering of employees of a public body shall not be deemed a "meeting"*
3 *subject to the provisions of this chapter.*

4 No meeting shall be conducted through telephonic, video, electronic or other
5 communication means where the members are not physically assembled to discuss or
6 transact public business, except as *provided in § 2.1-343.1 or as* may specifically be
7 provided in Title 54 54.1 for the summary suspension of professional licenses.

8 (b) "Official records" means all written or printed books, papers, letters, documents,
9 maps and tapes, photographs, films, sound recordings, reports or other material, regardless
10 of physical form or characteristics, prepared, owned, or in the possession of a public body
11 or any employee or officer of a public body in the transaction of public business.

12 (c) "~~Executive meeting~~" or "~~closed meeting~~" means a meeting from which the public is
13 excluded.

14 (d) "Open meeting" or "public meeting" means a meeting at which the public may be
15 present.

16 (e) "Public body" means any of the groups, agencies or organizations enumerated in
17 subdivision (a) of the definition of "meeting" as provided in this section , including any
18 committees or subcommittees of the public body created to perform delegated functions of
19 the public body or to advise the public body .

20 (f) "Scholastic records" means those records, files, documents, and other materials
21 containing information about a student and maintained by a public body which is an
22 educational agency or institution or by a person acting for such agency or institution, but,
23 for the purpose of access by a student, does not include (i) financial records of a parent
24 or guardian nor (ii) records of instructional, supervisory, and administrative personnel and
25 educational personnel ancillary thereto, which are in the sole possession of the maker
26 thereof and which are not accessible or revealed to any other person except a substitute.

27 § 2.1-342. Official records to be open to inspection; procedure for requesting records
28 and responding to request; charges; exceptions to application of chapter.—A. Except as
29 otherwise specifically provided by law, all official records shall be open to inspection and
30 copying by any citizens of this Commonwealth during the regular office hours of the
31 custodian of such records. Access to such records shall not be denied to ~~any such citizen~~
32 *citizens* of this Commonwealth, ~~nor to~~ representatives of newspapers and magazines with
33 circulation in this Commonwealth, and representatives of radio and television stations
34 broadcasting in or into this Commonwealth. The custodian of such records shall take all
35 necessary precautions for their preservation and safekeeping. Any public body covered
36 under the provisions of this chapter shall make an initial response to citizens requesting
37 records open to inspection within ~~fourteen calendar~~ *five work days from after* the receipt
38 of the request by the public body *which is the custodian of the requested records* . Such
39 citizen request shall designate the requested records with reasonable specificity. If the
40 requested records or public body is excluded from the provisions of this chapter, the public
41 body to which the request is directed shall ~~within fourteen calendar days from the receipt~~
42 ~~of the request tender a written explanation as to why the records are not available to the~~
43 ~~requestor. Such explanation shall make specific reference to the applicable provisions of~~
44 ~~this chapter or other Code sections which make the requested records unavailable. In the~~
45 ~~event a determination of the availability of the requested records may not be made within~~
46 ~~the fourteen-calendar-day period, the public body to which the request is directed shall~~
47 ~~inform the requestor as such , and shall have an additional ten calendar days in which to~~
48 ~~make a determination of availability.~~ A specific reference to this chapter by the requesting
49 citizen in his records request shall not be necessary to invoke the time limits for response
50 by the public body. *The response by the public body within such five work days shall be*
51 *one of the following responses:*

52 1. *The requested records shall be provided to the requesting citizen.*

53 2. *If the public body determines that an exemption applies to all of the requested*
54 *records, it may refuse to release such records and provide to the requesting citizen a*

1 *written explanation as to why the records are not available with the explanation making*
 2 *specific reference to the applicable Code sections which make the requested records*
 3 *exempt.*

4 3. *If the public body determines that an exemption applies to a portion of the*
 5 *requested records, it may delete or excise that portion of the records to which an*
 6 *exemption applies, disclose the remainder of the requested records and provide to the*
 7 *requesting citizen a written explanation as to why these portions of the record are not*
 8 *available to the requesting citizen with the explanation making specific reference to the*
 9 *applicable Code sections which make that portion of the requested records exempt. Any*
 10 *reasonably segregatable portion of an official record shall be provided to any person*
 11 *requesting the record after the deletion of the exempt portion.*

12 4. *If the public body determines that it is practically impossible to provide the*
 13 *requested records or to determine whether they are available within the five-work-day*
 14 *period, the public body shall so inform the requesting citizen and shall have an additional*
 15 *seven work days in which to provide one of the three preceeding responses.*

16 The public body may make reasonable charges for the copying ~~and~~, search time *and*
 17 *computer time* expended in the supplying of such records; however, ~~in no event shall~~ such
 18 charges *shall not* exceed the actual cost to the public body in supplying such records,
 19 except that the public body may charge, on a pro rata per acre basis, for the cost of
 20 creating topographical maps developed by the public body, for such maps or portions
 21 thereof, which encompass a contiguous area greater than fifty acres. Such charges for the
 22 supplying of requested records shall be estimated in advance at the request of the citizen.
 23 *The public body may require the advance payment of charges which are subject to*
 24 *advance determination.*

25 *In any case where a public body determines in advance that search and copying*
 26 *charges for producing the requested documents are likely to exceed \$200, the public body*
 27 *may, before continuing to process the request, require the citizen requesting the*
 28 *information to agree to payment of an amount not to exceed the advance determination*
 29 *by five percent. The period within which the public body must respond under this section*
 30 *shall be tolled for the amount of time that elapses between notice of the advance*
 31 *determination and the response of the citizen requesting the information.*

32 *Official records maintained by a public body on a computer or other electronic data*
 33 *processing system which are available to the public under the provisions of this chapter*
 34 *shall be made reasonably accessible to the public at reasonable cost.*

35 *Public bodies shall not be required to create or prepare a particular requested record if*
 36 *it does not already exist. Public bodies may, but shall not be required to, abstract or*
 37 *summarize information from official records or convert an official record available in one*
 38 *form into another form at the request of the citizen.*

39 *Failure to make any response to a request for records shall be a violation of this*
 40 *chapter and deemed a denial of the request.*

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

44 1. Memoranda, correspondence, evidence and complaints related to criminal
 45 investigations; reports submitted to the state and local police, to investigators authorized
 46 pursuant to § 53.1-16 and to the campus police departments of public institutions of higher
 47 education as established by Chapter 17 (§ 23-232 et seq.) of Title 23 in confidence; [
 48 *portions of records of local government crime commissions that would identify individuals*
 49 *providing information about crimes or criminal activities under a promise of anonymity;*]
 50 and all records of persons imprisoned in penal institutions in this Commonwealth provided
 51 such records relate to the ~~said~~ imprisonment. Information in the custody of
 52 law-enforcement officials relative to the identity of any individual other than a juvenile
 53 who is arrested and charged, and the status of the charge or arrest, shall not be excluded
 54 from the provisions of this chapter.

1 2. Confidential records of all investigations of applications for licensees and all licenses
2 made by or submitted to the Alcoholic Beverage Control Board.

3 3. State income , *business, and estate* tax returns, personal property tax returns,
4 scholastic records and personnel records *containing information concerning identifiable*
5 *individuals* , except that such access shall not be denied to the person who is the subject
6 thereof, and medical and mental records, except that such records can be personally
7 reviewed by the subject person or a physician of the subject person's choice; however, the
8 subject person's mental records may not be personally reviewed by such person when the
9 subject person's treating physician has made a part of such person's records a written
10 statement that in his opinion a review of such records by the subject person would be
11 injurious to the subject person's physical or mental health or well-being.

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

22 For the purposes of this chapter such statistical summaries of incidents and statistical
23 data concerning patient abuse as may be compiled by the Commissioner of the Department
24 of Mental Health, Mental Retardation and Substance Abuse Services shall be open to
25 inspection and releasable as provided in subsection A of this section. No such summaries
26 or data shall include any patient identifying information. Where the person who is the
27 subject of scholastic or medical and mental records is under the age of eighteen, his right
28 of access may be asserted only by his guardian , or his parent, including a noncustodial
29 parent, unless such parent's parental rights have been terminated or a court of competent
30 jurisdiction has restricted or denied such access. In instances where the person who is the
31 subject thereof is an emancipated minor or a student in a state-supported institution of
32 higher education such right of access may be asserted by the subject person.

33 4. Memoranda, working papers and correspondence held or requested by members of
34 the General Assembly or by the office of the Governor or Lieutenant Governor, Attorney
35 General or the mayor or other chief executive officer of any political subdivision of the
36 Commonwealth or the president or other chief executive officer of any state-supported
37 institutions of higher education.

38 5. Written opinions of the city ~~and~~ , county *and town* attorneys of the cities, counties
39 and towns in the Commonwealth and any other writing protected by the attorney-client
40 privilege.

41 6. Memoranda, working papers and records compiled specifically for use in litigation or
42 as a part of an active administrative investigation concerning a matter which is properly
43 the subject of an executive or closed meeting under § 2.1-344 and material furnished in
44 confidence with respect thereto.

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

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

51 9. Any test or examination used, administered or prepared by any public body for
52 purposes of evaluation of (i) any student or any student's performance, (ii) any employee
53 or employment seeker's qualifications or aptitude for employment, retention, or promotion,
54 or (iii) qualifications for any license or certificate issued by any public body.

1 As used in this subdivision 9, "test or examination" shall include (i) any scoring key for
2 any such test or examination, and (ii) any other document which would jeopardize the
3 security of such test or examination. Nothing contained in this subdivision 9 shall prohibit
4 the release of test scores or results as provided by law, or limit access to individual
5 records as is provided by law. However, the subject of such employment tests shall be
6 entitled to review and inspect all documents relative to his performance on such
7 employment tests.

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

15 10. Applications for admission to examinations or for licensure and scoring records
16 maintained by the Department of Health ~~Regulatory Boards Professions~~ or any board in
17 that department on individual licensees or applicants. However, such material may be
18 made available during normal working hours for copying, at the requestor's expense, by the
19 individual who is subject thereof, in the offices of the Department of Health ~~Regulatory~~
20 ~~Boards Professions~~ or in the offices of any health regulatory board, whichever may possess
21 the material.

22 11. Records of active investigations being conducted by the Department of Health
23 ~~Regulatory Boards Professions~~ or by any health regulatory board in the Commonwealth.

24 12. Memoranda, legal opinions, working papers and records recorded in or compiled
25 exclusively for executive or closed meetings lawfully held pursuant to § 2.1-344.

26 13. Reports, documentary evidence and other information as specified in §§ 2.1-373.2
27 and 63.1-55.4.

28 14. Proprietary information gathered by or for the Virginia Port Authority as provided
29 in ~~§ 62.1-134.1~~ or § 62.1-132.4 or § 62.1-134.1 .

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

34 16. Vendor proprietary information software which may be in the official records of a
35 public body. For the purpose of this section, "vendor proprietary software" means computer
36 programs acquired from a vendor for purposes of processing data for agencies or political
37 subdivisions of this Commonwealth.

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

44 18. Financial statements not publicly available filed with applications for industrial
45 development financings.

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

49 20. Confidential proprietary records, voluntarily provided by private business to the
50 Division of Tourism of the Department of Economic Development, used by that Division
51 periodically to indicate to the public statistical information on tourism visitation to Virginia
52 attractions and accommodations.

53 21. Information which meets the criteria for being filed as confidential under the Toxic
54 Substances Information Act (§ 32.1-239 et seq.), regardless of how or when it is used by

1 authorized persons in regulatory processes.

2 22. Documents as specified in § 58.1-3.

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

5 24. Computer software developed by or for a state agency, state-supported institution of
6 higher education or political subdivision of the Commonwealth.

7 25. Investigator notes, and other correspondence and information, furnished in
8 confidence with respect to an active investigation of individual employment discrimination
9 complaints made to the Department of Personnel and Training; however, nothing in this
10 section shall prohibit the disclosure of information taken from inactive reports in a form
11 which does not reveal the identity of charging parties, persons supplying the information or
12 other individuals involved in the investigation.

13 26. Fisheries data which would permit identification of any person or vessel, except
14 when required by court order as specified in § 28.1-23.2.

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

17 28. Documents and writings furnished by a member of the General Assembly to a
18 meeting of a standing committee, special committee or subcommittee of his house
19 established solely for the purpose of reviewing members' annual disclosure statements and
20 supporting materials filed under § 2.1-639.40 or of formulating advisory opinions to
21 members on standards of conduct, or both.

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

26 30. Investigative notes and other correspondence and information furnished in
27 confidence with respect to an investigation or conciliation process involving an alleged
28 unlawful discriminatory practice under the Virginia Human Rights Act (§ 2.1-714 et seq.);
29 however, nothing in this section shall prohibit the distribution of information taken from
30 inactive reports in a form which does not reveal the identity of the parties involved or
31 other persons supplying information.

32 31. Investigative notes; proprietary information not published, copyrighted or patented;
33 information obtained from employee personnel records; personally identifiable information
34 regarding residents, clients or other recipients of services; and other correspondence and
35 information furnished in confidence to the Department of Social Services in connection with
36 an active investigation of an applicant or licensee pursuant to Chapters 9 (§ 63.1-172 et
37 seq.) and 10 (§ 63.1-195 et seq.) of Title 63.1; however, nothing in this section shall prohibit
38 disclosure of information from the records of completed investigations in a form that does
39 not reveal the identity of complainants, persons supplying information, or other individuals
40 involved in the investigation.

41 32. Reports, manuals, specifications, documents, minutes or recordings of staff meetings
42 or other information or materials of the Virginia Board of Corrections, the Virginia
43 Department of Corrections or any institution thereof to the extent, as determined by the
44 Director of the Department of Corrections or his designee, that disclosure or public
45 dissemination of such materials would jeopardize the security of any correctional facility or
46 institution, as follows:

47 (i) Security manuals, including emergency plans that are a part thereof;

48 (ii) Engineering and architectural drawings of correctional facilities, and operational
49 specifications of security systems utilized by the Department, provided the general
50 descriptions of such security systems, cost and quality shall be made available to the
51 public;

52 (iii) Training manuals designed for correctional facilities to the extent that they address
53 procedures for institutional security, emergency plans and security equipment;

54 (iv) Internal security audits of correctional facilities, but only to the extent that they

1 specifically disclose matters described in (i), (ii), or (iii) above or other specific
2 operational details the disclosure of which would jeopardize the security of a correctional
3 facility or institution;

4 (v) Minutes or recordings of divisional, regional and institutional staff meetings or
5 portions thereof to the extent that such minutes deal with security issues listed in (i), (ii),
6 (iii), and (iv) of this subdivision;

7 (vi) Investigative case files by investigators authorized pursuant to § 53.1-16; however,
8 nothing in this section shall prohibit the disclosure of information taken from inactive
9 reports in a form which does not reveal the identity of complainants or charging parties,
10 persons supplying information, confidential sources, or other individuals involved in the
11 investigation, or other specific operational details the disclosure of which would jeopardize
12 the security of a correctional facility or institution; nothing herein shall permit the
13 disclosure of materials otherwise exempt as set forth in *subdivision 1 of subsection B of §*
14 *2.1-342 (b) (1)* ;

15 (vii) Logs or other documents containing information on movement of inmates or
16 employees; and

17 (viii) Documents disclosing contacts between inmates and law enforcement personnel.

18 Notwithstanding the provisions of this subdivision, reports and information regarding the
19 general operations of the Department, including notice that an escape has occurred, shall
20 be open to inspection and copying as provided in this section.

21 33. ~~The names, addresses and other client specific information for~~ *Personal information,*
22 *as defined in § 2.1-379 of the Code, (i) filed with the Virginia Housing Development*
23 *Authority concerning individuals who have applied for or received loans or other housing*
24 *assistance or who have applied for occupancy of or have occupied housing financed,*
25 *owned or otherwise assisted by the Virginia Housing Development Authority, or (ii)*
26 *concerning persons participating in or person persons on the waiting list for federally*
27 *funded rent-assistance programs ; except that . However, access to one's own information*
28 *shall not be denied.*

29 34. Documents regarding the siting of hazardous waste facilities, except as provided in §
30 10.1-1441, if disclosure of them would have a detrimental effect upon the negotiating
31 position of a governing body or on the establishment of the terms, conditions and
32 provisions of the siting agreement.

33 35. *Appraisals and cost estimates of real property subject to a proposed purchase, sale*
34 *or lease, prior to the completion of such purchase, sale or lease.*

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

41 37. *Official records, memoranda, working papers, graphics, video or audio tapes,*
42 *production models, data and information of a proprietary nature produced by or for or*
43 *collected by or for the State Lottery Department relating to matters of a specific lottery*
44 *game design, development, production, operation, ticket price, prize structure, manner of*
45 *selecting the winning ticket, manner of payment of prizes to holders of winning tickets,*
46 *frequency of drawings or selections of winning tickets, odds of winning, advertising, or*
47 *marketing, where such official records have not been publicly released, published,*
48 *copyrighted or patented. Whether released, published or copyrighted, all game-related*
49 *information shall be subject to public disclosure under this chapter upon the first day of*
50 *sales for the specific lottery game to which it pertains.*

51 38. *Official records of studies and investigations by the State Lottery Department of (i)*
52 *lottery agents, (ii) lottery vendors, (iii) lottery crimes under §§ 58.1-4014 through 58.1-4018,*
53 *(iv) defects in the law or regulations which cause abuses in the administration and*
54 *operation of the lottery and any evasions of such provisions, or (v) use of the lottery as a*

1 *subterfuge for organized crime and illegal gambling where such official records have not*
2 *been publicly released, published or copyrighted. All studies and investigations referred to*
3 *under subdivisions (iii), (iv) and (v) shall be subject to public disclosure under this chapter*
4 *upon completion of the study or investigation.*

5 C. Neither any provision of this chapter nor any provision of Chapter 26 (§ 2.1-377 et
6 seq.) of this title shall be construed as denying public access to contracts between a public
7 official and a public body, other than contracts settling public employee employment
8 disputes held confidential as personnel records under subdivision 3 of subsection B of this
9 section, or to records of the position, job classification, official salary or rate of pay of,
10 and to records of the allowances or reimbursements for expenses paid to any public
11 officer, official or employee at any level of state, local or regional government in this
12 Commonwealth. The provisions of this subsection, however, shall not apply to records of
13 the official salaries or rates of pay of public employees whose annual rate of pay is
14 \$10,000 or less.

15 § 2.1-343. Meetings to be public; notice of meetings; recordings; minutes; voting.—Except
16 as otherwise specifically provided by law and except as provided in §§ 2.1-344 and 2.1-345,
17 all meetings shall be public meetings , *including meetings and work sessions during which*
18 *no votes are cast or any decisions made . Notice including the time, date and place of*
19 *each meeting shall be furnished to any citizen of this Commonwealth who requests such*
20 *information. Requests to be notified on a continual basis shall be made at least once a*
21 *year in writing and include name, address, zip code and organization of the requestor.*
22 *Notice, reasonable under the circumstance, of special or emergency meetings shall be*
23 *given contemporaneously with the notice provided members of the public body conducting*
24 *the meeting.*

25 *Any person may photograph, film, record or otherwise reproduce any portion of a*
26 *meeting required to be open. The public body conducting the meeting may adopt rules*
27 *governing the placement and use of equipment necessary for broadcasting, photographing,*
28 *filming or recording a meeting to prevent interference with the proceedings.*

29 *Voting by secret or written ballot in an open meeting shall be a violation of this*
30 *chapter.*

31 Minutes shall be recorded at all public meetings. However, minutes shall not be
32 required to be taken at deliberations of (i) standing and other committees of the General
33 Assembly, (ii) legislative interim study commissions and committees, including the Virginia
34 Code Commission, (iii) ~~the Virginia Advisory Legislative Council and its committees,~~ (iv)
35 study committees or commissions appointed by the Governor, or ~~(v)~~ (iv) study commissions
36 or study committees , *or any other committees or subcommittees* appointed by the
37 governing bodies or school boards of counties, cities and towns, except where the
38 membership of any such study commission ~~or study~~ , committee *or subcommittee* includes
39 ~~more than one member of a three member governing body or school board, more than two~~
40 ~~members of a governing body or school board having four members or a majority of a~~ *the*
41 *governing body of the county, city or town or school board having more than four*
42 *members . Information as to the time and place of each meeting shall be furnished to any*
43 *citizen of this Commonwealth who requests such information. Requests to be notified on a*
44 *continual basis shall be made at least once a year in writing and include name, address,*
45 *zip code and organization if any, together with an adequate supply of stamped*
46 *self-addressed envelopes.*

47 § 2.1-343.1. Electronic communication meetings prohibited; exception, experimental
48 program.— A. It is a violation of this chapter for any ~~public political subdivision or any~~
49 *governing body , authority, board, bureau, commission, district or agency of local*
50 *government* to conduct a meeting wherein the public business is discussed or transacted
51 through telephonic, video, electronic or other communication means where the members
52 are not physically assembled.

53 *B. Public bodies of the Commonwealth, as provided in the definition of "meeting" in §*
54 *2.1-341, but excluding any political subdivision or any governing body, authority, board,*

1 bureau, commission, district or agency of local government, may conduct any meeting,
2 except executive or closed meetings held pursuant to § 2.1-344, wherein the public
3 business is discussed or transacted through telephonic or video means. For the purposes of
4 subsections B through G of this section, "public body" shall mean any state legislative
5 body, authority, board, bureau, commission, district or agency of the Commonwealth and
6 shall exclude those of local governments.

7 Meetings conducted through telephonic or video means shall be on an experimental
8 basis commencing on July 1, 1989, and ending on June 30, 1991. The Director of the
9 Department of Information Technology shall submit an evaluation of the effectiveness of
10 meetings by telephonic or video means by public bodies of the Commonwealth prior to
11 January 1, 1992, to the Governor and the General Assembly.

12 C. Notice of any meetings held pursuant to this section shall be provided at least
13 thirty days in advance of the date scheduled for the meeting. The notice shall include the
14 date, time, place and purpose for the meeting and shall identify the location or locations
15 for the meeting. All locations for the meeting shall be made accessible to the public. All
16 persons attending the meeting at any of the meeting locations shall be afforded the same
17 opportunity to address the public body as persons attending the primary or central
18 location. Any interruption in the telephonic or video broadcast of the meeting shall result
19 in the suspension of action at the meeting until repairs are made and public access
20 restored.

21 Thirty-day notice shall not be required for telephonic or video meetings continued to
22 address an emergency situation as provided in subsection F of this section or to conclude
23 the agenda of a telephonic or video meeting of the public body for which the proper
24 notice has been given, when the date, time, place and purpose of the continued meeting
25 are set during the meeting prior to adjournment.

26 The public body shall provide the Director of the Department of Information
27 Technology with notice of all public meetings held through telephonic or video means
28 pursuant to this section.

29 D. An agenda and materials which will be distributed to members of the public body
30 and which have been made available to the staff of the public body in sufficient time for
31 duplication and forwarding to all location sites where public access will be provided shall
32 be made available to the public at the time of the meeting. Minutes of all meetings held
33 by telephonic or video means shall be recorded as required by § 2.1-343. Votes taken
34 during any meeting conducted through telephonic or video means shall be recorded by
35 name in roll-call fashion and included in the minutes. In addition, the public body shall
36 make an audio recording of the meeting, if a telephonic medium is used, or an
37 audio/visual recording, if the meeting is held by video means. The recording shall be
38 preserved by the public body for a period of three years following the date of the meeting
39 and shall be available to the public.

40 E. No more than twenty-five percent of all meetings held annually by a public body,
41 including meetings of any ad hoc or standing committees, may be held by telephonic or
42 video means. Any public body which meets by telephonic or video means shall file with
43 the Director of the Department of Information Technology by July 1 of each year a
44 statement identifying the total number of meetings held during the preceding fiscal year,
45 the dates on which the meetings were held and the number and purpose of those
46 conducted through telephonic or video means.

47 F. Notwithstanding the limitations imposed by subsection E of this section, a public
48 body may meet by telephonic or video means as often as needed if an emergency exists
49 and the public body is unable to meet in regular session. As used in this subsection
50 "emergency" means an unforeseen circumstance rendering the notice required by this
51 section, or by § 2.1-343 of this chapter, impossible or impracticable and which
52 circumstance requires immediate action. Public bodies conducting emergency meetings
53 through telephonic or video means shall comply with the provisions of subsection D
54 requiring minutes, recordation and preservation of the audio or audio/visual recording of

1 *the meeting. The basis for the emergency shall be stated in the minutes.*

2 *G. The provisions of this section establish a two-year experimental program designed to*
3 *evaluate the effectiveness of meetings by telephonic or video means by public bodies of*
4 *the Commonwealth. Meetings by telephonic or video means shall be prohibited on and*
5 *after July 1, 1991, unless the provisions of this section pertaining to the termination of*
6 *this experimental program are amended and reenacted by the General Assembly.*

7 § 2.1-344. Executive or closed meetings.—A. *Executive Public bodies are not required to*
8 *conduct executive or closed meetings may . However, should a public body determine that*
9 *an executive or closed meeting is desirable, such meeting shall be held only for the*
10 *following purposes:*

11 1. Discussion or consideration of *or interviews of prospective candidates for*
12 *employment, assignment, appointment, promotion, performance, demotion, salaries,*
13 *disciplining or resignation of specific public officers, appointees or employees of any public*
14 *body, and evaluation of performance of departments or schools of state institutions of*
15 *higher education where such matters regarding such specific individuals might be affected*
16 *by such evaluation. Any teacher shall be permitted to be present during an executive*
17 *session or closed meeting in which there is a discussion or consideration of a disciplinary*
18 *matter , which involves the teacher and some student or students , and the student or*
19 *students involved in the matter are present ; , provided the teacher makes a written*
20 *request to be present to the presiding officer of the appropriate board.*

21 2. Discussion or consideration of admission or disciplinary matters concerning any
22 student or students of any state institution of higher education or any state school system.
23 However, any such student and legal counsel and, if the student is a minor, the student's
24 parents or legal guardians, shall be permitted to be present *during the taking of testimony*
25 *or presentation of evidence* at an executive or closed meeting, if such student, parents or
26 guardians so request in writing ; and such request is submitted to the presiding officer of
27 the appropriate board.

28 3. Discussion or consideration of the condition, acquisition or use of real property for
29 public purpose, or of the disposition of publicly held property, or of plans for the future of
30 a state institution of higher education which could affect the value of property owned or
31 desirable for ownership by such institution.

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

34 5. Discussion concerning a prospective business or industry where no previous
35 announcement has been made of the business' or industry's interest in locating in the
36 community.

37 6. The investing of public funds where competition or bargaining is involved, where if
38 made public initially the financial interest of the governmental unit would be adversely
39 affected.

40 7. Consultation with legal counsel and briefings by staff members, consultants or
41 attorneys, pertaining to actual or ~~potential~~ *probable* litigation, or other *specific* legal matters
42 ~~within the jurisdiction of the public body, and discussions or consideration of such matters~~
43 ~~without the presence of counsel, staff, consultants, or attorneys requiring the provision of~~
44 *legal advice by counsel .*

45 8. In the case of boards of visitors of state institutions of higher education, discussion or
46 consideration of matters relating to gifts, bequests and fund-raising activities, and grants
47 and contracts for services or work to be performed by such institution. However, the terms
48 and conditions of any such gifts, bequests, grants and contracts made by a foreign
49 government, a foreign legal entity or a foreign person and accepted by a state institution of
50 higher education shall be subject to public disclosure upon written request to the
51 appropriate board of visitors. For the purpose of this subdivision, (i) "foreign government"
52 means any government other than the United States government or the government of a
53 state or a political subdivision thereof; (ii) "foreign legal entity" means any legal entity
54 created under the laws of the United States or of any state thereof if a majority of the

1 ownership of the stock of such legal entity is owned by foreign governments or foreign
2 persons or if a majority of the membership of any such entity is composed of foreign
3 persons or foreign legal entities, or any legal entity created under the laws of a foreign
4 government; and (iii) "foreign person" means any individual who is not a citizen or
5 national of the United States or a trust territory or protectorate thereof.

6 9. In the case of the boards of trustees of the Virginia Museum of Fine Arts and the
7 Science Museum of Virginia, discussion or consideration of matters relating to specific gifts,
8 bequests, and grants.

9 10. Discussion or consideration of honorary degrees or special awards.

10 11. Discussion or consideration of tests or examinations or other documents excluded
11 from this chapter pursuant to § 2.1-342 B 9.

12 12. Discussion, consideration or review by the appropriate House or Senate committees
13 of possible disciplinary action against a member arising out of the possible inadequacy of
14 the disclosure statement filed by the member, provided the member may request in writing
15 that the committee meeting not be conducted in executive session.

16 13. Discussion of strategy with respect to the negotiation of a siting agreement or to
17 consider the terms, conditions, and provisions of a siting agreement if the governing body
18 in open meeting finds that an open meeting will have a detrimental effect upon the
19 negotiating position of the governing body or the establishment of the terms, conditions and
20 provisions of the siting agreement, or both. All discussions with the applicant or its
21 representatives may be conducted in a closed meeting or executive session.

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

24 15. *Discussion or consideration of medical and mental records excluded from this*
25 *chapter pursuant to § 2.1-342 B 3.*

26 16. *Discussion, consideration or review of State Lottery Department matters related to*
27 *proprietary lottery game information and studies or investigations exempted from*
28 *disclosure under subdivisions 37 and 38 of subsection B of § 2.1-342.*

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

32 B. No meeting shall become an executive or closed meeting unless there shall have
33 been recorded in open meeting an affirmative vote to that effect by the public body
34 holding the meeting, which motion shall state specifically the purpose or purposes
35 hereinabove set forth in this section which are to be the subject of the meeting and a
36 statement included in the minutes of the meeting which shall make specific reference to
37 the applicable exemption or exemptions as provided in subsection A of this section or §
38 2.1-345. A general reference to the provisions of this chapter or to the exemptions of
39 subsection A shall not be sufficient to satisfy the requirements for an executive or closed
40 meeting. The public body holding such an executive or closed meeting shall restrict its
41 consideration of matters during the closed portions only to those purposes specifically
42 exempted from the provisions of this chapter.

43 The notice provisions of this chapter shall not apply to executive or closed meetings of
44 any public body held solely for the purpose of interviewing candidates for the position of
45 chief administrative officer. The public body prior to any such executive or closed meeting
46 for the purpose of interviewing candidates shall announce in an open meeting that such
47 executive or closed meeting shall be held at a disclosed or undisclosed location within
48 fifteen days thereafter. In no event shall the public body take action on matters discussed
49 in such executive or closed meeting except at a public meeting for which notice was given
50 pursuant to § 2.1-343.

51 C. B. No resolution, ordinance, rule, contract, regulation or motion adopted, passed or
52 agreed to in an executive or closed meeting shall become effective unless the public body,
53 following the meeting, reconvenes in open meeting and takes a vote of the membership on
54 such resolution, ordinance, rule, contract, regulation or motion which shall have its

1 substance reasonably identified in the open meeting. Nothing in this section shall be
2 construed to require the board of directors of any authority created pursuant to the
3 Industrial Development and Revenue Bond Act (§ 15.1-1373 et seq.), or any public body
4 empowered to issue industrial revenue bonds by general or special law, to identify a
5 business or industry to which subdivision A 5 of this section applies. However, such
6 business or industry must be identified as a matter of public record at least thirty days
7 prior to the actual date of the board's authorization of the sale or issuance of such bonds.

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

11 *D. Nothing in this section shall be construed to prevent the holding of conferences*
12 *between two or more public bodies, or their representatives, but these conferences shall be*
13 *subject to the same regulations for holding executive or closed sessions as are applicable to*
14 *any other public body.*

15 *§ 2.1-344.1. Call of closed or executive meetings; certification of proceedings.— A. No*
16 *meetings shall become an executive or closed meeting unless the public body proposing to*
17 *convene such meeting shall have taken an affirmative recorded vote in open session to*
18 *that effect, by motion stating specifically the purpose or purposes which are to be the*
19 *subject of the meeting, and reasonably identifying the substance of the matters to be*
20 *discussed. A statement shall be included in the minutes of the open meeting which shall*
21 *make specific reference to the applicable exemption or exemptions from open meeting*
22 *requirements provided in subsection A of § 2.1-344 or in § 2.1-345, and the matters*
23 *contained in such motion shall be set forth in those minutes. A general reference to the*
24 *provisions of this chapter or authorized exemptions from open meeting requirements shall*
25 *not be sufficient to satisfy the requirements for an executive or closed meeting.*

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

32 *C. The public body holding an executive or closed meeting shall restrict its*
33 *consideration of matters during the closed portions only to those purposes specifically*
34 *exempted from the provisions of this chapter.*

35 *D. At the conclusion of any executive or closed meeting convened hereunder, the*
36 *public body holding such meeting shall reconvene in open session immediately thereafter*
37 *and shall take a roll call or other recorded vote to be included in the minutes of that*
38 *body, certifying that to the best of the member's knowledge (i) only public business*
39 *matters lawfully exempted from open meeting requirements under this chapter, and (ii)*
40 *only such public business matters as were identified in the motion by which the executive*
41 *or closed meeting was convened were heard, discussed or considered in the meeting by*
42 *the public body. Any member of the public body who believes that there was a departure*
43 *from the requirements of subdivisions (i) and (ii) above, shall so state prior to the vote,*
44 *indicating the substance of the departure that, in his judgment, has taken place. The*
45 *statement shall be recorded in the minutes of the public body.*

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

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

1 *G. In no event may any public body take action on matters discussed in any executive*
 2 *or closed meeting, except at a public meeting for which notice was given as required by §*
 3 *2.1-343.*

4 *H. Minutes may be taken during executive or closed sessions of a public body, but*
 5 *shall not be required. Such minutes shall not be subject to mandatory public disclosure.*

6 § 2.1-345. Public bodies to which chapter inapplicable.—The provisions of this chapter
 7 shall not be applicable to :

8 ~~(1) to (5) [Repealed.]~~

9 ~~(6) the Virginia Parole boards; Board, petit juries ; , grand juries , and the Virginia~~
 10 ~~State Crime Commission.~~

11 ~~(7) [Repealed.]~~

12 § 2.1-346. Proceedings for enforcement of chapter.—Any person, including the
 13 Commonwealth's attorney acting in his or her official or individual capacity, denied the
 14 rights and privileges conferred by this chapter may proceed to enforce such rights and
 15 privileges (i) by filing a petition for mandamus or injunction, supported by an affidavit
 16 showing good cause, addressed to the court of record of the county or city from which the
 17 public body has been elected or appointed to serve and in which such rights and privileges
 18 were so denied , or (ii) effective July 1, 1990, by requesting an administrative review by
 19 the Office of the Attorney General . Failure by any person to request and receive notice of
 20 the time and place of meetings as provided in § 2.1-343 shall not preclude any person from
 21 enforcing his or her rights and privileges conferred by this chapter.

22 *Effective July 1, 1990, any person who has been denied access to official records or*
 23 *public meetings by the action of a public body pursuant to any provision of this chapter*
 24 *and who has not filed a petition for mandamus or injunction may file a written request*
 25 *for an administrative review by the Office of the Attorney General within ten days of such*
 26 *denial. The administrative review request shall set forth with reasonable specificity (i) the*
 27 *rights and privileges conferred by this chapter which were denied, (ii) the pertinent facts*
 28 *pertaining to such denial, (iii) copies of relevant correspondence and (iv) the action taken*
 29 *by the public body. The person requesting administrative review shall forward a copy of*
 30 *the administrative review request to the public body which has denied access to its*
 31 *records or meetings contemporaneously with the request for administrative review filed*
 32 *with the Office of the Attorney General.*

33 *Upon receipt of the administrative review request, the Office of the Attorney General*
 34 *shall contact the affected public body and provide it with an opportunity to comment and*
 35 *submit additional information. The Office of the Attorney General shall review the issues*
 36 *and facts pertaining to the action taken by the public body and issue an opinion to the*
 37 *individual requesting the review and the public body within thirty days as to whether the*
 38 *public body's action prompting the review was in compliance with the chapter. The Office*
 39 *of the Attorney General may decline to issue an opinion if it determines that a request*
 40 *lacks reasonable specificity or is materially inaccurate in any significant respect, or if the*
 41 *Office has provided legal advice on a specific request. If the public body's action was not*
 42 *in compliance with the chapter, the Office of the Attorney General shall advise the public*
 43 *body on methods to conform its action.*

44 *The Office of the Attorney General shall publish monthly a synopsis of each review*
 45 *conducted pursuant to this section. Copies of the synopsis shall be available upon request.*

46 *Persons denied the rights and privileges conferred by this chapter shall not be required*
 47 *to request an administrative review prior to filing a petition in circuit court. Any person*
 48 *who elects to request administrative review may file a petition in an appropriate circuit*
 49 *court only after the opinion by the Attorney General is rendered and the alleged violation*
 50 *of this chapter is not resolved to his satisfaction.*

51 *Any such petition alleging such denial of rights and privileges conferred by this chapter*
 52 *by a board, bureau, commission, authority, district or agency of the state government or by*
 53 *a standing or other committee of the General Assembly, shall be addressed to the Circuit*
 54 *Court of the City of Richmond. Such A petition for mandamus or injunction under this*

1 *chapter* shall be heard within seven days of the date when the same is made; provided, if
 2 ~~such the~~ petition is made outside of the regular terms of the circuit court of a county
 3 which is included in a judicial circuit with another county or counties, the hearing on ~~such~~
 4 ~~the~~ petition shall be given precedence on the docket of such court over all cases which
 5 are not otherwise given precedence by law. ~~Such~~ *The* petition shall allege with reasonable
 6 specificity the circumstances of the denial of the rights and privileges conferred by this
 7 chapter. [~~Any opinion of the Office of the Attorney General issued pursuant to this~~
 8 ~~section after July 1, 1990, shall be admissible in evidence.~~] A single instance of denial of
 9 ~~such the~~ rights and privileges conferred by this chapter shall be sufficient to invoke the
 10 remedies granted herein. If the court finds the denial to be in violation of the provisions of
 11 this chapter, the court [may ~~shall~~] award costs and reasonable attorney's fees to the
 12 petitioning citizen. [~~However, the award shall be discretionary with the court if the public~~
 13 ~~body relied upon an opinion of the Attorney General, or a decision of a court, with~~
 14 ~~respect to such denial, and the court finds that such opinion substantially supports the~~
 15 ~~public body's position. The burden of showing reliance and substantial support shall be on~~
 16 ~~the public body.~~ Such costs and fees shall be paid by the public body in violation of this
 17 chapter. The court may award costs and reasonable attorney's fees to the public body if
 18 the court finds that the petition was based upon a clearly inadequate case ~~also impose~~
 19 ~~appropriate sanctions as provided in § 8.01-271.1~~ also impose appropriate sanctions in
 20 favor of the public body as provided in § 8.01-271.1].

21 § 2.1-346.1. Violations and penalties.—In a proceeding commenced against members of
 22 public bodies under § 2.1-346 for a violation of §§ 2.1-342, 2.1-343, 2.1-343.1 ~~or §~~ , 2.1-344 ~~or~~
 23 ~~§ 2.1-344.1~~ , the court, if it finds that a violation was willfully and knowingly made, shall
 24 impose upon such ~~person or persons~~ *member* in his ~~or her~~ individual capacity, whether a
 25 writ of mandamus or injunctive relief is awarded or not, a civil penalty of not less than
 26 \$25 nor more than ~~\$500~~ *\$1,000* , which amount shall be paid into the State Literary Fund.

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Date: _____	Date: _____
_____ Clerk of the House of Delegates	_____ Clerk of the Senate

1989 SESSION

LD7689410

HOUSE BILL NO. 1229

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on General Laws
on February 15, 1989)

(Patron Prior to Substitute—Delegate Axselle)

A BILL to amend and reenact §§ 2.1-340.1, 2.1-341, 2.1-342, 2.1-343, 2.1-343.1, 2.1-344, 2.1-345, 2.1-346 and 2.1-346.1 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 2.1-344.1, relating to the Virginia Freedom of Information Act; penalty.

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.1-340.1, 2.1-341, 2.1-342, 2.1-343, 2.1-343.1, 2.1-344, 2.1-345, 2.1-346 and 2.1-346.1 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 2.1-344.1 as follows:

§ 2.1-340.1. Policy of chapter.— ~~It is the purpose of the General Assembly by providing~~ *By enacting this chapter to ensure to the General Assembly ensures* the people of this Commonwealth ready access to records in the custody of public officials and free entry to meetings of public bodies wherein the business of the people is being conducted. ~~This chapter recognizes that the Committees or subcommittees of public bodies created to perform delegated functions of a public body or to advise a public body shall also conduct their meetings and business pursuant to this chapter. 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. To the end that the purposes of this* *Unless the public body specifically elects to exercise an exemption provided by this chapter or any other statute, every meeting shall be open to the public and all reports, documents and other material shall be available for disclosure upon request.*

~~This chapter may be realized,~~ it 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 exception or exemption from applicability shall be narrowly construed in order that no thing which should be public may be hidden from any person.

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

§ 2.1-341. Definitions.—The following terms, whenever used or referred to in this chapter, shall have the following meanings ; ~~respectively~~ , unless a different meaning clearly appears from the context:

“Executive meeting” or “closed meeting” means a meeting from which the public is excluded.

~~(a)~~“Meeting” or “meetings” means the meetings *including work sessions* , when sitting *physically, or through telephonic or video equipment pursuant to § 2.1-343.1,* 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 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 state institutions of higher education; and other organizations, corporations or agencies in the Commonwealth, supported wholly or principally by public funds. The notice provisions of this chapter shall not apply to the said informal meetings or gatherings of the members of the General Assembly. Nothing in this chapter shall be construed to make unlawful the gathering or attendance of two or more members of a body or entity 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 body or

1 entity. *The gathering of employees of a public body shall not be deemed a "meeting"*
 2 *subject to the provisions of this chapter.*

3 No meeting shall be conducted through telephonic, video, electronic or other
 4 communication means where the members are not physically assembled to discuss or
 5 transact public business, except as *provided in § 2.1-343.1 or as* may specifically be
 6 provided in Title 54 *54.1* for the summary suspension of professional licenses.

7 (b) "Official records" means all written or printed books, papers, letters, documents,
 8 maps and tapes, photographs, films, sound recordings, reports or other material, regardless
 9 of physical form or characteristics, prepared, owned, or in the possession of a public body
 10 or any employee or officer of a public body in the transaction of public business.

11 (c) "Executive meeting" or "closed meeting" means a meeting from which the public is
 12 excluded.

13 (d) "Open meeting" or "public meeting" means a meeting at which the public may be
 14 present.

15 (e) "Public body" means any of the groups, agencies or organizations enumerated in
 16 subdivision (a) of the definition of "meeting" as provided in this section, including any
 17 committees or subcommittees of the public body created to perform delegated functions of
 18 the public body or to advise the public body.

19 (f) "Scholastic records" means those records, files, documents, and other materials
 20 containing information about a student and maintained by a public body which is an
 21 educational agency or institution or by a person acting for such agency or institution, but,
 22 for the purpose of access by a student, does not include (i) financial records of a parent
 23 or guardian nor (ii) records of instructional, supervisory, and administrative personnel and
 24 educational personnel ancillary thereto, which are in the sole possession of the maker
 25 thereof and which are not accessible or revealed to any other person except a substitute.

26 § 2.1-342. Official records to be open to inspection; procedure for requesting records
 27 and responding to request; charges; exceptions to application of chapter.—A. Except as
 28 otherwise specifically provided by law, all official records shall be open to inspection and
 29 copying by any citizens of this Commonwealth during the regular office hours of the
 30 custodian of such records. Access to such records shall not be denied to ~~any such citizen~~
 31 *citizens* of this Commonwealth, ~~nor to~~ representatives of newspapers and magazines with
 32 circulation in this Commonwealth, and representatives of radio and television stations
 33 broadcasting in or into this Commonwealth. The custodian of such records shall take all
 34 necessary precautions for their preservation and safekeeping. Any public body covered
 35 under the provisions of this chapter shall make an initial response to citizens requesting
 36 records open to inspection within ~~fourteen calendar~~ *five work days* from after the receipt
 37 of the request by the public body *which is the custodian of the requested records*. Such
 38 citizen request shall designate the requested records with reasonable specificity. If the
 39 requested records or public body is excluded from the provisions of this chapter, the public
 40 body to which the request is directed shall within fourteen calendar days from the receipt
 41 of the request tender a written explanation as to why the records are not available to the
 42 requestor. Such explanation shall make specific reference to the applicable provisions of
 43 this chapter or other Code sections which make the requested records unavailable. In the
 44 event a determination of the availability of the requested records may not be made within
 45 the ~~fourteen-calendar-day~~ period, the public body to which the request is directed shall
 46 inform the requestor as such, and shall have an additional ten calendar days in which to
 47 make a determination of availability. A specific reference to this chapter by the requesting
 48 citizen in his records request shall not be necessary to invoke the time limits for response
 49 by the public body. *The response by the public body within such five work days shall be*
 50 *one of the following responses:*

51 1. *The requested records shall be provided to the requesting citizen.*

52 2. *If the public body determines that an exemption applies to all of the requested*
 53 *records, it may refuse to release such records and provide to the requesting citizen a*
 54 *written explanation as to why the records are not available with the explanation making*

1 *specific reference to the applicable Code sections which make the requested records*
2 *exempt.*

3 *3. If the public body determines that an exemption applies to a portion of the*
4 *requested records, it may delete or excise that portion of the records to which an*
5 *exemption applies, disclose the remainder of the requested records and provide to the*
6 *requesting citizen a written explanation as to why these portions of the record are not*
7 *available to the requesting citizen with the explanation making specific reference to the*
8 *applicable Code sections which make that portion of the requested records exempt. Any*
9 *reasonably segregatable portion of an official record shall be provided to any person*
10 *requesting the record after the deletion of the exempt portion.*

11 *4. If the public body determines that it is practically impossible to provide the*
12 *requested records or to determine whether they are available within the five-work-day*
13 *period, the public body shall so inform the requesting citizen and shall have an additional*
14 *seven work days in which to provide one of the three preceding responses.*

15 *Nothing in this section shall prohibit any public body from petitioning the appropriate*
16 *circuit court for additional time to respond to a request for records when the request is*
17 *for an extraordinary volume of records and a response by the public body within the time*
18 *required by this chapter will prevent the public body from meeting its operational*
19 *responsibilities. Before proceeding with this petition, however, the public body shall make*
20 *reasonable efforts to reach an agreement with the requestor concerning the production of*
21 *the records requested.*

22 *The public body may make reasonable charges for the copying and , search time and*
23 *computer time expended in the supplying of such records; however, in no event shall such*
24 *charges shall not exceed the actual cost to the public body in supplying such records,*
25 *except that the public body may charge, on a pro rata per acre basis, for the cost of*
26 *creating topographical maps developed by the public body, for such maps or portions*
27 *thereof, which encompass a contiguous area greater than fifty acres. Such charges for the*
28 *supplying of requested records shall be estimated in advance at the request of the citizen.*
29 *The public body may require the advance payment of charges which are subject to*
30 *advance determination.*

31 *In any case where a public body determines in advance that search and copying*
32 *charges for producing the requested documents are likely to exceed \$200, the public body*
33 *may, before continuing to process the request, require the citizen requesting the*
34 *information to agree to payment of an amount not to exceed the advance determination*
35 *by five percent. The period within which the public body must respond under this section*
36 *shall be tolled for the amount of time that elapses between notice of the advance*
37 *determination and the response of the citizen requesting the information.*

38 *Official records maintained by a public body on a computer or other electronic data*
39 *processing system which are available to the public under the provisions of this chapter*
40 *shall be made reasonably accessible to the public at reasonable cost.*

41 *Public bodies shall not be required to create or prepare a particular requested record if*
42 *it does not already exist. Public bodies may, but shall not be required to, abstract or*
43 *summarize information from official records or convert an official record available in one*
44 *form into another form at the request of the citizen.*

45 *Failure to make any response to a request for records shall be a violation of this*
46 *chapter and deemed a denial of the request.*

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

50 *1. Memoranda, correspondence, evidence and complaints related to criminal*
51 *investigations; reports submitted to the state and local police, to investigators authorized*
52 *pursuant to § 53.1-16 and to the campus police departments of public institutions of higher*
53 *education as established by Chapter 17 (§ 23-232 et seq.) of Title 23 in confidence; [*
54 *portions of records of local government crime commissions that would identify individuals*

1 *providing information about crimes or criminal activities under a promise of anonymity;*]
2 and all records of persons imprisoned in penal institutions in this Commonwealth provided
3 such records relate to the said imprisonment. Information in the custody of
4 law-enforcement officials relative to the identity of any individual other than a juvenile
5 who is arrested and charged, and the status of the charge or arrest, shall not be excluded
6 from the provisions of this chapter.

7 2. Confidential records of all investigations of applications for licensees and all licenses
8 made by or submitted to the Alcoholic Beverage Control Board.

9 3. State income , *business, and estate* tax returns, personal property tax returns,
10 scholastic records and personnel records *containing information concerning identifiable*
11 *individuals* , except that such access shall not be denied to the person who is the subject
12 thereof, and medical and mental records, except that such records can be personally
13 reviewed by the subject person or a physician of the subject person's choice; however, the
14 subject person's mental records may not be personally reviewed by such person when the
15 subject person's treating physician has made a part of such person's records a written
16 statement that in his opinion a review of such records by the subject person would be
17 injurious to the subject person's physical or mental health or well-being.

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

28 For the purposes of this chapter such statistical summaries of incidents and statistical
29 data concerning patient abuse as may be compiled by the Commissioner of the Department
30 of Mental Health, Mental Retardation and Substance Abuse Services shall be open to
31 inspection and releasable as provided in subsection A of this section. No such summaries
32 or data shall include any patient identifying information. Where the person who is the
33 subject of scholastic or medical and mental records is under the age of eighteen, his right
34 of access may be asserted only by his guardian , or his parent, including a noncustodial
35 parent, unless such parent's parental rights have been terminated or a court of competent
36 jurisdiction has restricted or denied such access. In instances where the person who is the
37 subject thereof is an emancipated minor or a student in a state-supported institution of
38 higher education such right of access may be asserted by the subject person.

39 4. Memoranda, working papers and correspondence held or requested by members of
40 the General Assembly or by the office of the Governor or Lieutenant Governor, Attorney
41 General or the mayor or other chief executive officer of any political subdivision of the
42 Commonwealth or the president or other chief executive officer of any state-supported
43 institutions of higher education.

44 5. Written opinions of the city *and* , county *and town* attorneys of the cities, counties
45 and towns in the Commonwealth and any other writing protected by the attorney-client
46 privilege.

47 6. Memoranda, working papers and records compiled specifically for use in litigation or
48 as a part of an active administrative investigation concerning a matter which is properly
49 the subject of an executive or closed meeting under § 2.1-344 and material furnished in
50 confidence with respect thereto.

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

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

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

7 As used in this subdivision 9, "test or examination" shall include (i) any scoring key for
8 any such test or examination, and (ii) any other document which would jeopardize the
9 security of such test or examination. Nothing contained in this subdivision 9 shall prohibit
10 the release of test scores or results as provided by law, or limit access to individual
11 records as is provided by law. However, the subject of such employment tests shall be
12 entitled to review and inspect all documents relative to his performance on such
13 employment tests.

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

21 10. Applications for admission to examinations or for licensure and scoring records
22 maintained by the Department of Health ~~Regulatory Boards Professions~~ or any board in
23 that department on individual licensees or applicants. However, such material may be
24 made available during normal working hours for copying, at the requestor's expense, by the
25 individual who is subject thereof, in the offices of the Department of Health ~~Regulatory~~
26 ~~Boards Professions~~ or in the offices of any health regulatory board, whichever may possess
27 the material.

28 11. Records of active investigations being conducted by the Department of Health
29 ~~Regulatory Boards Professions~~ or by any health regulatory board in the Commonwealth.

30 12. Memoranda, legal opinions, working papers and records recorded in or compiled
31 exclusively for executive or closed meetings lawfully held pursuant to § 2.1-344.

32 13. Reports, documentary evidence and other information as specified in §§ 2.1-373.2
33 and 63.1-55.4.

34 14. Proprietary information gathered by or for the Virginia Port Authority as provided
35 in ~~§ 62.1-134.1 or § 62.1-132.4 or § 62.1-134.1~~ .

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

40 16. Vendor proprietary information software which may be in the official records of a
41 public body. For the purpose of this section, "vendor proprietary software" means computer
42 programs acquired from a vendor for purposes of processing data for agencies or political
43 subdivisions of this Commonwealth.

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

50 18. Financial statements not publicly available filed with applications for industrial
51 development financings.

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

1 20. Confidential proprietary records, voluntarily provided by private business to the
2 Division of Tourism of the Department of Economic Development, used by that Division
3 periodically to indicate to the public statistical information on tourism visitation to Virginia
4 attractions and accommodations.

5 21. Information which meets the criteria for being filed as confidential under the Toxic
6 Substances Information Act (§ 32.1-239 et seq.), regardless of how or when it is used by
7 authorized persons in regulatory processes.

8 22. Documents as specified in § 58.1-3.

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

11 24. Computer software developed by or for a state agency, state-supported institution of
12 higher education or political subdivision of the Commonwealth.

13 25. Investigator notes, and other correspondence and information, furnished in
14 confidence with respect to an active investigation of individual employment discrimination
15 complaints made to the Department of Personnel and Training; however, nothing in this
16 section shall prohibit the disclosure of information taken from inactive reports in a form
17 which does not reveal the identity of charging parties, persons supplying the information or
18 other individuals involved in the investigation.

19 26. Fisheries data which would permit identification of any person or vessel, except
20 when required by court order as specified in § 28.1-23.2.

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

23 28. Documents and writings furnished by a member of the General Assembly to a
24 meeting of a standing committee, special committee or subcommittee of his house
25 established solely for the purpose of reviewing members' annual disclosure statements and
26 supporting materials filed under § 2.1-639.40 or of formulating advisory opinions to
27 members on standards of conduct, or both.

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

32 30. Investigative notes and other correspondence and information furnished in
33 confidence with respect to an investigation or conciliation process involving an alleged
34 unlawful discriminatory practice under the Virginia Human Rights Act (§ 2.1-714 et seq.);
35 however, nothing in this section shall prohibit the distribution of information taken from
36 inactive reports in a form which does not reveal the identity of the parties involved or
37 other persons supplying information.

38 31. Investigative notes; proprietary information not published, copyrighted or patented;
39 information obtained from employee personnel records; personally identifiable information
40 regarding residents, clients or other recipients of services; and other correspondence and
41 information furnished in confidence to the Department of Social Services in connection with
42 an active investigation of an applicant or licensee pursuant to Chapters 9 (§ 63.1-172 et
43 seq.) and 10 (§ 63.1-195 et seq.) of Title 63.1; however, nothing in this section shall prohibit
44 disclosure of information from the records of completed investigations in a form that does
45 not reveal the identity of complainants, persons supplying information, or other individuals
46 involved in the investigation.

47 32. Reports, manuals, specifications, documents, minutes or recordings of staff meetings
48 or other information or materials of the Virginia Board of Corrections, the Virginia
49 Department of Corrections or any institution thereof to the extent, as determined by the
50 Director of the Department of Corrections or his designee, that disclosure or public
51 dissemination of such materials would jeopardize the security of any correctional facility or
52 institution, as follows:

53 (i) Security manuals, including emergency plans that are a part thereof;

54 (ii) Engineering and architectural drawings of correctional facilities, and operational

1 specifications of security systems utilized by the Department, provided the general
2 descriptions of such security systems, cost and quality shall be made available to the
3 public;

4 (iii) Training manuals designed for correctional facilities to the extent that they address
5 procedures for institutional security, emergency plans and security equipment;

6 (iv) Internal security audits of correctional facilities, but only to the extent that they
7 specifically disclose matters described in (i), (ii), or (iii) above or other specific
8 operational details the disclosure of which would jeopardize the security of a correctional
9 facility or institution;

10 (v) Minutes or recordings of divisional, regional and institutional staff meetings or
11 portions thereof to the extent that such minutes deal with security issues listed in (i), (ii),
12 (iii), and (iv) of this subdivision;

13 (vi) Investigative case files by investigators authorized pursuant to § 53.1-16; however,
14 nothing in this section shall prohibit the disclosure of information taken from inactive
15 reports in a form which does not reveal the identity of complainants or charging parties,
16 persons supplying information, confidential sources, or other individuals involved in the
17 investigation, or other specific operational details the disclosure of which would jeopardize
18 the security of a correctional facility or institution; nothing herein shall permit the
19 disclosure of materials otherwise exempt as set forth in *subdivision 1 of subsection B of §*
20 *2.1-342 (b) (1)* ;

21 (vii) Logs or other documents containing information on movement of inmates or
22 employees; and

23 (viii) Documents disclosing contacts between inmates and law enforcement personnel.

24 Notwithstanding the provisions of this subdivision, reports and information regarding the
25 general operations of the Department, including notice that an escape has occurred, shall
26 be open to inspection and copying as provided in this section.

27 33. ~~The names, addresses and other client specific information for~~ *Personal information,*
28 *as defined in § 2.1-379 of the Code, (i) filed with the Virginia Housing Development*
29 *Authority concerning individuals who have applied for or received loans or other housing*
30 *assistance or who have applied for occupancy of or have occupied housing financed,*
31 *owned or otherwise assisted by the Virginia Housing Development Authority, or (ii)*
32 *concerning persons participating in or person persons on the waiting list for federally*
33 *funded rent-assistance programs ; except that . However, access to one's own information*
34 *shall not be denied.*

35 34. Documents regarding the siting of hazardous waste facilities, except as provided in §
36 10.1-1441, if disclosure of them would have a detrimental effect upon the negotiating
37 position of a governing body or on the establishment of the terms, conditions and
38 provisions of the siting agreement.

39 35. *Appraisals and cost estimates of real property subject to a proposed purchase, sale*
40 *or lease, prior to the completion of such purchase, sale or lease.*

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

47 37. *Official records, memoranda, working papers, graphics, video or audio tapes,*
48 *production models, data and information of a proprietary nature produced by or for or*
49 *collected by or for the State Lottery Department relating to matters of a specific lottery*
50 *game design, development, production, operation. ticket price, prize structure, manner of*
51 *selecting the winning ticket, manner of payment of prizes to holders of winning tickets,*
52 *frequency of drawings or selections of winning tickets, odds of winning, advertising, or*
53 *marketing, where such official records have not been publicly released, published,*
54 *copyrighted or patented. Whether released, published or copyrighted, all game-related*

1 *information shall be subject to public disclosure under this chapter upon the first day of*
2 *sales for the specific lottery game to which it pertains.*

3 *38. Official records of studies and investigations by the State Lottery Department of (i)*
4 *lottery agents, (ii) lottery vendors, (iii) lottery crimes under §§ 58.1-4014 through 58.1-4018,*
5 *(iv) defects in the law or regulations which cause abuses in the administration and*
6 *operation of the lottery and any evasions of such provisions, or (v) use of the lottery as a*
7 *subterfuge for organized crime and illegal gambling where such official records have not*
8 *been publicly released, published or copyrighted. All studies and investigations referred to*
9 *under subdivisions (iii), (iv) and (v) shall be subject to public disclosure under this chapter*
10 *upon completion of the study or investigation.*

11 *39. Those portions of engineering and construction drawings and plans submitted for*
12 *the sole purpose of complying with the building code in obtaining a building permit which*
13 *would identify specific trade secrets or other information the disclosure of which would be*
14 *harmful to the competitive position of the owner or lessee; however, such information*
15 *shall be exempt only until the building is completed. Information relating to the safety or*
16 *environmental soundness of any building shall not be exempt from disclosure.*

17 *C. Neither any provision of this chapter nor any provision of Chapter 26 (§ 2.1-377 et*
18 *seq.) of this title shall be construed as denying public access to contracts between a public*
19 *official and a public body, other than contracts settling public employee employment*
20 *disputes held confidential as personnel records under subdivision 3 of subsection B of this*
21 *section, or to records of the position, job classification, official salary or rate of pay of,*
22 *and to records of the allowances or reimbursements for expenses paid to any public*
23 *officer, official or employee at any level of state, local or regional government in this*
24 *Commonwealth. The provisions of this subsection, however, shall not apply to records of*
25 *the official salaries or rates of pay of public employees whose annual rate of pay is*
26 *\$10,000 or less.*

27 *§ 2.1-343. Meetings to be public; notice of meetings; recordings; minutes; voting.—Except*
28 *as otherwise specifically provided by law and except as provided in §§ 2.1-344 and 2.1-345,*
29 *all meetings shall be public meetings , including meetings and work sessions during which*
30 *no votes are cast or any decisions made . Notice including the time, date and place of*
31 *each meeting shall be furnished to any citizen of this Commonwealth who requests such*
32 *information. Requests to be notified on a continual basis shall be made at least once a*
33 *year in writing and include name, address, zip code and organization of the requestor.*
34 *Notice, reasonable under the circumstance, of special or emergency meetings shall be*
35 *given contemporaneously with the notice provided members of the public body conducting*
36 *the meeting.*

37 *Any person may photograph, film, record or otherwise reproduce any portion of a*
38 *meeting required to be open. The public body conducting the meeting may adopt rules*
39 *governing the placement and use of equipment necessary for broadcasting, photographing,*
40 *filming or recording a meeting to prevent interference with the proceedings.*

41 *Voting by secret or written ballot in an open meeting shall be a violation of this*
42 *chapter.*

43 *Minutes shall be recorded at all public meetings. However, minutes shall not be*
44 *required to be taken at deliberations of (i) standing and other committees of the General*
45 *Assembly, (ii) legislative interim study commissions and committees, including the Virginia*
46 *Code Commission, (iii) the Virginia Advisory Legislative Council and its committees, (iv)*
47 *study committees or commissions appointed by the Governor, or ~~(v)~~ (iv) study commissions*
48 *or study committees , or any other committees or subcommittees appointed by the*
49 *governing bodies or school boards of counties, cities and towns, except where the*
50 *membership of any such study commission or study , committee or subcommittee includes*
51 *more than one member of a three member governing body or school board, more than two*
52 *members of a governing body or school board having four members or a majority of a the*
53 *governing body of the county, city or town or school board having more than four*
54 *members . Information as to the time and place of each meeting shall be furnished to any*

1 citizen of this Commonwealth who requests such information. Requests to be notified on a
2 continual basis shall be made at least once a year in writing and include name, address,
3 zip code and organization if any, together with an adequate supply of stamped
4 self-addressed envelopes.

5 § 2.1-343.1. Electronic communication meetings prohibited; exception, experimental
6 program.— A. It is a violation of this chapter for any ~~public~~ *political subdivision or any*
7 *governing body , authority, board, bureau, commission, district or agency of local*
8 *government* to conduct a meeting wherein the public business is discussed or transacted
9 through telephonic, video, electronic or other communication means where the members
10 are not physically assembled.

11 *B. Public bodies of the Commonwealth, as provided in the definition of "meeting" in §*
12 *2.1-341, but excluding any political subdivision or any governing body, authority, board,*
13 *bureau, commission, district or agency of local government, may conduct any meeting.*
14 *except executive or closed meetings held pursuant to § 2.1-344, wherein the public*
15 *business is discussed or transacted through telephonic or video means. For the purposes of*
16 *subsections B through G of this section, "public body" shall mean any state legislative*
17 *body, authority, board, bureau, commission, district or agency of the Commonwealth and*
18 *shall exclude those of local governments.*

19 *Meetings conducted through telephonic or video means shall be on an experimental*
20 *basis commencing on July 1, 1989, and ending on June 30, 1991. The Director of the*
21 *Department of Information Technology shall submit an evaluation of the effectiveness of*
22 *meetings by telephonic or video means by public bodies of the Commonwealth prior to*
23 *January 1, 1992, to the Governor and the General Assembly.*

24 *C. Notice of any meetings held pursuant to this section shall be provided at least*
25 *thirty days in advance of the date scheduled for the meeting. The notice shall include the*
26 *date, time, place and purpose for the meeting and shall identify the location or locations*
27 *for the meeting. All locations for the meeting shall be made accessible to the public. All*
28 *persons attending the meeting at any of the meeting locations shall be afforded the same*
29 *opportunity to address the public body as persons attending the primary or central*
30 *location. Any interruption in the telephonic or video broadcast of the meeting shall result*
31 *in the suspension of action at the meeting until repairs are made and public access*
32 *restored.*

33 *Thirty-day notice shall not be required for telephonic or video meetings continued to*
34 *address an emergency situation as provided in subsection F of this section or to conclude*
35 *the agenda of a telephonic or video meeting of the public body for which the proper*
36 *notice has been given, when the date, time, place and purpose of the continued meeting*
37 *are set during the meeting prior to adjournment.*

38 *The public body shall provide the Director of the Department of Information*
39 *Technology with notice of all public meetings held through telephonic or video means*
40 *pursuant to this section.*

41 *D. An agenda and materials which will be distributed to members of the public body*
42 *and which have been made available to the staff of the public body in sufficient time for*
43 *duplication and forwarding to all location sites where public access will be provided shall*
44 *be made available to the public at the time of the meeting. Minutes of all meetings held*
45 *by telephonic or video means shall be recorded as required by § 2.1-343. Votes taken*
46 *during any meeting conducted through telephonic or video means shall be recorded by*
47 *name in roll-call fashion and included in the minutes. In addition, the public body shall*
48 *make an audio recording of the meeting, if a telephonic medium is used, or an*
49 *audio/visual recording, if the meeting is held by video means. The recording shall be*
50 *preserved by the public body for a period of three years following the date of the meeting*
51 *and shall be available to the public.*

52 *E. No more than twenty-five percent of all meetings held annually by a public body,*
53 *including meetings of any ad hoc or standing committees, may be held by telephonic or*
54 *video means. Any public body which meets by telephonic or video means shall file with*

1 *the Director of the Department of Information Technology by July 1 of each year a*
2 *statement identifying the total number of meetings held during the preceding fiscal year,*
3 *the dates on which the meetings were held and the number and purpose of those*
4 *conducted through telephonic or video means.*

5 *F. Notwithstanding the limitations imposed by subsection E of this section, a public*
6 *body may meet by telephonic or video means as often as needed if an emergency exists*
7 *and the public body is unable to meet in regular session. As used in this subsection*
8 *“emergency” means an unforeseen circumstance rendering the notice required by this*
9 *section, or by § 2.1-343 of this chapter, impossible or impracticable and which*
10 *circumstance requires immediate action. Public bodies conducting emergency meetings*
11 *through telephonic or video means shall comply with the provisions of subsection D*
12 *requiring minutes, recordation and preservation of the audio or audio/visual recording of*
13 *the meeting. The basis for the emergency shall be stated in the minutes.*

14 *G. The provisions of this section establish a two-year experimental program designed to*
15 *evaluate the effectiveness of meetings by telephonic or video means by public bodies of*
16 *the Commonwealth. Meetings by telephonic or video means shall be prohibited on and*
17 *after July 1, 1991, unless the provisions of this section pertaining to the termination of*
18 *this experimental program are amended and reenacted by the General Assembly.*

19 **§ 2.1-344. Executive or closed meetings.—A. ~~Executive~~ Public bodies are not required to**
20 **conduct executive or closed meetings may . However, should a public body determine that**
21 **an executive or closed meeting is desirable, such meeting shall be held only for the**
22 **following purposes:**

23 1. Discussion or consideration of *or interviews of prospective candidates for*
24 *employment, assignment, appointment, promotion, performance, demotion, salaries,*
25 *disciplining or resignation of specific public officers, appointees or employees of any public*
26 *body, and evaluation of performance of departments or schools of state institutions of*
27 *higher education where such matters regarding such specific individuals might be affected*
28 *by such evaluation. Any teacher shall be permitted to be present during an executive*
29 *session or closed meeting in which there is a discussion or consideration of a disciplinary*
30 *matter ; which involves the teacher and some student or students ; and the student or*
31 *students involved in the matter are present ; , provided the teacher makes a written*
32 *request to be present to the presiding officer of the appropriate board.*

33 2. Discussion or consideration of admission or disciplinary matters concerning any
34 student or students of any state institution of higher education or any state school system.
35 However, any such student and legal counsel and, if the student is a minor, the student's
36 parents or legal guardians, shall be permitted to be present *during the taking of testimony*
37 *or presentation of evidence* at an executive or closed meeting, if such student, parents or
38 guardians so request in writing ; and such request is submitted to the presiding officer of
39 the appropriate board.

40 3. Discussion or consideration of the condition, acquisition or use of real property for
41 public purpose, or of the disposition of publicly held property, or of plans for the future of
42 a state institution of higher education which could affect the value of property owned or
43 desirable for ownership by such institution.

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

46 5. Discussion concerning a prospective business or industry where no previous
47 announcement has been made of the business' or industry's interest in locating in the
48 community.

49 6. The investing of public funds where competition or bargaining is involved, where if
50 made public initially the financial interest of the governmental unit would be adversely
51 affected.

52 7. Consultation with legal counsel and briefings by staff members, consultants or
53 attorneys, pertaining to actual or ~~potential~~ *probable* litigation, or other *specific* legal matters
54 ~~within the jurisdiction of the public body, and discussions or consideration of such matters~~

1 ~~without the presence of counsel, staff, consultants, or attorneys requiring the provision of~~
2 ~~legal advice by counsel .~~

3 8. In the case of boards of visitors of state institutions of higher education, discussion or
4 consideration of matters relating to gifts, bequests and fund-raising activities, and grants
5 and contracts for services or work to be performed by such institution. However, the terms
6 and conditions of any such gifts, bequests, grants and contracts made by a foreign
7 government, a foreign legal entity or a foreign person and accepted by a state institution of
8 higher education shall be subject to public disclosure upon written request to the
9 appropriate board of visitors. For the purpose of this subdivision, (i) "foreign government"
10 means any government other than the United States government or the government of a
11 state or a political subdivision thereof; (ii) "foreign legal entity" means any legal entity
12 created under the laws of the United States or of any state thereof if a majority of the
13 ownership of the stock of such legal entity is owned by foreign governments or foreign
14 persons or if a majority of the membership of any such entity is composed of foreign
15 persons or foreign legal entities, or any legal entity created under the laws of a foreign
16 government; and (iii) "foreign person" means any individual who is not a citizen or
17 national of the United States or a trust territory or protectorate thereof.

18 9. In the case of the boards of trustees of the Virginia Museum of Fine Arts and the
19 Science Museum of Virginia, discussion or consideration of matters relating to specific gifts,
20 bequests, and grants.

21 10. Discussion or consideration of honorary degrees or special awards.

22 11. Discussion or consideration of tests or examinations or other documents excluded
23 from this chapter pursuant to § 2.1-342 B 9.

24 12. Discussion, consideration or review by the appropriate House or Senate committees
25 of possible disciplinary action against a member arising out of the possible inadequacy of
26 the disclosure statement filed by the member, provided the member may request in writing
27 that the committee meeting not be conducted in executive session.

28 13. Discussion of strategy with respect to the negotiation of a siting agreement or to
29 consider the terms, conditions, and provisions of a siting agreement if the governing body
30 in open meeting finds that an open meeting will have a detrimental effect upon the
31 negotiating position of the governing body or the establishment of the terms, conditions and
32 provisions of the siting agreement, or both. All discussions with the applicant or its
33 representatives may be conducted in a closed meeting or executive session.

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

36 15. *Discussion or consideration of medical and mental records excluded from this*
37 *chapter pursuant to § 2.1-342 B 3. and those portions of disciplinary proceedings by any*
38 *regulatory board within the Department of Commerce or Department of Health Professions*
39 *conducted pursuant to § 9-6.14:11 or § 9-6.14:12 during which the board deliberates to*
40 *reach a decision.*

41 16. *Discussion, consideration or review of State Lottery Department matters related to*
42 *proprietary lottery game information and studies or investigations exempted from*
43 *disclosure under subdivisions 37 and 38 of subsection B of § 2.1-342.*

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

47 B. No meeting shall become an executive or closed meeting unless there shall have
48 been recorded in open meeting an affirmative vote to that effect by the public body
49 holding the meeting, which motion shall state specifically the purpose or purposes
50 hereinabove set forth in this section which are to be the subject of the meeting and a
51 statement included in the minutes of the meeting which shall make specific reference to
52 the applicable exemption or exemptions as provided in subsection A of this section or §
53 2.1-345. A general reference to the provisions of this chapter or to the exemptions of
54 subsection A shall not be sufficient to satisfy the requirements for an executive or closed

1 meeting. The public body holding such an executive or closed meeting shall restrict its
2 consideration of matters during the closed portions only to those purposes specifically
3 exempted from the provisions of this chapter.

4 The notice provisions of this chapter shall not apply to executive or closed meetings of
5 any public body held solely for the purpose of interviewing candidates for the position of
6 chief administrative officer. The public body prior to any such executive or closed meeting
7 for the purpose of interviewing candidates shall announce in an open meeting that such
8 executive or closed meeting shall be held at a disclosed or undisclosed location within
9 fifteen days thereafter. In no event shall the public body take action on matters discussed
10 in such executive or closed meeting except at a public meeting for which notice was given
11 pursuant to § 2.1-343.

12 *C. B.* No resolution, ordinance, rule, contract, regulation or motion adopted, passed or
13 agreed to in an executive or closed meeting shall become effective unless the public body,
14 following the meeting, reconvenes in open meeting and takes a vote of the membership on
15 such resolution, ordinance, rule, contract, regulation or motion which shall have its
16 substance reasonably identified in the open meeting. Nothing in this section shall be
17 construed to require the board of directors of any authority created pursuant to the
18 Industrial Development and Revenue Bond Act (§ 15.1-1373 et seq.), or any public body
19 empowered to issue industrial revenue bonds by general or special law, to identify a
20 business or industry to which subdivision A 5 of this section applies. However, such
21 business or industry must be identified as a matter of public record at least thirty days
22 prior to the actual date of the board's authorization of the sale or issuance of such bonds.

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

26 *D.* Nothing in this section shall be construed to prevent the holding of conferences
27 between two or more public bodies, or their representatives, but these conferences shall be
28 subject to the same regulations for holding executive or closed sessions as are applicable to
29 any other public body.

30 *§ 2.1-344.1. Call of closed or executive meetings; certification of proceedings.— A. No*
31 *meetings shall become an executive or closed meeting unless the public body proposing to*
32 *convene such meeting shall have taken an affirmative recorded vote in open session to*
33 *that effect, by motion stating specifically the purpose or purposes which are to be the*
34 *subject of the meeting, and reasonably identifying the substance of the matters to be*
35 *discussed. A statement shall be included in the minutes of the open meeting which shall*
36 *make specific reference to the applicable exemption or exemptions from open meeting*
37 *requirements provided in subsection A of § 2.1-344 or in § 2.1-345, and the matters*
38 *contained in such motion shall be set forth in those minutes. A general reference to the*
39 *provisions of this chapter or authorized exemptions from open meeting requirements shall*
40 *not be sufficient to satisfy the requirements for an executive or closed meeting.*

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

47 *C.* The public body holding an executive or closed meeting shall restrict its
48 consideration of matters during the closed portions only to those purposes specifically
49 exempted from the provisions of this chapter.

50 *D.* At the conclusion of any executive or closed meeting convened hereunder, the
51 public body holding such meeting shall reconvene in open session immediately thereafter
52 and shall take a roll call or other recorded vote to be included in the minutes of that
53 body, certifying that to the best of the member's knowledge (i) only public business
54 matters lawfully exempted from open meeting requirements under this chapter, and (ii)

1 *only such public business matters as were identified in the motion by which the executive*
 2 *or closed meeting was convened were heard, discussed or considered in the meeting by*
 3 *the public body. Any member of the public body who believes that there was a departure*
 4 *from the requirements of subdivisions (i) and (ii) above, shall so state prior to the vote.*
 5 *indicating the substance of the departure that, in his judgment, has taken place. The*
 6 *statement shall be recorded in the minutes of the public body.*

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

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

16 *G. Except as specifically authorized by law, in no event may any public body take*
 17 *action on matters discussed in any executive or closed meeting, except at a public*
 18 *meeting for which notice was given as required by § 2.1-343.*

19 *H. Minutes may be taken during executive or closed sessions of a public body, but*
 20 *shall not be required. Such minutes shall not be subject to mandatory public disclosure.*

21 § 2.1-345. Public bodies to which chapter inapplicable.—The provisions of this chapter
 22 shall not be applicable to :

23 ~~(1) to (5) [Repealed.]~~

24 ~~(6) the Virginia Parole boards; Board, petit juries ; , grand juries , and the Virginia~~
 25 ~~State Crime Commission.~~

26 ~~(7) [Repealed.]~~

27 § 2.1-346. Proceedings for enforcement of chapter.—Any person, including the
 28 Commonwealth's attorney acting in his ~~or her~~ official or individual capacity, denied the
 29 rights and privileges conferred by this chapter may proceed to enforce such rights and
 30 privileges by *filing a petition for mandamus or injunction, supported by an affidavit*
 31 *showing good cause, addressed to the court of record of the county or city from which the*
 32 *public body has been elected or appointed to serve and in which such rights and privileges*
 33 *were so denied. Failure by any person to request and receive notice of the time and place*
 34 *of meetings as provided in § 2.1-343 shall not preclude any person from enforcing his or*
 35 *her rights and privileges conferred by this chapter.*

36 Any ~~such~~ petition alleging ~~such~~ *denial of rights and privileges conferred by this chapter*
 37 *by a board, bureau, commission, authority, district or agency of the state government or by*
 38 *a standing or other committee of the General Assembly, shall be addressed to the Circuit*
 39 *Court of the City of Richmond. ~~Such~~ A petition for mandamus or injunction under this*
 40 *chapter shall be heard within seven days of the date when the same is made; provided, if*
 41 *~~such~~ the petition is made outside of the regular terms of the circuit court of a county*
 42 *which is included in a judicial circuit with another county or counties, the hearing on ~~such~~*
 43 *the petition shall be given precedence on the docket of such court over all cases which*
 44 *are not otherwise given precedence by law. ~~Such~~ The petition shall allege with reasonable*
 45 *specificity the circumstances of the denial of the rights and privileges conferred by this*
 46 *chapter. A single instance of denial of ~~such~~ the rights and privileges conferred by this*
 47 *chapter shall be sufficient to invoke the remedies granted herein. If the court finds the*
 48 *denial to be in violation of the provisions of this chapter, ~~the court may award costs and~~*
 49 *reasonable attorney's fees to the petitioning citizen the petitioner shall be entitled to*
 50 *recover reasonable costs and attorney's fees from the public body if the petitioner*
 51 *substantially prevails on the merits of the case, unless special circumstances would make*
 52 *an award unjust. In making this determination, a court may consider, among other things,*
 53 *the reliance of a public body on an opinion of the Attorney General or a decision of a*
 54 *court that substantially supports the public body's position . ~~Such costs and fees shall be~~*

1 paid by the public body in violation of this chapter. The court may award costs and
2 reasonable attorney's fees to the public body if the court finds that the petition was based
3 upon a clearly inadequate case also impose appropriate sanctions in favor of the public
4 body as provided in § 8.01-271.1 .

5 § 2.1-346.1. Violations and penalties.—In a proceeding commenced against members of
6 public bodies under § 2.1-346 for a violation of §§ 2.1-342, 2.1-343, 2.1-343.1 or § , 2.1-344 or
7 § 2.1-344.1 , the court, if it finds that a violation was willfully and knowingly made, shall
8 impose upon such person or persons member in his or her individual capacity, whether a
9 writ of mandamus or injunctive relief is awarded or not, a civil penalty of not less than
10 \$25 nor more than \$500 \$1,000 , which amount shall be paid into the State Literary Fund.

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Clerk of the House of Delegates	Clerk of the Senate

1989 SESSION

VIRGINIA ACTS OF ASSEMBLY - CHAPTER 358

An Act to amend and reenact §§ 2.1-340.1, 2.1-341, 2.1-342, 2.1-343, 2.1-343.1, 2.1-344, 2.1-345, 2.1-346 and 2.1-346.1 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 2.1-344.1, relating to the Virginia Freedom of Information Act; penalty.

[H 1229]

Approved MAR 20 1989

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.1-340.1, 2.1-341, 2.1-342, 2.1-343, 2.1-343.1, 2.1-344, 2.1-345, 2.1-346 and 2.1-346.1 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 2.1-344.1 as follows:

§ 2.1-340.1. Policy of chapter.— ~~It is the purpose of the General Assembly by providing~~ *By enacting this chapter to ensure to the General Assembly ensures* the people of this Commonwealth ready access to records in the custody of public officials and free entry to meetings of public bodies wherein the business of the people is being conducted. ~~This chapter recognizes that the Committees or subcommittees of public bodies created to perform delegated functions of a public body or to advise a public body shall also conduct their meetings and business pursuant to this chapter. 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. To the end that the purposes of this~~ *Unless the public body specifically elects to exercise an exemption provided by this chapter or any other statute, every meeting shall be open to the public and all reports, documents and other material shall be available for disclosure upon request.*

~~This chapter may be realized,~~ it 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 exception or exemption from applicability shall be narrowly construed in order that no thing which should be public may be hidden from any person.

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

§ 2.1-341. Definitions.—The following terms, whenever used or referred to in this chapter, shall have the following meanings ; respectively , unless a different meaning clearly appears from the context:

“Executive meeting” or “closed meeting” means a meeting from which the public is excluded.

~~(a)~~ *“Meeting” or “meetings” means the meetings including work sessions , when sitting physically, or through telephonic or video equipment pursuant to § 2.1-343.1, 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 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 state institutions of higher education; and other organizations, corporations or agencies in the Commonwealth, supported wholly or principally by public funds. The notice provisions of this chapter shall not apply to the said informal meetings or gatherings of the members of the General Assembly. Nothing in this chapter shall be construed to make unlawful the gathering or attendance of two or more members of a body or entity 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 body or entity. The gathering of employees of a public body shall not be deemed a “meeting” subject to the provisions of this chapter.*

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 § 2.1-343.1 or as* may specifically be provided in Title 54 54.1 for the summary suspension of professional licenses.

~~(b)~~ *“Official records” means all written or printed books, papers, letters, documents,*

maps and tapes, photographs, films, sound recordings, reports or other material, regardless of physical form or characteristics, prepared, owned, or in the possession of a public body or any employee or officer of a public body in the transaction of public business.

(c) "Executive meeting" or "closed meeting" means a meeting from which the public is excluded.

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

(e) "Public body" means any of the groups, agencies or organizations enumerated in subdivision (a) of the definition of "meeting" as provided in this section, including any committees or subcommittees of the public body created to perform delegated functions of the public body or to advise the public body.

(f) "Scholastic records" means those records, files, documents, and other materials containing information about a student and maintained by a public body which is an educational agency or institution or by a person acting for such agency or institution, but, for the purpose of access by a student, does not include (i) financial records of a parent or guardian nor (ii) records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto, which are in the sole possession of the maker thereof and which are not accessible or revealed to any other person except a substitute.

§ 2.1-342. Official records to be open to inspection; procedure for requesting records and responding to request; charges; exceptions to application of chapter.—A. Except as otherwise specifically provided by law, all official records shall be open to inspection and copying by any citizens of this Commonwealth during the regular office hours of the custodian of such records. Access to such records shall not be denied to any such citizen citizens of this Commonwealth, nor to representatives of newspapers and magazines with circulation in this Commonwealth, and representatives of radio and television stations broadcasting in or into this Commonwealth. The custodian of such records shall take all necessary precautions for their preservation and safekeeping. Any public body covered under the provisions of this chapter shall make an initial response to citizens requesting records open to inspection within fourteen calendar five work days from after the receipt of the request by the public body which is the custodian of the requested records. Such citizen request shall designate the requested records with reasonable specificity. If the requested records or public body is excluded from the provisions of this chapter, the public body to which the request is directed shall within fourteen calendar days from the receipt of the request tender a written explanation as to why the records are not available to the requestor. Such explanation shall make specific reference to the applicable provisions of this chapter or other Code sections which make the requested records unavailable. In the event a determination of the availability of the requested records may not be made within the fourteen-calendar-day period, the public body to which the request is directed shall inform the requestor as such, and shall have an additional ten calendar days in which to make a determination of availability. A specific reference to this chapter by the requesting citizen in his records request shall not be necessary to invoke the time limits for response by the public body. *The response by the public body within such five work days shall be one of the following responses:*

1. *The requested records shall be provided to the requesting citizen.*
2. *If the public body determines that an exemption applies to all of the requested records, it may refuse to release such records and provide to the requesting citizen a written explanation as to why the records are not available with the explanation making specific reference to the applicable Code sections which make the requested records exempt.*
3. *If the public body determines that an exemption applies to a portion of the requested records, it may delete or excise that portion of the records to which an exemption applies, disclose the remainder of the requested records and provide to the requesting citizen a written explanation as to why these portions of the record are not available to the requesting citizen with the explanation making specific reference to the applicable Code sections which make that portion of the requested records exempt. Any reasonably segregatable portion of an official record shall be provided to any person requesting the record after the deletion of the exempt portion.*
4. *If the public body determines that it is practically impossible to provide the requested records or to determine whether they are available within the five-work-day period, the public body shall so inform the requesting citizen and shall have an additional seven work days in which to provide one of the three preceding responses.*

Nothing in this section shall prohibit any public body from petitioning the appropriate circuit court for additional time to respond to a request for records when the request is

for an extraordinary volume of records 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 this petition, however, the public body shall make reasonable efforts to reach an agreement with the requestor concerning the production of the records requested.

The public body may make reasonable charges for the copying and , search time and computer time expended in the supplying of such records; however, ~~in no event shall 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 fifty acres. Such charges for the supplying of requested records shall be estimated in advance at the request of the citizen. *The public body may require the advance payment of charges which are subject to advance determination.*

In any case where a public body determines in advance that search and copying charges for producing the requested documents are likely to exceed \$200, the public body may, before continuing to process the request, require the citizen requesting the information to agree to payment of an amount not to exceed the advance determination by five percent. The period within which the public body must 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 citizen requesting the information.

Official records maintained by a public body on a computer or other electronic data processing system which are available to the public under the provisions of this chapter shall be made reasonably accessible to the public at reasonable cost.

Public bodies shall not be required to create or prepare a particular requested record if it does not already exist. Public bodies may, but shall not be required to, abstract or summarize information from official records or convert an official record available in one form into another form at the request of the citizen.

Failure to make any response to a request for records shall be a violation of this chapter and deemed a denial of the request.

B. 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. Memoranda, correspondence, evidence and complaints related to criminal investigations; reports submitted to the state and local police, to investigators authorized pursuant to § 53.1-16 and to the campus police departments of public institutions of higher education as established by Chapter 17 (§ 23-232 et seq.) of Title 23 in confidence; *portions of records of local government crime commissions that would identify individuals providing information about crimes or criminal activities under a promise of anonymity;* and all records of persons imprisoned in penal institutions in this Commonwealth provided such records relate to the ~~said~~ imprisonment. Information in the custody of law-enforcement officials 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 not be excluded from the provisions of this chapter.

2. Confidential records of all investigations of applications for licensees and all licenses made by or submitted to the Alcoholic Beverage Control Board.

3. State income , *business, and estate tax returns, personal property tax returns, scholastic records and personnel records containing information concerning identifiable individuals* , except that such access shall not be denied to the person who is the subject thereof, and medical and mental records, except that such records can be personally reviewed by the subject person or a physician of the subject person's choice; however, the subject person's mental records may not be personally reviewed by such person when the subject person's treating physician has made a part of such person's records a written statement that in his opinion a review of such records by the subject person would be injurious to the subject person's physical or mental health or well-being.

Where the person who is the subject of medical 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 medical 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. Medical records shall be reviewed only and shall not be copied by such administrator or chief medical officer. The information in the medical records of a person so confined shall continue to be confidential and shall not be disclosed to any person

except the subject by the administrator or chief medical officer of the facility or except as provided by law.

For the purposes of this chapter such 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 releasable as provided in subsection A of this section. No such summaries or data shall include any patient identifying information. Where the person who is the subject of scholastic or medical and mental records is under the age of eighteen, 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 or a court of competent jurisdiction has restricted or denied such access. In instances where the person who is the subject thereof is an emancipated minor or a student in a state-supported institution of higher education such right of access may be asserted by the subject person.

4. Memoranda, working papers and correspondence held or requested by members of the General Assembly or by the office of the Governor or Lieutenant Governor, Attorney General or the mayor or other chief executive officer of any political subdivision of the Commonwealth or the president or other chief executive officer of any state-supported institutions of higher education.

5. Written opinions of the city ~~and~~ , county *and town* attorneys of the cities, counties and towns in the Commonwealth and any other writing protected by the attorney-client privilege.

6. Memoranda, working papers and records compiled specifically for use in litigation or as a part of an active administrative investigation concerning a matter which is properly the subject of an executive or closed meeting under § 2.1-344 and material furnished in confidence with respect thereto.

7. 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.

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

9. 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 any public body.

As used in this subdivision 9, "test or examination" shall include (i) any scoring key for any such test or examination, and (ii) any other document which would jeopardize the security of such test or examination. Nothing contained in this subdivision 9 shall prohibit the release of test scores or results as provided by law, or limit access to individual records as is provided by law. However, the subject of such employment tests shall be entitled to review and inspect all documents 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, such 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.

10. Applications for admission to examinations or for licensure and scoring records maintained by the Department of Health ~~Regulatory Boards 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 requestor's expense, by the individual who is subject thereof, in the offices of the Department of Health ~~Regulatory Boards Professions~~ or in the offices of any health regulatory board, whichever may possess the material.

11. Records of active investigations being conducted by the Department of Health ~~Regulatory Boards Professions~~ or by any health regulatory board in the Commonwealth.

12. Memoranda, legal opinions, working papers and records recorded in or compiled exclusively for executive or closed meetings lawfully held pursuant to § 2.1-344.

13. Reports, documentary evidence and other information as specified in §§ 2.1-373.2 and 63.1-55.4.

14. Proprietary information gathered by or for the Virginia Port Authority as provided

in § 62.1-134.1 or § 62.1-132.4 or § 62.1-134.1 .

15. 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, documents and automated systems prepared for the Department's Bid Analysis and Monitoring Program.

16. Vendor proprietary information software which may be in the official records of a public body. For the purpose of this section, "vendor proprietary software" means computer programs acquired from a vendor for purposes of processing data for agencies or political subdivisions of this Commonwealth.

17. Data, records or information of a proprietary nature produced or collected by or for faculty or staff of state institutions of higher learning, 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 have not been publicly released, published, copyrighted or patented.

18. Financial statements not publicly available filed with applications for industrial development financings.

19. 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.

20. Confidential proprietary records, voluntarily provided by private business to the Division of Tourism of the Department of Economic Development, used by that Division periodically to indicate to the public statistical information on tourism visitation to Virginia attractions and accommodations.

21. Information which meets the criteria for being filed as confidential under the Toxic Substances Information Act (§ 32.1-239 et seq.), regardless of how or when it is used by authorized persons in regulatory processes.

22. Documents as specified in § 58.1-3.

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

24. Computer software developed by or for a state agency, state-supported institution of higher education or political subdivision of the Commonwealth.

25. 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 Personnel and Training; however, nothing in this section shall prohibit the disclosure of information taken from inactive reports in a form which does not reveal the identity of charging parties, persons supplying the information or other individuals involved in the investigation.

26. Fisheries data which would permit identification of any person or vessel, except when required by court order as specified in § 28.1-23.2.

27. 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.

28. Documents 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 § 2.1-639.40 or of formulating advisory opinions to members on standards of conduct, or both.

29. 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.

30. 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 (§ 2.1-714 et seq.); however, nothing in this section shall prohibit the distribution of information taken from inactive reports in a form which does not reveal the identity of the parties involved or other persons supplying information.

31. 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 9 (§ 63.1-172 et seq.) and 10 (§ 63.1-195 et seq.) of Title 63.1; however, nothing in this section shall prohibit

disclosure of information from the records of completed investigations in a form that does not reveal the identity of complainants, persons supplying information, or other individuals involved in the investigation.

32. Reports, manuals, specifications, documents, minutes or recordings of staff meetings or other information or materials of the Virginia Board of Corrections, the Virginia Department of Corrections or any institution thereof to the extent, as determined by the Director of the Department of Corrections or his designee, that disclosure or public dissemination of such materials would jeopardize the security of any correctional facility or institution, as follows:

- (i) Security manuals, including emergency plans that are a part thereof;
- (ii) Engineering and architectural drawings of correctional facilities, and operational specifications of security systems utilized by the Department, provided the general descriptions of such security systems, cost and quality shall be made available to the public;
- (iii) Training manuals designed for correctional facilities to the extent that they address procedures for institutional security, emergency plans and security equipment;
- (iv) Internal security audits of correctional facilities, but only to the extent that they specifically disclose matters described in (i), (ii), or (iii) above or other specific operational details the disclosure of which would jeopardize the security of a correctional facility or institution;
- (v) Minutes or recordings of divisional, regional and institutional staff meetings or portions thereof to the extent that such minutes deal with security issues listed in (i), (ii), (iii), and (iv) of this subdivision;
- (vi) Investigative case files by investigators authorized pursuant to § 53.1-16; however, nothing in this section shall prohibit the disclosure of information taken from inactive reports in a form which does not reveal the identity of complainants or charging parties, persons supplying information, confidential sources, or other individuals involved in the investigation, or other specific operational details the disclosure of which would jeopardize the security of a correctional facility or institution; nothing herein shall permit the disclosure of materials otherwise exempt as set forth in *subdivision 1 of subsection B of § 2.1-342 (b) (1)* ;
- (vii) Logs or other documents containing information on movement of inmates or employees; and
- (viii) Documents disclosing contacts between inmates and law enforcement personnel.

Notwithstanding the provisions of this subdivision, reports and information regarding the general operations of the Department, including notice that an escape has occurred, shall be open to inspection and copying as provided in this section.

33. ~~The names, addresses and other client specific information for Personal information, as defined in § 2.1-379 of the Code, (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, or (ii) concerning persons participating in or person persons on the waiting list for federally funded rent-assistance programs ; except that . However, access to one's own information shall not be denied.~~

34. Documents 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.

35. *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.*

36. *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 which 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.*

37. *Official 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.

38. Official 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 which cause abuses in the administration and operation of the lottery and any evasions of such provisions, or (v) 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 subdivisions (iii), (iv) and (v) shall be subject to public disclosure under this chapter upon completion of the study or investigation.

39. 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 which 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.

C. Neither any provision of this chapter nor any provision of Chapter 26 (§ 2.1-377 et seq.) of this title shall be construed as denying public access to contracts between a public official and a public body, other than contracts settling public employee employment disputes held confidential as personnel records under subdivision 3 of subsection B of this section, or to records of the position, job classification, official salary or rate of pay of, and to records of the allowances or reimbursements for expenses paid to any public officer, official or employee at any level of state, local or regional government in this Commonwealth. The provisions of this subsection, however, shall not apply to records of the official salaries or rates of pay of public employees whose annual rate of pay is \$10,000 or less.

§ 2.1-343. Meetings to be public; notice of meetings; recordings; minutes; voting.—Except as otherwise specifically provided by law and except as provided in §§ 2.1-344 and 2.1-345, all meetings shall be public meetings, including meetings and work sessions during which no votes are cast or any decisions made. Notice including the time, date and place of each meeting shall be furnished to any citizen of this Commonwealth who requests such information. Requests to be notified on a continual basis shall be made at least once a year in writing and include name, address, zip code and organization of the requestor. 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.

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.

Voting by secret or written ballot in an open meeting shall be a violation of this chapter.

Minutes shall be recorded at all public 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) the Virginia Advisory Legislative Council and its committees, (iv) study committees or commissions appointed by the Governor, or ~~(v)~~ (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 study commission or study committee or subcommittee includes more than one member of a three member governing body or school board, more than two members of a governing body or school board having four members or a majority of a the governing body of the county, city or town or school board having more than four members. Information as to the time and place of each meeting shall be furnished to any citizen of this Commonwealth who requests such information. Requests to be notified on a continual basis shall be made at least once a year in writing and include name, address, zip code and organization if any, together with an adequate supply of stamped self-addressed envelopes.

§ 2.1-343.1. Electronic communication meetings prohibited; exception, experimental program.— A. It is a violation of this chapter for any public political subdivision or any governing body, authority, board, bureau, commission, district or agency of local

government to 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.

B. Public bodies of the Commonwealth, as provided in the definition of "meeting" in § 2.1-341, but excluding any political subdivision or any governing body, authority, board, bureau, commission, district or agency of local government, may conduct any meeting, except executive or closed meetings held pursuant to § 2.1-344, wherein the public business is discussed or transacted through telephonic or video means. For the purposes of subsections B through G of this section, "public body" shall mean any state legislative body, authority, board, bureau, commission, district or agency of the Commonwealth and shall exclude those of local governments.

Meetings conducted through telephonic or video means shall be on an experimental basis commencing on July 1, 1989, and ending on June 30, 1991. The Director of the Department of Information Technology shall submit an evaluation of the effectiveness of meetings by telephonic or video means by public bodies of the Commonwealth prior to January 1, 1992, to the Governor and the General Assembly.

C. Notice of any meetings held pursuant to this section shall be provided at least thirty days in advance of the date scheduled for the meeting. The notice shall include the date, time, place and purpose for the meeting and shall identify the location or locations for the meeting. All locations for the meeting shall be made accessible 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. 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.

Thirty-day notice shall not be required for telephonic or video meetings continued to address an emergency situation as provided in subsection F of this section or to conclude the agenda of a telephonic or video meeting of the public body for which the proper notice has been given, when the date, time, place and purpose of the continued meeting are set during the meeting prior to adjournment.

The public body shall provide the Director of the Department of Information Technology with notice of all public meetings held through telephonic or video means pursuant to this section.

D. An agenda and materials which will be distributed to members of the public body and which have been made available to the staff of the public body in sufficient time for duplication and forwarding to all location sites 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 telephonic or video means shall be recorded as required by § 2.1-343. Votes taken during any meeting conducted through telephonic or video means shall be recorded by name in roll-call fashion and included in the minutes. In addition, the public body shall make an audio recording of the meeting, if a telephonic medium is used, or an audio/visual recording, if the meeting is held by video means. The recording shall be preserved by the public body for a period of three years following the date of the meeting and shall be available to the public.

E. No more than twenty-five percent of all meetings held annually by a public body, including meetings of any ad hoc or standing committees, may be held by telephonic or video means. Any public body which meets by telephonic or video means shall file with the Director of the Department of Information Technology by July 1 of each year a statement identifying the total number of meetings held during the preceding fiscal year, the dates on which the meetings were held and the number and purpose of those conducted through telephonic or video means.

F. Notwithstanding the limitations imposed by subsection E of this section, a public body may meet by telephonic or video means as often as needed if an emergency exists and the public body is unable to meet in regular session. As used in this subsection "emergency" means an unforeseen circumstance rendering the notice required by this section, or by § 2.1-343 of this chapter, impossible or impracticable and which circumstance requires immediate action. Public bodies conducting emergency meetings through telephonic or video means shall comply with the provisions of subsection D requiring minutes, recordation and preservation of the audio or audio/visual recording of the meeting. The basis for the emergency shall be stated in the minutes.

G. The provisions of this section establish a two-year experimental program designed to evaluate the effectiveness of meetings by telephonic or video means by public bodies of the Commonwealth. Meetings by telephonic or video means shall be prohibited on and

after July 1, 1991, unless the provisions of this section pertaining to the termination of this experimental program are amended and reenacted by the General Assembly.

§ 2.1-344. Executive or closed meetings.—A. ~~Executive~~ *Public bodies are not required to conduct executive or closed meetings may . However, should a public body determine that an executive or closed meeting is desirable, such meeting shall be held only for the following purposes:*

1. Discussion or consideration of ~~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 state institutions of higher education where such matters regarding such *specific* individuals might be affected by such evaluation. Any teacher shall be permitted to be present during an executive session or closed meeting in which there is a discussion or consideration of a disciplinary matter ; which involves the teacher and some student or students ; and the student or students involved in the matter are 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 concerning any student or students of any state institution of higher education or any state school system. However, any such student and 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 an executive or 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 condition, acquisition or use of real property for public purpose, or of the disposition of publicly held property, or of plans for the future of a state institution of higher education which could affect the value of property owned or desirable for ownership by such institution.

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

5. Discussion concerning a prospective business or industry where no previous announcement has been made of the business' or industry's interest in locating in the community.

6. The investing 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, consultants or attorneys, pertaining to actual or ~~potential~~ *probable* litigation, or other *specific* legal matters ~~within the jurisdiction of the public body, and discussions or consideration of such matters without the presence of counsel, staff, consultants, or attorneys requiring the provision of legal advice by counsel .~~

8. In the case of boards of visitors of state 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 state institution of higher education 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 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 or examinations or other documents excluded from this chapter pursuant to § 2.1-342 B 9.

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 executive session.

13. Discussion of strategy with respect to the negotiation of a siting agreement or to consider the terms, conditions, and provisions of a siting agreement if the governing body in open meeting finds that an open meeting will have a detrimental 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 or executive session.

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 § 2.1-342 B 3, and those portions of disciplinary proceedings by any regulatory board within the Department of Commerce or Department of Health Professions conducted pursuant to § 9-6.14:11 or § 9-6.14:12 during which the board deliberates to reach a decision.*

16. *Discussion, consideration or review of State Lottery Department matters related to proprietary lottery game information and studies or investigations exempted from disclosure under subdivisions 37 and 38 of subsection B of § 2.1-342.*

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.*

B. No meeting shall become an executive or closed meeting unless there shall have been recorded in open meeting an affirmative vote to that effect by the public body holding the meeting, which motion shall state specifically the purpose or purposes hereinabove set forth in this section which are to be the subject of the meeting and a statement included in the minutes of the meeting which shall make specific reference to the applicable exemption or exemptions as provided in subsection A of this section or § 2.1-345. A general reference to the provisions of this chapter or to the exemptions of subsection A shall not be sufficient to satisfy the requirements for an executive or closed meeting. The public body holding such an executive or closed meeting shall restrict its consideration of matters during the closed portions only to those purposes specifically exempted from the provisions of this chapter.

The notice provisions of this chapter shall not apply to executive or closed meetings of any public body held solely for the purpose of interviewing candidates for the position of chief administrative officer. The public body prior to any such executive or closed meeting for the purpose of interviewing candidates shall announce in an open meeting that such executive or closed meeting shall be held at a disclosed or undisclosed location within fifteen days thereafter. In no event shall the public body take action on matters discussed in such executive or closed meeting except at a public meeting for which notice was given pursuant to § 2.1-343.

C. No resolution, ordinance, rule, contract, regulation or motion adopted, passed or agreed to in an executive or 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 which shall have its substance reasonably identified in the open meeting. Nothing in this section shall be construed to require the board of directors of any authority created pursuant to the Industrial Development and Revenue Bond Act (§ 15.1-1373 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 of this section applies. However, such business or industry must be identified as a matter of public record at least thirty days prior to the actual date of the board's authorization of the sale or issuance of such bonds.

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 regulations for holding executive or closed sessions as are applicable to any other public body.

§ 2.1-344.1. Call of closed or executive meetings; certification of proceedings.— A. No meetings shall become an executive or closed meeting unless the public body proposing to convene such meeting shall have taken an affirmative recorded vote in open session to that effect, by motion stating specifically the purpose or purposes which are to be the subject of the meeting, and reasonably identifying the substance of the matters to be

discussed. A statement shall be included in the minutes of the open meeting which shall make specific reference to the applicable exemption or exemptions from open meeting requirements provided in subsection A of § 2.1-344 or in § 2.1-345, and the matters contained in such motion shall be set forth in those minutes. A general reference to the provisions of this chapter or authorized exemptions from open meeting requirements shall not be sufficient to satisfy the requirements for an executive or closed meeting.

B. The notice provisions of this chapter shall not apply to executive or 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 executive or closed meeting for the purpose of interviewing candidates the public body shall announce in an open meeting that such executive or closed meeting shall be held at a disclosed or undisclosed location within fifteen days thereafter.

C. The public body holding an executive or closed meeting shall restrict its consideration of matters during the closed portions only to those purposes specifically exempted from the provisions of this chapter.

D. At the conclusion of any executive or closed meeting convened hereunder, the public body holding such meeting shall reconvene in open session immediately thereafter 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 the 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 executive or 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 subdivisions (i) and (ii) above, 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, above, to receive the affirmative vote of a majority of the members of the public body present during a closed or executive session 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 this chapter.

F. A public body may permit nonmembers to attend an executive or closed meeting if such persons are deemed necessary or if their presence will reasonably aid the public body in its consideration of a topic which 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 executive or closed meeting, except at a public meeting for which notice was given as required by § 2.1-343.

H. Minutes may be taken during executive or closed sessions of a public body, but shall not be required. Such minutes shall not be subject to mandatory public disclosure.

§ 2.1-345. Public bodies to which chapter inapplicable.—The provisions of this chapter shall not be applicable to :

~~(1) to (5) [Repealed.]~~

~~(6) the Virginia Parole boards; Board, petit juries ; , grand juries , and the Virginia State Crime Commission.~~

~~(7) [Repealed.]~~

§ 2.1-346. Proceedings for enforcement of chapter.—Any person, including the Commonwealth's attorney acting in his or her 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, addressed to the court of record 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. Failure by any person to request and receive notice of the time and place of meetings as provided in § 2.1-343 shall not preclude any person from enforcing his or her rights and privileges conferred by this chapter.*

Any such petition alleging such denial of rights and privileges conferred by this chapter by a board, bureau, commission, authority, district or agency of the state government or by a standing or other committee of the General Assembly, shall be addressed to the Circuit Court of the City of Richmond. Such A petition for mandamus or injunction under this chapter shall be heard within seven days of the date when the same is made; provided, if such the petition is made outside of the regular terms of the circuit court of a county which is included in a judicial circuit with another county or counties, the hearing on such the petition shall be given precedence on the docket of such court over all cases which

are not otherwise given precedence by law. ~~Such~~ *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 ~~such~~ *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 court may award costs and reasonable attorney's fees to the petitioning citizen~~ *the petitioner shall be entitled to recover reasonable costs and attorney's 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 . Such costs and fees shall be paid by the public body in violation of this chapter. The court may award costs and reasonable attorney's fees to the public body if the court finds that the petition was based upon a clearly inadequate case also impose appropriate sanctions in favor of the public body as provided in § 8.01-271.1 .*

§ 2.1-346.1. Violations and penalties.—In a proceeding commenced against members of public bodies under § 2.1-346 for a violation of §§ 2.1-342, 2.1-343, 2.1-343.1 ~~or §~~ , 2.1-344 ~~or § 2.1-344.1~~ , the court, if it finds that a violation was willfully and knowingly made, shall impose upon such ~~person or persons~~ *member* in his ~~or her~~ individual capacity, whether a writ of mandamus or injunctive relief is awarded or not, a civil penalty of not less than \$25 nor more than \$500 ~~\$1,000~~ , which amount shall be paid into the State Literary Fund.

President of the Senate

Speaker of the House of Delegates

Approved:

Governor

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APPENDIX II

1/11/89*

8 § 2.1-340.1. Policy of chapter.-- It is the purpose of the
9 ~~General Assembly by providing~~ By enacting this chapter to ensure to
10 the General Assembly ensures the people of this Commonwealth ready
11 access to records in the custody of public officials and free entry to
12 meetings of public bodies wherein the business of the people is being
13 conducted. ~~This chapter recognizes that the~~ Committees or
14 subcommittees of public bodies created to perform delegated functions
15 of a public body or to advise a public body shall also conduct their
16 meetings and business pursuant to this chapter. The affairs of
17 government are not intended to be conducted in an atmosphere of
18 secrecy since at all times the public is to be the beneficiary of any
19 action taken at any level of government. ~~To the end that the purposes~~
20 ~~of this~~ Unless the public body specifically elects to exercise an
21 exemption provided by this chapter or any other statute, every meeting
22 shall be open to the public and all reports, documents and other
23 material shall be available for disclosure upon request.

24 This chapter may be realized; it shall be liberally construed to
25 promote an increased awareness by all persons of governmental
26 activities and afford every opportunity to citizens to witness the
27 operations of government. Any exception or exemption from
28 applicability shall be narrowly construed in order that no thing which

1 should be public may be hidden from any person.

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

4 COMMENT: Attorney General Opinions to Delegate Frederick H.
5 Creekmore on April 3, 1979, and to Bruce D. Jones, Jr., on December
6 20, 1985, provided the source for the language added on lines 10
7 through 13 of § 2.1-340.1. The new language on lines 17 through 20 on
8 page 1 was added at the direction of the Subcommittee. An Attorney
9 General Opinion to Delegate James M. Thomson on October 10, 1975, was
10 the source of the new language on lines 27 through 28 on page 1. The
11 other changes in the section were housekeeping in nature.

12 § 2.1-341. Definitions.--The following terms, whenever used or
13 referred to in this chapter, shall have the following meanings 7
14 respectively , unless a different meaning clearly appears from the
15 context:

16 "Executive meeting" or "closed meeting" means a meeting from
17 which the public is excluded.

18 (a) "Meeting" or "meetings" means the meetings including work
19 sessions , when sitting physically, or through telephonic or video
20 equipment pursuant to § 2.1-343.1, as a body or entity, or as an
21 informal assemblage of (i) as many as three members, or (ii) a quorum,
22 if less than three, of the constituent membership, wherever held, with
23 or without minutes being taken, whether or not votes are cast, of any
24 legislative body, authority, board, bureau, commission, district or
25 agency of the Commonwealth or of any political subdivision of the
26 Commonwealth, including cities, towns and counties; municipal
27 councils, governing bodies of counties, school boards and planning
28 commissions; boards of visitors of state institutions of higher
29 education; and other organizations, corporations or agencies in the
30 Commonwealth, supported wholly or principally by public funds. The
31 notice provisions of this chapter shall not apply to the said informal

1 meetings or gatherings of the members of the General Assembly. Nothing
2 in this chapter shall be construed to make unlawful the gathering or
3 attendance of two or more members of a body or entity at any place or
4 function where no part of the purpose of such gathering or attendance
5 is the discussion or transaction of any public business, and such
6 gathering or attendance was not called or prearranged with any purpose
7 of discussing or transacting any business of the body or entity. The
8 gathering of employees of a public body shall not be deemed a
9 "meeting" subject to the provisions of this chapter.

10 No meeting shall be conducted through telephonic, video,
11 electronic or other communication means where the members are not
12 physically assembled to discuss or transact public business, except as
13 provided in § 2.1-343.1 or as may specifically be provided in Title 54
14 54.1 for the summary suspension of professional licenses.

15 ~~(b)~~ "Official records" means all written or printed books,
16 papers, letters, documents, maps and tapes, photographs, films, sound
17 recordings, reports or other material, regardless of physical form or
18 characteristics, prepared, owned, or in the possession of a public
19 body or any employee or officer of a public body in the transaction of
20 public business.

21 ~~(c)~~ "Executive meeting" or "closed meeting" means a meeting from
22 ~~which the public is excluded.~~

23 ~~(d)~~ "Open meeting" or "public meeting" means a meeting at which
24 the public may be present.

25 ~~(e)~~ "Public body" means any of the groups, agencies or
26 organizations enumerated in ~~subdivision (a)~~ of the definition of
27 "meeting" as provided in this section, including any committees or
28 subcommittees of the public body created to perform delegated

1 functions of the public body or to advise the public body .

2 {f} "Scholastic records" means those records, files, documents,
3 and other materials containing information about a student and
4 maintained by a public body which is an educational agency or
5 institution or by a person acting for such agency or institution, but,
6 for the purpose of access by a student, does not include (i) financial
7 records of a parent or guardian nor (ii) records of instructional,
8 supervisory, and administrative personnel and educational personnel
9 ancillary thereto, which are in the sole possession of the maker
10 thereof and which are not accessible or revealed to any other person
11 except a substitute.

12 COMMENT: The words "including work sessions" in the first
13 sentence of the definition of "meeting" were added for clarification.
14 The second change in the first sentence of the definition of "meeting"
15 was added to conform the definition with the provisions of §
16 2.1-343.1, which allows certain telephonic or video meetings to be
17 conducted on an experimental basis. An Attorney General Opinion to
18 Delegate John G. Dicks III, on August 30, 1986, was the source of the
19 added language on lines 3 through 5 on page 3. Attorney General
20 Opinions to Delegate Frederick H. Creekmore on April 3, 1979, and to
21 Bruce D. Jones, Jr., on December 20, 1985, provided the source for
22 the language added in the definition of "public body" on lines 23
23 through 25 on page 3. The other changes in the section were
24 housekeeping in nature.

25 § 2.1-342. Official records to be open to inspection; procedure
26 for requesting records and responding to request; charges; exceptions
27 to application of chapter.--A. Except as otherwise specifically
28 provided by law, all official records shall be open to inspection and
29 copying by any citizens of this Commonwealth during the regular office
30 hours of the custodian of such records. Access to such records shall
31 not be denied to ~~any such citizen~~ citizens of this Commonwealth, ~~nor~~
32 ~~to~~ representatives of newspapers and magazines with circulation in
33 this Commonwealth, and representatives of radio and television
34 stations broadcasting in or into this Commonwealth. The custodian of

1 such records shall take all necessary precautions for their
2 preservation and safekeeping. Any public body covered under the
3 provisions of this chapter shall make an initial response to citizens
4 requesting records open to inspection within ~~fourteen calendar~~ five
5 work days from after the receipt of the request by the public body
6 which is the custodian of the requested records . Such citizen request
7 shall designate the requested records with reasonable specificity. ~~If~~
8 ~~the requested records or public body is excluded from the provisions~~
9 ~~of this chapter, the public body to which the request is directed~~
10 ~~shall within fourteen calendar days from the receipt of the request~~
11 ~~tender a written explanation as to why the records are not available~~
12 ~~to the requester. Such explanation shall make specific reference to~~
13 ~~the applicable provisions of this chapter or other Code sections which~~
14 ~~make the requested records unavailable. In the event a determination~~
15 ~~of the availability of the requested records may not be made within~~
16 ~~the fourteen-calendar -day period, the public body to which the~~
17 ~~request is directed shall inform the requester as such , and shall~~
18 ~~have an additional ten calendar days in which to make a determination~~
19 ~~of availability. A specific reference to this chapter by the~~
20 ~~requesting citizen in his records request shall not be necessary to~~
21 ~~invoke the time limits for response by the public body. The response~~
22 ~~by the public body within such five work days shall be one of the~~
23 ~~following responses:~~

24 1. The requested records shall be provided to the requesting
25 citizen.

26 2. If the public body determines that an exemption applies to
27 all of the requested records, it may refuse to release such records
28 and provide to the requesting citizen a written explanation as to why

1 the records are not available with the explanation making specific
2 reference to the applicable Code sections which make the requested
3 records exempt.

4 3. If the public body determines that an exemption applies to a
5 portion of the requested records, it may delete or excise that portion
6 of the records to which an exemption applies, disclose the remainder
7 of the requested records and provide to the requesting citizen a
8 written explanation as to why these portions of the record are not
9 available to the requesting citizen with the explanation making
10 specific reference to the applicable Code sections which make that
11 portion of the requested records exempt. Any reasonably segregatable
12 portion of an official record shall be provided to any person
13 requesting the record after the deletion of the exempt portion.

14 4. If the public body determines that it is practically
15 impossible to provide the requested records or to determine whether
16 they are available within the five-work-day period, the public body
17 shall so inform the requesting citizen and shall have an additional
18 seven work days in which to provide one of the three preceding
19 responses.

20 The public body may make reasonable charges for the copying and
21 search time and computer time expended in the supplying of such
22 records; however, ~~in no event shall~~ such charges shall not exceed the
23 actual cost to the public body in supplying such records, except that
24 the public body may charge, on a pro rata per acre basis, for the cost
25 of creating topographical maps developed by the public body, for such
26 maps or portions thereof, which encompass a contiguous area greater
27 than fifty acres. Such charges for the supplying of requested records
28 shall be estimated in advance at the request of the citizen. The

1 public body may require the advance payment of charges which are
2 subject to advance determination.

3 In any case where a public body determines in advance that search
4 and copying charges for producing the requested documents are likely
5 to exceed \$200, the public body may, before continuing to process the
6 request, require the citizen requesting the information to agree to
7 payment of an amount not to exceed the advance determination by five
8 percent. The period within which the public body must respond under
9 this section shall be tolled for the amount of time that elapses
10 between receipt of notification of the advance determination and the
11 response of the citizen requesting the information.

12 Official records maintained by a public body on a computer or
13 other electronic data processing system which are available to the
14 public under the provisions of this chapter shall be made reasonably
15 accessible to the public at reasonable cost.

16 Public bodies shall not be required to create or prepare a
17 particular requested record if it does not already exist. Public
18 bodies may, but shall not be required to, abstract or summarize
19 information from official records or convert an official record
20 available in one form into another form at the request of the citizen.

21 Failure to make any response to a request for records shall be a
22 violation of this chapter and deemed a denial of the request.

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

26 1. Memoranda, correspondence, evidence and complaints related to
27 criminal investigations; reports submitted to the state and local
28 police, to investigators authorized pursuant to § 53.1-16 and to the

1 campus police departments of public institutions of higher education
2 as established by Chapter 17 (§ 23-232 et seq.) of Title 23 in
3 confidence; and all records of persons imprisoned in penal
4 institutions in this Commonwealth provided such records relate to the
5 ~~said~~ imprisonment. Information in the custody of law-enforcement
6 officials relative to the identity of any individual other than a
7 juvenile who is arrested and charged, and the status of the charge or
8 arrest, shall not be excluded from the provisions of this chapter.

9 2. Confidential records of all investigations of applications for
10 licenses and all licenses made by or submitted to the Alcoholic
11 Beverage Control Board.

12 3. State income , business, and estate tax returns, personal
13 property tax returns, scholastic records and personnel records
14 containing information concerning identifiable individuals , except
15 that such access shall not be denied to the person who is the subject
16 thereof, and medical and mental records, except that such records can
17 be personally reviewed by the subject person or a physician of the
18 subject person's choice; however, the subject person's mental records
19 may not be personally reviewed by such person when the subject
20 person's treating physician has made a part of such person's records a
21 written statement that in his opinion a review of such records by the
22 subject person would be injurious to the subject person's physical or
23 mental health or well-being.

24 Where the person who is the subject of medical records is
25 confined in a state or local correctional facility, the administrator
26 or chief medical officer of such facility may assert such confined
27 person's right of access to the medical records if the administrator
28 or chief medical officer has reasonable cause to believe that such

1 confined person has an infectious disease or other medical condition
2 from which other persons so confined need to be protected. Medical
3 records shall be reviewed only and shall not be copied by such
4 administrator or chief medical officer. The information in the medical
5 records of a person so confined shall continue to be confidential and
6 shall not be disclosed to any person except the subject by the
7 administrator or chief medical officer of the facility or except as
8 provided by law.

9 For the purposes of this chapter such statistical summaries of
10 incidents and statistical data concerning patient abuse as may be
11 compiled by the Commissioner of the Department of Mental Health,
12 Mental Retardation and Substance Abuse Services shall be open to
13 inspection and releasable as provided in subsection A of this section.
14 No such summaries or data shall include any patient identifying
15 information. Where the person who is the subject of scholastic or
16 medical and mental records is under the age of eighteen, his right of
17 access may be asserted only by his guardian, or his parent, including
18 a noncustodial parent, unless such parent's parental rights have been
19 terminated or a court of competent jurisdiction has restricted or
20 denied such access. In instances where the person who is the subject
21 thereof is an emancipated minor or a student in a state-supported
22 institution of higher education such right of access may be asserted
23 by the subject person.

24 4. Memoranda, working papers and correspondence held or requested
25 by members of the General Assembly or by the office of the Governor or
26 Lieutenant Governor, Attorney General or the mayor or other chief
27 executive officer of any political subdivision of the Commonwealth or
28 the president or other chief executive officer of any state-supported

1 institutions of higher education.

2 5. Written opinions of the city and , county and town attorneys
3 of the cities, counties and towns in the Commonwealth and any other
4 writing protected by the attorney-client privilege.

5 6. Memoranda, working papers and records compiled specifically
6 for use in litigation or as a part of an active administrative
7 investigation concerning a matter which is properly the subject of an
8 executive or closed meeting under § 2.1-344 and material furnished in
9 confidence with respect thereto.

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

15 8. Library records which can be used to identify both (i) any
16 library patron who has borrowed material from a library and (ii) the
17 material such patron borrowed.

18 9. Any test or examination used, administered or prepared by any
19 public body for purposes of evaluation of (i) any student or any
20 student's performance, (ii) any employee or employment seeker's
21 qualifications or aptitude for employment, retention, or promotion, or
22 (iii) qualifications for any license or certificate issued by any
23 public body.

24 As used in this subdivision 9, "test or examination" shall
25 include (i) any scoring key for any such test or examination, and (ii)
26 any other document which would jeopardize the security of such test or
27 examination. Nothing contained in this subdivision 9 shall prohibit
28 the release of test scores or results as provided by law, or limit

1 access to individual records as is provided by law. However, the
2 subject of such employment tests shall be entitled to review and
3 inspect all documents relative to his performance on such employment
4 tests.

5 When, in the reasonable opinion of such public body, any such
6 test or examination no longer has any potential for future use, and
7 the security of future tests or examinations will not be jeopardized,
8 such test or examination shall be made available to the public.
9 However, minimum competency tests administered to public school
10 children shall be made available to the public contemporaneously with
11 statewide release of the scores of those taking such tests, but in no
12 event shall such tests be made available to the public later than six
13 months after the administration of such tests.

14 10. Applications for admission to examinations or for licensure
15 and scoring records maintained by the Department of Health Regulatory
16 Boards Professions or any board in that department on individual
17 licensees or applicants. However, such material may be made available
18 during normal working hours for copying, at the requestor's expense,
19 by the individual who is subject thereof, in the offices of the
20 Department of Health Regulatory Boards Professions or in the offices
21 of any health regulatory board, whichever may possess the material.

22 11. Records of active investigations being conducted by the
23 Department of Health Regulatory Boards Professions or by any health
24 regulatory board in the Commonwealth.

25 12. Memoranda, legal opinions, working papers and records
26 recorded in or compiled exclusively for executive or closed meetings
27 lawfully held pursuant to § 2.1-344.

28 13. Reports, documentary evidence and other information as

1 specified in §§ 2.1-373.2 and 63.1-55.4.

2 14. Proprietary information gathered by or for the Virginia Port
3 Authority as provided in ~~§ 62.1-134.1~~ or § 62.1-132.4 or § 62.1-134.1

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

10 16. Vendor proprietary information software which may be in the
11 official records of a public body. For the purpose of this section,
12 "vendor proprietary software" means computer programs acquired from a
13 vendor for purposes of processing data for agencies or political
14 subdivisions of this Commonwealth.

15 17. Data, records or information of a proprietary nature produced
16 or collected by or for faculty or staff of state institutions of
17 higher learning, other than the institutions' financial or
18 administrative records, in the conduct of or as a result of study or
19 research on medical, scientific, technical or scholarly issues,
20 whether sponsored by the institution alone or in conjunction with a
21 governmental body or a private concern, where such data, records or
22 information have not been publicly released, published, copyrighted or
23 patented.

24 18. Financial statements not publicly available filed with
25 applications for industrial development financings.

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

1 by the political subdivision.

2 20. Confidential proprietary records, voluntarily provided by
3 private business to the Division of Tourism of the Department of
4 Economic Development, used by that Division periodically to indicate
5 to the public statistical information on tourism visitation to
6 Virginia attractions and accommodations.

7 21. Information which meets the criteria for being filed as
8 confidential under the Toxic Substances Information Act (§ 32.1-239 et
9 seq.), regardless of how or when it is used by authorized persons in
10 regulatory processes.

11 22. Documents as specified in § 58.1-3.

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

15 24. Computer software developed by or for a state agency,
16 state-supported institution of higher education or political
17 subdivision of the Commonwealth.

18 25. Investigator notes, and other correspondence and information,
19 furnished in confidence with respect to an active investigation of
20 individual employment discrimination complaints made to the Department
21 of Personnel and Training; however, nothing in this section shall
22 prohibit the disclosure of information taken from inactive reports in
23 a form which does not reveal the identity of charging parties, persons
24 supplying the information or other individuals involved in the
25 investigation.

26 26. Fisheries data which would permit identification of any
27 person or vessel, except when required by court order as specified in
28 § 28.1-23.2.

1 27. Records of active investigations being conducted by the
2 Department of Medical Assistance Services pursuant to Chapter 10 (§
3 32.1-323 et seq.) of Title 32.1.

4 28. Documents and writings furnished by a member of the General
5 Assembly to a meeting of a standing committee, special committee or
6 subcommittee of his house established solely for the purpose of
7 reviewing members' annual disclosure statements and supporting
8 materials filed under § 2.1-639.40 or of formulating advisory opinions
9 to members on standards of conduct, or both.

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

15 30. Investigative notes and other correspondence and information
16 furnished in confidence with respect to an investigation or
17 conciliation process involving an alleged unlawful discriminatory
18 practice under the Virginia Human Rights Act (§ 2.1-714 et seq.);
19 however, nothing in this section shall prohibit the distribution of
20 information taken from inactive reports in a form which does not
21 reveal the identity of the parties involved or other persons supplying
22 information.

23 31. Investigative notes; proprietary information not published,
24 copyrighted or patented; information obtained from employee personnel
25 records; personally identifiable information regarding residents,
26 clients or other recipients of services; and other correspondence and
27 information furnished in confidence to the Department of Social
28 Services in connection with an active investigation of an applicant or

1 licensee pursuant to Chapters 9 (§ 63.1-172 et seq.) and 10 (§
2 63.1-195 et seq.) of Title 63.1; however, nothing in this section
3 shall prohibit disclosure of information from the records of completed
4 investigations in a form that does not reveal the identity of
5 complainants, persons supplying information, or other individuals
6 involved in the investigation.

7 32. Reports, manuals, specifications, documents, minutes or
8 recordings of staff meetings or other information or materials of the
9 Virginia Board of Corrections, the Virginia Department of Corrections
10 or any institution thereof to the extent, as determined by the
11 Director of the Department of Corrections or his designee, that
12 disclosure or public dissemination of such materials would jeopardize
13 the security of any correctional facility or institution, as follows:

14 (i) Security manuals, including emergency plans that are a part
15 thereof;

16 (ii) Engineering and architectural drawings of correctional
17 facilities, and operational specifications of security systems
18 utilized by the Department, provided the general descriptions of such
19 security systems, cost and quality shall be made available to the
20 public;

21 (iii) Training manuals designed for correctional facilities to
22 the extent that they address procedures for institutional security,
23 emergency plans and security equipment;

24 (iv) Internal security audits of correctional facilities, but
25 only to the extent that they specifically disclose matters described
26 in (i), (ii), or (iii) above or other specific operational details the
27 disclosure of which would jeopardize the security of a correctional
28 facility or institution;

1 (v) Minutes or recordings of divisional, regional and
2 institutional staff meetings or portions thereof to the extent that
3 such minutes deal with security issues listed in (i), (ii), (iii), and
4 (iv) of this subdivision;

5 (vi) Investigative case files by investigators authorized
6 pursuant to § 53.1-16; however, nothing in this section shall prohibit
7 the disclosure of information taken from inactive reports in a form
8 which does not reveal the identity of complainants or charging
9 parties, persons supplying information, confidential sources, or other
10 individuals involved in the investigation, or other specific
11 operational details the disclosure of which would jeopardize the
12 security of a correctional facility or institution; nothing herein
13 shall permit the disclosure of materials otherwise exempt as set forth
14 in subdivision 1 of subsection B of § 2.1-342 (b) (1) ;

15 (vii) Logs or other documents containing information on movement
16 of inmates or employees; and

17 (viii) Documents disclosing contacts between inmates and law
18 enforcement personnel.

19 Notwithstanding the provisions of this subdivision, reports and
20 information regarding the general operations of the Department,
21 including notice that an escape has occurred, shall be open to
22 inspection and copying as provided in this section.

23 33. ~~The names, addresses and other client specific information~~
24 ~~for~~ Personal information, as defined in § 2.1-379 of the Code, (i)
25 filed with the Virginia Housing Development Authority concerning
26 individuals who have applied for or received loans or other housing
27 assistance or who have applied for occupancy of or have occupied
28 housing financed, owned or otherwise assisted by the Virginia Housing

1 Development Authority, or (ii) concerning persons participating in or
2 person persons on the waiting list for federally funded
3 rent-assistance programs ; ~~except that~~ . However, access to one's
4 own information shall not be denied.

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

10 35. Appraisals and cost estimates of real property subject to a
11 proposed purchase, sale or lease, prior to the completion of such
12 purchase, sale or lease.

13 C. Neither any provision of this chapter nor any provision of
14 Chapter 26 (§ 2.1-377 et seq.) of this title shall be construed as
15 denying public access to contracts between a public official and a
16 public body, other than contracts settling public employee employment
17 disputes held confidential as personnel records under subdivision 3 of
18 subsection B of this section, or to records of the position, job
19 classification, official salary or rate of pay of, and to records of
20 the allowances or reimbursements for expenses paid to any public
21 officer, official or employee at any level of state, local or regional
22 government in this Commonwealth. The provisions of this subsection,
23 however, shall not apply to records of the official salaries or rates
24 of pay of public employees whose annual rate of pay is \$10,000 or
25 less.

26 COMMENT: Subsection A . The initial time frame for response to
27 freedom of information requests was changed from "fourteen calendar
28 days from the receipt of the request" to "five work days after the
29 receipt of the request" at the direction of the Subcommittee. The
30 stricken language on lines 3 through 15 on page 5 was rewritten and

1 incorporated in the new language added on lines 17 through 28 on page
2 5 and lines 1 through 15 on page 6. At the direction of the
3 Subcommittee language was included requiring the provision of any
4 reasonably segregatable portion of an official record after deletion
5 of the exempt portion. The Subcommittee also determined that the
6 public body should have an additional seven work days (after the
7 five-work-day period) to make the appropriate response if the public
8 body determines that it is practically impossible to provide the
9 requested records or to determine whether they are available within
10 the five-work-day period. The source for the allowance of reasonable
11 charges for computer time by the public body to the requesting party
12 is the July 25, 1983, Attorney General Opinion to Senator Frank W.
13 Nolen. A September 6, 1979, Attorney General Opinion to Delegate
14 Bernard G. Barrow is the source of the language allowing advance
15 payment of charges on lines 24 through 26 on page 6. The Subcommittee
16 directed that the provisions on lines 27 and 28 on page 6 and lines 1
17 through 7 on page 7 relating to advance payment and the provisions on
18 lines 8 through 11 on page 7 relating to the access of official
19 records on a computer or other electronic data processing system be
20 added. The source of the added language on lines 12 through 16 of
21 page 7 is a September 25, 1984, Attorney General Opinion to Mr. Warren
22 E. Barry. The language on lines 17 and 18 on page 7 was added at the
23 direction of the Subcommittee.

24 Subsection B . The new language on lines 20 and 21 of page 7 was
25 added at the direction of the Subcommittee. A February 8, 1986,
26 Attorney General Opinion to Senator Robert C. Scott was the source of
27 the language added on line 10 of page 8. Amendments to exclusion #33
28 and the addition of exclusion #35 were incorporated at the direction
29 of the Subcommittee in response to testimony presented to the
30 Subcommittee.

31 All other changes made in the section were housekeeping in
32 nature.

33

34 § 2.1-343. Meetings to be public; notice of meetings;
35 recordings; minutes; voting.--Except as otherwise specifically
36 provided by law and except as provided in §§ 2.1-344 and 2.1-345, all
37 meetings shall be public meetings , including meetings and work
38 sessions during which no votes are cast or any decisions made .
39 Notice including the time, date and place of each meeting shall be
40 furnished to any citizen of this Commonwealth who requests such
41 information. Requests to be notified on a continual basis shall be
42 made at least once a year in writing and include name, address, zip
43 code and organization of the requestor. Notice, reasonable under the

1 circumstance, of special or emergency meetings shall be given
2 contemporaneously with the notice provided members of the public body
3 conducting the meeting.

4 Any person may photograph, film, record or otherwise reproduce
5 any portion of a meeting required to be open. The public body
6 conducting the meeting may adopt rules governing the placement and use
7 of equipment necessary for broadcasting, photographing, filming or
8 recording a meeting to prevent interference with the proceedings.

9 Voting by secret or written ballot in an open meeting shall be a
10 violation of this chapter.

11 Minutes shall be recorded at all public meetings. However,
12 minutes shall not be required to be taken at deliberations of (i)
13 standing and other committees of the General Assembly, (ii)
14 legislative interim study commissions and committees, including the
15 Virginia Code Commission, (iii) ~~the Virginia Advisory Legislative~~
16 ~~Council and its committees,~~ (iv) study committees or commissions
17 appointed by the Governor, or (v) (iv) study commissions or study
18 committees , or any other committees or subcommittees appointed by the
19 governing bodies or school boards of counties, cities and towns,
20 except where the membership of any such study commission or study
21 committee or subcommittee includes more than one member of a three
22 member governing body or school board, more than two members of a
23 governing body or school board having four members or a majority of a
24 the governing body of the county, city or town or school board having
25 more than four members . Information as to the time and place of each
26 meeting shall be furnished to any citizen of this Commonwealth who
27 requests such information. Requests to be notified on a continual
28 basis shall be made at least once a year in writing and include name,

1 address, zip code and organization if any, together with an adequate
2 supply of stamped self-addressed envelopes.

3 COMMENT: Most of the language added on lines 31 through 35 on
4 page 18 was rewritten and moved from the stricken language on lines 21
5 through 26 on page 19. The clarifying language on lines 29 and 30 on
6 page 18 was added at the direction of the Subcommittee. A specific
7 provision allowing filming or recordation of a meeting and the
8 adoption of rules governing the use of equipment was added at the
9 direction of the Subcommittee. The language specifically prohibiting
10 secret or written ballots in open meeting was incorporated at the
11 direction of the Subcommittee. The reference to the Virginia Advisory
12 Legislative Council was stricken as that Council no longer exists.
13 Other changes in the second sentence of the last paragraph of §
14 2.1-343 were made at the direction of the Subcommittee.

15 § 2.1-343.1. Electronic communication meetings prohibited;
16 exception, experimental program.-- A. It is a violation of this
17 chapter for any ~~public~~ political subdivision or any governing body ,
18 authority, board, bureau, commission, district or agency of local
19 government to conduct a meeting wherein the public business is
20 discussed or transacted through telephonic, video, electronic or other
21 communication means where the members are not physically assembled.

22 B. Public bodies of the Commonwealth, as provided in the
23 definition of "meeting" in § 2.1-341, but excluding any political
24 subdivision or any governing body, authority, board, bureau,
25 commission, district or agency of local government, may conduct any
26 meeting, except executive or closed meetings held pursuant to §
27 2.1-344, wherein the public business is discussed or transacted
28 through telephonic or video means. For the purposes of subsections B
29 through G of this section, "public body" shall mean any state
30 legislative body, authority, board, bureau, commission, district or
31 agency of the Commonwealth and shall exclude those of local
32 governments.

33 Meetings conducted through telephonic or video means shall be on

1 an experimental basis commencing on July 1, 1989, and ending on June
2 30, 1991. The Director of the Department of Information Technology
3 shall submit an evaluation of the effectiveness of meetings by
4 telephonic or video means by public bodies of the Commonwealth prior
5 to January 1, 1992, to the Governor and the General Assembly.

6 C. Notice of any meetings held pursuant to this section shall be
7 provided at least thirty days in advance of the date scheduled for the
8 meeting. The notice shall include the date, time, place and purpose
9 for the meeting and shall identify the location or locations for the
10 meeting. All locations for the meeting shall be made accessible to
11 the public. All persons attending the meeting at any of the meeting
12 locations shall be afforded the same opportunity to address the public
13 body as persons attending the primary or central location. Any
14 interruption in the telephonic or video broadcast of the meeting shall
15 result in the suspension of action at the meeting until repairs are
16 made and public access restored.

17 Thirty-day notice shall not be required for telephonic or video
18 meetings continued to address an emergency situation as provided in
19 subsection F of this section or to conclude the agenda of a telephonic
20 or video meeting of the public body for which the proper notice has
21 been given, when the date, time, place and purpose of the continued
22 meeting are set during the meeting prior to adjournment.

23 The public body shall provide the Director of the Department of
24 Information Technology with notice of all public meetings held through
25 telephonic or video means pursuant to this section.

26 D. An agenda and materials which will be distributed to members
27 of the public body and which have been made available to the staff of
28 the public body in sufficient time for duplication and forwarding to

1 all location sites where public access will be provided shall be made
2 available to the public at the time of the meeting. Minutes of all
3 meetings held by telephonic or video means shall be recorded as
4 required by § 2.1-343. Votes taken during any meeting conducted
5 through telephonic or video means shall be recorded by name in
6 roll-call fashion and included in the minutes. In addition, the public
7 body shall make an audio recording of the meeting, if a telephonic
8 medium is used, or an audio/visual recording, if the meeting is held
9 by video means. The recording shall be preserved by the public body
10 for a period of three years following the date of the meeting and
11 shall be available to the public.

12 E. No more than twenty-five percent of all meetings held
13 annually, including meetings of any ad hoc or standing committees, may
14 be held by telephonic or video means. Any public body which meets by
15 telephonic or video means shall file with the Director of the
16 Department of Information Technology by July 1 of each year a
17 statement identifying the total number of meetings held during the
18 preceding fiscal year, the dates on which the meetings were held and
19 the number and purpose of those conducted through telephonic or video
20 means.

21 F. Notwithstanding the limitations imposed by subsection E of
22 this section, a public body may meet by telephonic or video means as
23 often as needed if an emergency exists and the public body is unable
24 to meet in regular session. As used in this subsection "emergency"
25 means an unforeseen circumstance rendering the notice required by this
26 section, or by § 2.1-343 of this chapter, impossible or impracticable
27 and which circumstance requires immediate action. Public bodies
28 conducting emergency meetings through telephonic or video means shall

1 comply with the provisions of subsection D requiring minutes,
2 recordation and preservation of the audio or audio/visual recording of
3 the meeting. The basis for the emergency shall be stated in the
4 minutes.

5 G. The provisions of this section establish a two-year
6 experimental program designed to evaluate the effectiveness of
7 meetings by telephonic or video means by public bodies of the
8 Commonwealth. Meetings by telephonic or video means shall be
9 prohibited on and after July 1, 1991, unless the provisions of this
10 section pertaining to the termination of this experimental program are
11 amended and reenacted by the General Assembly.

12 COMMENT: Amendments and additions in this section were included
13 to provide for an experimental program allowing public bodies of the
14 Commonwealth to conduct certain meetings by telephonic or video means.

15 § 2.1-344. Executive or closed meetings.--A. Executive Public
16 bodies are not required to conduct executive or closed meetings may .
17 However, should a public body determine that an executive or closed
18 meeting is desirable, such meeting shall be held only for the
19 following purposes:

20 1. Discussion or consideration of or interviews of prospective
21 candidates for employment, assignment, appointment, promotion,
22 performance, demotion, salaries, disciplining or resignation of
23 specific public officers, appointees or employees of any public body,
24 and evaluation of performance of departments or schools of state
25 institutions of higher education where such matters regarding such
26 specific individuals might be affected by such evaluation. Any teacher
27 shall be permitted to be present during an executive session or closed
28 meeting in which there is a discussion or consideration of a
29 disciplinary matter , which involves the teacher and some student or

1 students 7 and the student or students involved in the matter are
2 present 7 , provided the teacher makes a written request to be
3 present to the presiding officer of the appropriate board.

4 2. Discussion or consideration of admission or disciplinary
5 matters concerning any student or students of any state institution of
6 higher education or any state school system. However, any such student
7 and legal counsel and, if the student is a minor, the student's
8 parents or legal guardians, shall be permitted to be present during
9 the taking of testimony or presentation of evidence at an executive or
10 closed meeting, if such student, parents or guardians so request in
11 writing 7 and such request is submitted to the presiding officer of
12 the appropriate board.

13 3. Discussion or consideration of the condition, acquisition or
14 use of real property for public purpose, or of the disposition of
15 publicly held property, or of plans for the future of a state
16 institution of higher education which could affect the value of
17 property owned or desirable for ownership by such institution.

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

20 5. Discussion concerning a prospective business or industry where
21 no previous announcement has been made of the business' or industry's
22 interest in locating in the community.

23 6. The investing of public funds where competition or bargaining
24 is involved, where if made public initially the financial interest of
25 the governmental unit would be adversely affected.

26 7. Consultation with legal counsel and briefings by staff
27 members, consultants or attorneys, pertaining to actual or ~~potential~~
28 probable litigation, or other specific legal matters within the

1 jurisdiction of the public body 7 and discussions or consideration of
2 such matters without the presence of counsel, staff, consultants, or
3 attorneys requiring the provision of legal advice by counsel .

4 8. In the case of boards of visitors of state institutions of
5 higher education, discussion or consideration of matters relating to
6 gifts, bequests and fund-raising activities, and grants and contracts
7 for services or work to be performed by such institution. However, the
8 terms and conditions of any such gifts, bequests, grants and contracts
9 made by a foreign government, a foreign legal entity or a foreign
10 person and accepted by a state institution of higher education shall
11 be subject to public disclosure upon written request to the
12 appropriate board of visitors. For the purpose of this subdivision,
13 (i) "foreign government" means any government other than the United
14 States government or the government of a state or a political
15 subdivision thereof; (ii) "foreign legal entity" means any legal
16 entity created under the laws of the United States or of any state
17 thereof if a majority of the ownership of the stock of such legal
18 entity is owned by foreign governments or foreign persons or if a
19 majority of the membership of any such entity is composed of foreign
20 persons or foreign legal entities, or any legal entity created under
21 the laws of a foreign government; and (iii) "foreign person" means any
22 individual who is not a citizen or national of the United States or a
23 trust territory or protectorate thereof.

24 9. In the case of the boards of trustees of the Virginia Museum
25 of Fine Arts and the Science Museum of Virginia, discussion or
26 consideration of matters relating to specific gifts, bequests, and
27 grants.

28 10. Discussion or consideration of honorary degrees or special

1 awards.

2 11. Discussion or consideration of tests or examinations or other
3 documents excluded from this chapter pursuant to § 2.1-342 B 9.

4 12. Discussion, consideration or review by the appropriate House
5 or Senate committees of possible disciplinary action against a member
6 arising out of the possible inadequacy of the disclosure statement
7 filed by the member, provided the member may request in writing that
8 the committee meeting not be conducted in executive session.

9 13. Discussion of strategy with respect to the negotiation of a
10 siting agreement or to consider the terms, conditions, and provisions
11 of a siting agreement if the governing body in open meeting finds that
12 an open meeting will have a detrimental effect upon the negotiating
13 position of the governing body or the establishment of the terms,
14 conditions and provisions of the siting agreement, or both. All
15 discussions with the applicant or its representatives may be conducted
16 in a closed meeting or executive session.

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

20 15. Discussion or consideration of medical and mental records
21 excluded from this chapter pursuant to § 2.1-342 B 3.

22 B. No meeting shall become an executive or closed meeting unless
23 there shall have been recorded in open meeting an affirmative vote to
24 that effect by the public body holding the meeting, which motion shall
25 state specifically the purpose or purposes hereinabove set forth in
26 this section which are to be the subject of the meeting and a
27 statement included in the minutes of the meeting which shall make
28 specific reference to the applicable exemption or exemptions as

1 provided in subsection A of this section or § 2-1-345. A general
2 reference to the provisions of this chapter or to the exemptions of
3 subsection A shall not be sufficient to satisfy the requirements for
4 an executive or closed meeting. The public body holding such an
5 executive or closed meeting shall restrict its consideration of
6 matters during the closed portions only to those purposes specifically
7 exempted from the provisions of this chapter.

8 The notice provisions of this chapter shall not apply to
9 executive or closed meetings of any public body held solely for the
10 purpose of interviewing candidates for the position of chief
11 administrative officer. The public body prior to any such executive
12 or closed meeting for the purpose of interviewing candidates shall
13 announce in an open meeting that such executive or closed meeting
14 shall be held at a disclosed or undisclosed location within fifteen
15 days thereafter. In no event shall the public body take action on
16 matters discussed in such executive or closed meeting except at a
17 public meeting for which notice was given pursuant to § 2-1-343.

18 C. B. No resolution, ordinance, rule, contract, regulation or
19 motion adopted, passed or agreed to in an executive or closed meeting
20 shall become effective unless the public body, following the meeting,
21 reconvenes in open meeting and takes a vote of the membership on such
22 resolution, ordinance, rule, contract, regulation or motion which
23 shall have its substance reasonably identified in the open meeting.
24 Nothing in this section shall be construed to require the board of
25 directors of any authority created pursuant to the Industrial
26 Development and Revenue Bond Act (§ 15.1-1373 et seq.), or any public
27 body empowered to issue industrial revenue bonds by general or special
28 law, to identify a business or industry to which subdivision A 5 of

1 this section applies. However, such business or industry must be
2 identified as a matter of public record at least thirty days prior to
3 the actual date of the board's authorization of the sale or issuance
4 of such bonds.

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

9 D. Nothing in this section shall be construed to prevent the
10 holding of conferences between two or more public bodies, or their
11 representatives, but these conferences shall be subject to the same
12 regulations for holding executive or closed sessions as are applicable
13 to any other public body.

14 COMMENT: Subsection A . The clarifying language at the
15 beginning of subsection A was added at the direction of the
16 Subcommittee. A July 11, 1985, Attorney General Opinion to Mr. C.
17 Dean Foster, Jr., is the source of the amendment contained in lines 13
18 and 14 on page 23. The source of the new language on lines 16 and 17
19 on page 23 is the July 12, 1985, Attorney General Opinion to Senator
20 W. Onico Barker. The other changes in subdivision 1 and the
21 amendments to subdivision 7 were made at the direction of the
22 Subcommittee. The Subcommittee added subdivision 15.

23 Subsection B . Lines 18 through 28 on page 26 and lines 1
24 through 13 on page 27 were stricken and incorporated in the provisions
25 of a new section, § 2.1-344.1.

26 Subsection C . The designation of subsection C was changed to
27 subsection B and a new subsection C added on lines 1 through 4 on page
28 28. A February 26, 1986, Attorney General Opinion to Mr. Gerald G.
29 Poindexter was the source of the new language in subsection C.

30 § 2.1-344.1. Call of closed or executive meetings; certification
31 of proceedings.-- A. No meeting shall become an executive or closed
32 meeting unless the public body proposing to convene such meeting shall
33 have taken an affirmative recorded vote in open session to that
34 effect, by motion stating specifically the purpose or purposes which

1 are to be the subject of the meeting, and reasonably identifying the
2 substance of the matters to be discussed. A statement shall be
3 included in the minutes of the open meeting which shall make specific
4 reference to the applicable exemption or exemptions from open meeting
5 requirements provided in subsection A of § 2.1-344 or in § 2.1-345,
6 and the matters contained in such motion shall be set forth in those
7 minutes. A general reference to the provisions of this chapter or
8 authorized exemptions from open meeting requirements shall not be
9 sufficient to satisfy the requirements for an executive or closed
10 meeting.

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

19 C. The public body holding an executive or closed meeting shall
20 restrict its consideration of matters during the closed portions only
21 to those purposes specifically exempted from the provisions of this
22 chapter.

23 D. At the conclusion of any executive or closed meeting convened
24 hereunder, the public body holding such meeting shall reconvene in
25 open session immediately thereafter and shall take a roll call or
26 other recorded vote to be included in the minutes of that body,
27 certifying that (i) only public business matters lawfully exempted
28 from open meeting requirements under this chapter, and (ii) only such

1 public business matters as were identified in the motion by which such
2 executive or closed meeting was convened, were discussed or considered
3 in such meeting. Any member of the public body who believes that
4 there was a departure from the requirements of subsections A and B
5 above, shall so state prior to the vote, indicating the substance of
6 the departure that, in his judgment, has taken place. The statement
7 shall be recorded in the minutes of the public body.

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

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

20 G. In no event may any public body take action on matters
21 discussed in any executive or closed meeting, except at a public
22 meeting for which notice was given as required by § 2.1-343.

23 H. Minutes may be taken during executive or closed sessions of a
24 public body, but shall not be required. Such minutes shall not be
25 subject to mandatory public disclosure.

26 COMMENT: This new section includes provisions stricken in
27 subsection B of § 2.1-344. The executive meeting certification
28 process in subsection D was added at the direction of the
29 Subcommittee. The source for subsection F on lines 12 through 15 is
30 the July 11, 1985, Attorney General Opinion to Mr. C. Dean Foster,

1 Jr. Attorney General Opinions to Mr. Robert C. Boswell on June 15,
2 1979, and to Mr. Joseph L. Howard, Jr., on January 27, 1984, served as
3 sources for subsection H on lines 19 through 21.

4 § 2.1-345. Public bodies to which chapter inapplicable.--The
5 provisions of this chapter shall not be applicable to -

6 ~~(1) to (5) {Repeated-}~~

7 ~~(6) Parole parole boards , , petit juries , , grand juries ,~~
8 and the Virginia State Crime Commission.

9 ~~(7) {Repeated-}~~

10 COMMENT: Changes in this section were housekeeping in nature.

11 § 2.1-345.1. Chapter inapplicable under certain circumstances.--

12 The provisions of this chapter shall not be applicable when the
13 requested information or material is the specific subject of active
14 litigation and the public body reasonably believes that the request
15 has been initiated by or for the benefit of a party to that
16 litigation.

17 COMMENT: This section was added at the direction of the
18 Subcommittee.

19 § 2.1-346. Proceedings for enforcement of chapter.--Any person,
20 including the Commonwealth's attorney acting in his ~~or her~~ official or
21 individual capacity, denied the rights and privileges conferred by
22 this chapter may proceed to enforce such rights and privileges (i) by
23 filing a petition for mandamus or injunction, supported by an
24 affidavit showing good cause, addressed to the court of record of the
25 county or city from which the public body has been elected or
26 appointed to serve and in which such rights and privileges were so
27 denied , or (ii) effective July 1, 1990, by requesting an
28 administrative review by the Office of the Attorney General . Failure
29 by any person to request and receive notice of the time and place of
30 meetings as provided in § 2.1-343 shall not preclude any person from

1 enforcing his or her rights and privileges conferred by this chapter.

2 Effective July 1, 1990, any person who has been denied access to
3 official records or public meetings by the action of a public body
4 pursuant to any provision of this chapter may file a written request
5 for an administrative review by the Office of the Attorney General
6 within ten days of such denial. The administrative review request
7 shall set forth with reasonable specificity (i) the rights and
8 privileges conferred by this chapter which were denied, (ii) the
9 pertinent facts pertaining to such denial, (iii) copies of relevant
10 correspondence and (iv) the action taken by the public body. The
11 person requesting administrative review shall forward a copy of the
12 administrative review request to the public body which has denied
13 access to its records or meetings contemporaneously with the request
14 for administrative review filed with the Attorney General.

15 The Office of the Attorney General shall review the issues and
16 facts pertaining to the action taken by the public body and issue an
17 opinion to the individual requesting the review and the public body
18 within thirty days as to whether the public body's action prompting
19 the review was in compliance with the chapter. The Office of the
20 Attorney General may decline to issue an opinion if it determines that
21 a request lacks reasonable specificity or is materially inaccurate in
22 any significant respect, or if the Office has rendered an opinion on
23 the specific request within the attorney-client privilege. If the
24 public body's action was not in compliance with the chapter, the
25 Office of the Attorney General shall advise the public body on methods
26 to conform its action. If the Office of the Attorney General
27 determines that records or other documents have been withheld in
28 violation of the provisions of this chapter, the public body

1 withholding such records or documents shall provide them to the
2 requesting party unless within seven days of receipt of such
3 determination the public body files a petition in circuit court for
4 review of the determination. The decision rendered by the Attorney
5 General shall be admissible in evidence.

6 The Office of the Attorney General shall publish monthly a
7 synopsis of each review conducted pursuant to this section. Copies of
8 the synopsis shall be available upon request.

9 Persons denied the rights and privileges conferred by this
10 chapter shall not be required to request an administrative review
11 prior to filing a petition in circuit court. Any person who elects to
12 request administrative review may file a petition in an appropriate
13 circuit court only after the opinion by the Attorney General is
14 rendered and the alleged violation of this chapter is not resolved to
15 his satisfaction.

16 Any such petition alleging such denial of rights and privileges
17 conferred by this chapter by a board, bureau, commission, authority,
18 district or agency of the state government or by a standing or other
19 committee of the General Assembly, shall be addressed to the Circuit
20 Court of the City of Richmond. Such A petition for mandamus or
21 injunction under this chapter shall be heard within seven days of the
22 date when the same is made; provided, if such the petition is made
23 outside of the regular terms of the circuit court of a county which is
24 included in a judicial circuit with another county or counties, the
25 hearing on such the petition shall be given precedence on the docket
26 of such court over all cases which are not otherwise given precedence
27 by law. Such The petition shall allege with reasonable specificity
28 the circumstances of the denial of the rights and privileges conferred

1 by this chapter. Any decision of the Office of the Attorney General
 2 issued pursuant to this section after July 1, 1990, shall be
 3 admissible in evidence. A single instance of denial of such the
 4 rights and privileges conferred by this chapter shall be sufficient to
 5 invoke the remedies granted herein. If the court finds the denial to
 6 be in violation of the provisions of this chapter, the court may
 7 shall award costs and reasonable attorney's fees to the petitioning
 8 citizen. However, the award shall be discretionary with the court if
 9 the public body relied upon an opinion of the Attorney General, or a
 10 decision of a court, with respect to such denial, and the court finds
 11 that such opinion substantially supports the public body's position.
 12 The burden of showing reliance and substantial support shall be on the
 13 public body. Such costs and fees shall be paid by the public body in
 14 violation of this chapter. The court may award ~~costs and reasonable~~
 15 ~~attorney's fees to the public body if the court finds that the~~
 16 ~~petition was based upon a clearly inadequate case~~ also impose
 17 appropriate sanctions as provided in § 8.01-271.1 .

18 COMMENT: A majority of the amendments to this section provided
 19 for the administrative review by the Office of the Attorney General of
 20 the denial of rights and privileges conferred by the Virginia Freedom
 21 of Information Act. Amendments pertaining to the award of costs and
 22 attorney's fees and sanctions were made at the direction of the
 23 Subcommittee. Other changes were housekeeping in nature.

24 § 2.1-346.1. Violations and penalties.--In a proceeding
 25 commenced against members of public bodies under § 2.1-346 for a
 26 violation of §§ 2.1-342, 2.1-343, 2.1-343.1 or § 2.1-344, the court,
 27 if it finds that a violation was willfully and knowingly made, shall
 28 impose upon such ~~person or persons~~ member in his ~~or her~~ individual
 29 capacity, whether a writ of mandamus or injunctive relief is awarded
 30 or not, a civil penalty of not less than \$25 nor more than \$500

1 \$1,000 , which amount shall be paid into the State Literary Fund.

2 COMMENT: The maximum amount of the civil penalty for violation
3 of the Act was raised from \$500 to \$1,000 at the direction of the
4 Subcommittee. Other changes were housekeeping in nature.

5 #

