

**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**



HOUSE DOCUMENT NO. 73

**COMMONWEALTH OF VIRGINIA
RICHMOND
1990**

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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 1990**

TO: The Honorable Lawrence Douglas Wilder, Governor of Virginia,
and
The General Assembly of Virginia

INTRODUCTION AND BACKGROUND

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. The Subcommittee issued a report which was published as House Document No. 70 (1989 Session). Information pertaining to previous legislative studies of the Freedom of Information Act and the legislative history of the Act and the open meeting principle are contained in House Document No. 70. The Subcommittee also sponsored a legislative package during the 1989 Session which included one bill and two resolutions. The bill, House Bill No. 1229 (Chapter 358 of the 1989 Acts of Assembly), contained amendments to nine of the twelve sections which comprised the Virginia Freedom of Information Act at that time. The specific amendments were discussed in the "Recommendations" portion of the report and in Appendix II of House Document No. 70. 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, which would be updated periodically as determined necessary by the Office of the Attorney General.

House Joint Resolution No. 246 continued the study for an additional year.

HOUSE JOINT RESOLUTION NO. 246

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

Agreed to by the House of Delegates, February 6, 1989
Agreed to by the Senate, February 23, 1989

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.

1989 FINDINGS AND ACTIVITIES

This document reports the findings and activities of the Subcommittee pursuant to the resolution which continued the original study. It will not address any issues resolved during the first year of this study.

The Subcommittee conducted four meetings during 1989, including one public hearing to solicit comments from interested persons regarding the 1990 legislative package. The meetings were held on May 22, 1989; July 6, 1989; August 3, 1989; and November 20, 1989.

The Honorable Mary Sue Terry, Attorney General for the Commonwealth, addressed the Subcommittee at its May 22 meeting regarding the implementation of House Joint Resolution No. 247. The resolution requested the Office of the Attorney General to conduct educational seminars on the Virginia Freedom of Information Act and to consider the possible publication of a manual explaining the Act. Ms. Terry informed the Subcommittee of the educational seminars which would be conducted at various locations throughout the Commonwealth in association with numerous cosponsoring groups. A mock board of supervisors meeting would be included in the program so that potential problems with the Act would be portrayed. The educational seminars were heavily attended by state and local government employees and officials, members of the press, broadcasters, and other interested persons. The Office of the Attorney General also conducted an in-house freedom of information seminar. The Attorney General and members of the Subcommittee predicted that many of the current problems with the Freedom of Information Act will be alleviated as a result of the educational seminars.

Representatives of the Virginia Press Association indicated that despite the passage of House Bill No. 1229 (1989) and the two resolutions, the Association continued to have concerns regarding public access. These concerns included police records, other exemptions from the Act, and administrative review. The Association proposed that consideration be given to granting general district courts in Virginia concurrent jurisdiction with circuit courts to decide cases brought under the Freedom of Information Act. This proposal would allow a citizen to elect to enforce his rights in either general district court or circuit court. A member of the Association asserted that general district courts are better suited for the pro se litigant and would provide aggrieved citizens with an accessible forum. Most participants involved with the work of the Subcommittee believed the concurrent jurisdiction approach to be reasonable; however, one participant noted that the proposal might not accomplish what the proponents hoped since the public body would probably appeal to circuit court if it lost in general district court.

Representatives of the Association also suggested that the Parole Board have the same accountability as the court which convicted and sentenced the inmate and proposed the release of additional information regarding inmates on parole. The lack of consistency on the type and amount of information released by police and law-enforcement officials remained as an important issue to resolve.

During its work in 1989, the Subcommittee considered the problems and proposals presented by participants in the meetings. Some suggestions were agreed to with little or no changes, while others were revised or rejected.

Police Records Exemption.

The Subcommittee was initially presented with four options regarding the police records exemption: (i) no change; (ii) the VPA approach -- that information would be released except under certain circumstances; (iii) upon request, law-enforcement officials would provide the information in their own format; and (iv) a policy would be established which law-enforcement officials must comply regarding a minimum amount of information to be released. Chairman Axelle reconstituted the ad hoc "police records" committee established in 1988. The ad hoc committee was instructed to discuss the police records exemption and develop a policy for uniform information which would be agreeable to the Virginia Press Association and law-enforcement officials.

During the course of the study prior to the development of the compromise proposal, law-enforcement officials and representatives of various organizations expressed the following concerns regarding a change in the police records exemption:

(i) law-enforcement officials need discretion to release information in a time and manner which would not be a detriment to the investigation or prosecution; mandatory or minimum information requirements should be carefully determined so as not to cripple investigations.

(ii) some law-enforcement departments would have to adapt their data entry systems to conform to the format required by new legislation.

(iii) due to the number of crimes committed in the urban portions of the Commonwealth, urban area law-enforcement departments may need to hire additional personnel to perform the increased paperwork that would be mandated by a new reporting system; most people would not be interested in the hundreds of calls some departments receive on a daily basis; proposed legislation should be limited to felony offenses.

(iv) who would make the determination as to whether damage from the release of information would no longer be likely to occur?

(v) should information regarding a "crime" be released when someone reports the incident (prior to an investigation) or after an investigation as to whether there is probable cause for an arrest?

(vi) information released by law-enforcement officials at the time of complaint (prior to an investigation) would constitute a release of rumors.

(vii) information pertaining to victims should not be released before the investigation has been completed and the victim assisted; victims are often placed in jeopardy of being victimized again.

(viii) the protection of victims' identities often enhances the investigation of the crime.

(ix) law-enforcement agencies which refuse to release information should be addressed in some manner other than statutory.

(x) some organizations which are not public or service-oriented request detailed information on crimes.

(xi) citizens and reporters who anticipate a response within the time limitations of the Virginia Freedom of Information Act should be required to indicate that fact in the request for information.

Members of the Virginia Press Association had concerns regarding the administration of the current police records exemption. While many law-enforcement officials are cooperative and comply with requests for information, others refuse to give any information or give very limited information. The Association maintained that a uniform policy as to the release of a minimum amount of information would greatly improve compliance with the Freedom of Information Act. It supported the release of essential information in a sanitized form. No obligation to keep criminal and police records in any particular manner was contemplated. In addition, public bodies would continue to be able to charge for their costs in responding to freedom of information requests. The Association agreed that safeguards regarding privacy and protection of victims, witnesses, investigations, and undercover operations must be maintained while allowing law-enforcement officials a certain amount of discretion.

Representatives of the ad hoc committee, the Virginia Press Association, and law-enforcement officials actively participated in every meeting of the Subcommittee. A compromise was reached at the November meeting of the Subcommittee regarding the police records exemption after a thorough discussion of the issues and considerations involved. The Subcommittee agreed to include in its legislative package the following changes to the Freedom of Information Act relating to police records:

1. Section 2.1-341 of the Freedom of Information Act.

The addition of a definition for "criminal incident information." The term will be described as a general description of the criminal activity reported, the date and general location the alleged crime was committed, the identity of the investigating officer, and a general description of any injuries suffered or property damaged or stolen. The identity of any victim, witness, undercover officer, or investigative techniques or procedures need not but may be disclosed. The identity of any individual providing information about a crime or criminal activity under a promise of anonymity shall not be disclosed.

2. Subdivision 1 of subsection B of § 2.1-342 of the Freedom of Information Act.

The current police records exemption will be amended to clarify that criminal incident information relating to felony offenses shall not be excluded from the provisions of the Act. However, where release of criminal incident information is likely to jeopardize an ongoing criminal investigation or the safety of an individual, cause a suspect to flee or evade detection, or result in the destruction of evidence, the information may be withheld until damage is no longer likely to occur from release of the information.

Parole Board.

Section 2.1-345 exempts the Virginia Parole Board, petit juries, grand juries, and the Virginia State Crime Commission from the provisions of the Freedom of Information Act. The Virginia Press Association complained that there was no public notification of when a convict might be considered for parole. The Association advocated the repeal of the Parole Board's exemption and the release of additional information by the Parole Board on inmates being considered for parole, including the votes of Board members on individual cases.

Clarence L. Jackson, Jr., Chairman of the Virginia Parole Board, explained the parole process in Virginia and the voting procedure for the Board. A simple majority of the five members of the Board is all that is needed for a decision. The Board does not meet as a group to decide each individual case. Cases are assigned to three of the Board members on a rotation basis. If the decision of the three members is not unanimous, then the case will be referred to the fourth member. Mr. Jackson, as Chairman and fifth member of the Board, does not become involved unless there is a tie vote (two to two) on a case. He stated that 70% of the cases are decided at the first level involving three members, 13% at the second level involving the fourth member and the remainder (17%) are referred to him. He explained the detriment to the Board should the votes of the members on individual cases be released to the public.

The notification process regarding parole decisions was also explained. Persons wanting parole information regarding a particular inmate may notify the Board. Their names and addresses are entered into the inmate's file. In response to concerns regarding the public's lack of knowledge of this right, Mr. Jackson stated that an employee had recently been added to his staff whose primary responsibility is public relations regarding the victim input program and notification. Subcommittee members discussed the merits of the possible release on a daily, monthly, or quarterly basis of the names of and decisions about inmates being considered for parole. Mr. Jackson stated that publication of such a list would not create a hardship for the Board. After further discussion, the Subcommittee agreed (5-yes to 4-no) to recommend the monthly reporting of Parole Board action. The Subcommittee rejected (2-yes to 7-no) a proposal to include on the list a vote count or tally for each case.

The Subcommittee agreed to include in its legislative package an amendment to § 53.1-136 directing the Parole Board to publish a monthly statement regarding the action it takes on the parole of prisoners. The statement will list the name of each prisoner considered for parole and indicate whether parole was granted or denied.

Concurrent Jurisdiction.

The Subcommittee also considered the administrative review proposal submitted by the Virginia Press Association. The proposal would provide that general district courts would have concurrent jurisdiction with circuit courts to hear freedom of information request cases. In sharing his thoughts with the Subcommittee regarding the proposal, Robert Baldwin, Executive Secretary to the Virginia Supreme Court, estimated that a caseload of less than 3% would be added should general district judges hear freedom of information request cases and that the level appeared to be a manageable one. The lack of expertise on the part of general district judges would not present a problem since they receive training and each year must become familiar with additions and changes to the law. He also noted that general district courts appear to be more accessible to the public since the scheduling of cases is easier and not as delayed as the scheduling in circuit court.

Subcommittee members realized that since cases appealed from district court would be heard de novo, there was a possibility that cases would be heard twice -- once in general district court and once in circuit court on appeal. After a discussion and consideration of the issues involved, the Subcommittee agreed to recommend concurrent jurisdiction for freedom of information cases.

Public Comment.

Senator Miller expressed concern about the various practices of some state agencies which refuse to let citizens speak at meetings. She suggested an amendment to the Freedom of Information Act which would require public bodies composed of members appointed by the Governor to establish public comment guidelines. The notices of meetings would include the guidelines which would be in effect during the meeting. In discussing the proposal, it was noted that the public comment guidelines would have to be promulgated as regulations pursuant to the Administrative Process Act and that it was uncertain whether certain boards and commissions which meet only a few times during the year could promulgate the regulations by the date specified in the draft legislation (January 1, 1991). The Subcommittee considered and rejected a suggestion that the proposal be expanded to include all state and local government public bodies.

The Subcommittee agreed to include the following amendment to § 2.1-343 of the Act as part of its legislative package:

"Notices for meetings of public bodies of the Commonwealth on which there is at least one member appointed by the Governor shall state whether or not public comment will be received at the meeting, and, if so, the approximate points during the meeting public comment will be received."

Production of Records.

Delegate Medico suggested the addition of clarifying language to the Act after discussing a problem he had encountered with a local government involving a request for information. The Subcommittee agreed to include the amendments in its legislative package. The first amendment would be placed in the policy section of the Act (§ 2.1-340.1) and in subsection A of § 2.1-342 and provide that "The public body shall make reasonable efforts to reach an agreement with the requester concerning the production of the records requested." The second clarifying amendment would amend subsection A of § 2.1-342 to provide that a specific reference to the chapter by the requesting citizen shall not be necessary to invoke the provisions of this chapter and the time limits for response by the public body.

Additional Exemptions from the Act.

During the course of the study, representatives of public bodies and organizations requested the Subcommittee to consider in its legislative package additional exemptions to the Act which would exclude certain information from mandatory disclosure or allow additional executive or closed meetings. In considering the proposals, Chairman Axelle reminded the Subcommittee that it had adopted a policy supporting the premise that if certain information was held to be confidential, then the public body conducting meetings relating to the discussion of the confidential material should be authorized to conduct the meeting in closed session.

The Subcommittee rejected some of the proposals but agreed to include the following amendments in its legislative package.

1. To amend subdivision 33 of subsection B of § 2.1-342 exempting certain personal information filed with any local redevelopment and housing authority created pursuant to § 36-4 concerning participants in or persons on the waiting list for housing assistance programs funded by local governments or by any such authority. (Requested by Fairfax County)

2. The addition of a subdivision 40 to subsection B of § 2.1-342 to exclude from mandatory disclosure records concerning reserves established in specific claims administered by the Department of General Services through its Division of Risk Management or by any county, city, or town. (Requested by Carolyn J. Moss, Secretary of Administration)

3. The addition of subdivision 18 to subsection A of § 2.1-344 to allow executive or closed meetings for those portions of meetings of the Virginia Health Services Cost Review Council in which the Council discusses filings of individual health care institutions which are confidential pursuant to subsection B of § 9-159. (Requested by the Virginia Hospital Association)

4. The addition of subdivision 19 to subsection A of § 2.1-344 to allow executive or closed meetings for those portions of meetings in which the Board of Corrections discusses or discloses the identity of, or information tending to identify, any prisoner who (i) provides information about crimes or criminal activities, (ii) renders assistance in preventing the escape of another prisoner or in the apprehension of an escaped prisoner, or (iii) voluntarily or at the instance of a prison official renders other extraordinary services, the disclosure of which is likely to jeopardize the prisoner's life or safety. (Requested by the Department of Corrections)

RECOMMENDATIONS

The Subcommittee agreed to sponsor legislation which would incorporate its recommendations.

Senate Bill No. 332.

Senate Bill No. 332, introduced by Senator Houck, Vice Chairman of the Subcommittee, contained all but one of the Subcommittee's recommendations. The bill provided that:

1. Criminal incident information (a general description of the criminal activity reported, the date and general location of the alleged crime, the identity of the investigating officer, and a general description of any injuries suffered or property damaged or stolen) relating to felony offenses is not excluded from the provisions of the Freedom of Information Act. The identity of any victim, witness, undercover officer, or investigative techniques or procedures need not but may be disclosed. The identity of any individual providing information about a crime or criminal activity under a promise of anonymity shall not be disclosed. Where the release of criminal incident information is likely to jeopardize an ongoing criminal investigation or the safety of an individual, cause a suspect to flee or evade detection, or result in the destruction of evidence, the information may be withheld until the damage is no longer likely to occur from release of the information.

2. The Parole Board (although exempt from the Freedom of Information Act) will publish a monthly statement regarding the action taken by the Board on the parole of prisoners. The statement shall list the name of each prisoner considered for parole and indicate whether parole was granted or denied.

3. Public bodies are to make reasonable efforts to reach an agreement with the requester concerning the production of the records requested. (included in §§ 2.1-340.1 and 2.1-342)

4. A specific reference to the chapter by the requesting citizen in his request shall not be necessary to invoke the provisions of the Freedom of Information Act (current law provides that a specific reference is not necessary to invoke the time limits for response by the public body).

5. Personal information filed with any local redevelopment and housing authority created pursuant to § 36-4 concerning persons participating in or persons on the waiting list for housing assistance programs funded by local governments or by any such authority is exempted from mandatory disclosure.

6. Records concerning reserves established in specific claims administered by the Department of General Services through its Division of Risk Management or by any county, city, or town are exempted from mandatory disclosure.

7. Notices for meetings of public bodies of the Commonwealth on which there is at least one member appointed by the Governor shall state whether or not public comment will be received at the meeting and, if so, the approximate points during the meeting public comment will be received.

8. Portions of meetings of the Virginia Health Services Cost Review Council in which the Council discusses filings of individual health care institutions which are confidential pursuant to subsection B of § 9-159 may be held in executive or closed session.

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

House Bill No. 690.

The final recommendation of the Subcommittee was included in House Bill No. 690, sponsored by Delegate Woodrum. It provides that the rights pursuant to the Virginia Freedom of Information Act may be enforced through either the general district court or the circuit court. Currently cases pertaining to the Act must commence in the circuit court.

CONCLUSION

The 1990 General Assembly passed both bills sponsored by the Subcommittee. They appear as Chapter 217 (HB 690) and Chapter 538 (SB 332) in the Appendix. The Subcommittee appreciates the participation of interested organizations, associations, government employees, and citizens in the development of its 1990 legislative package. These changes to the Virginia Freedom of Information Act will continue to enhance the operation and utilization of the Act.

Respectfully submitted,

Ralph L. Axselle, Jr., Chairman
R. Edward Houck, Vice Chairman
W. Onico Barker
Jay W. DeBoer
Alan E. Mayer
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APPENDIX

1990 SESSION

VIRGINIA ACTS OF ASSEMBLY - CHAPTER 217

An Act to amend and reenact §§ 2.1-342, 2.1-346, 16.1-77, 16.1-83, and 16.1-106 of the Code of Virginia, relating to the jurisdiction of general district and circuit courts; enforcement of the Virginia Freedom of Information Act.

[H 690]

Approved MAR 23 1990

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.1-342, 2.1-346, 16.1-77, 16.1-83, and 16.1-106 of the Code of Virginia are amended and reenacted as follows:

§ 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 citizens of this Commonwealth, 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 five work days 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. 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 ~~court~~ 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, search time and computer time expended in the supplying of such records; however, such charges shall not exceed the actual cost to the public body in supplying such records, except that the public body may charge, on a pro rata per acre basis, for the cost of creating topographical maps developed by the public body, for such maps or portions thereof, which encompass a contiguous area greater than 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 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~~ *licenses* and all ~~licensees~~ *licensees* made by or submitted to the Alcoholic Beverage Control Board or the State Lottery Department.

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, 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 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 the subject thereof, in the offices of the Department of Health Professions or in the offices of any health regulatory board, whichever may possess the material.

11. Records of active investigations being conducted by the Department of Health 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 § 62.1-132.4 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 this section;

(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. 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 persons on the waiting list for federally funded rent-assistance programs. 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.

§ 2.1-346. Proceedings for enforcement of chapter.—Any person, including the Commonwealth's attorney acting in his official or individual capacity, denied the rights and privileges conferred by this chapter may proceed to enforce such rights and privileges by filing a petition for mandamus or injunction, supported by an affidavit showing good cause, addressed to the *general district court or 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 petition alleging 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 *General District Court or the* Circuit Court of the City of Richmond. 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 the~~ . However, any 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 the petition shall be given precedence on the docket of such court over all cases which are not otherwise given precedence by law. The petition shall allege with reasonable specificity the circumstances of the denial of the rights and privileges conferred by this chapter. A single instance of denial of the rights and privileges conferred by this chapter shall be sufficient to invoke the remedies granted herein. If the court finds the denial to be in violation of the provisions of this chapter, the petitioner shall be entitled to recover reasonable costs and 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. The court may also impose appropriate sanctions in favor of the public body as provided in § 8.01-271.1.

§ 16.1-77. Civil jurisdiction of general district courts.—Except as provided in Article 5 (§ 16.1-122.1 et seq.) of this chapter, each general district court shall have, within the limits of the territory it serves, civil jurisdiction as follows:

(1) Exclusive original jurisdiction of any claim to specific personal property or to any debt, fine or other money, or to damages for breach of contract or for injury done to property, real or personal, or for any injury to the person, which would be recoverable by action at law or suit in equity, when the amount of such claim does not exceed \$1,000 exclusive of interest and any attorney's fees contracted for in the instrument, and concurrent jurisdiction with the circuit courts having jurisdiction in such territory of any such claim when the amount thereof exceeds \$1,000 but does not exceed \$7,000, exclusive of interest and any attorney's fees contracted for in the instrument.

(2) Jurisdiction to try and decide attachment cases when the amount of the plaintiff's claim does not exceed \$7,000 exclusive of interest and any attorney's fees contracted for in the instrument.

(3) Jurisdiction of actions of unlawful entry or detainer as provided in Article 13 (§ 8.01-124 et seq.) of Chapter 3 of Title 8.01, and in Chapter 13 (§ 55-217 et seq.) of Title 55.

(4) Except where otherwise specifically provided, all jurisdiction, power and authority over any civil action or proceeding conferred upon any general district court judge or magistrate under or by virtue of any provisions of the Code of Virginia.

(5) Jurisdiction to try and decide cases for civil penalties not exceeding \$10,000 per violation, exclusive of interest and costs, arising under the occupational safety and health laws or standards as provided in Article 5 (§ 40.1-44.1 et seq.) of Chapter 3 of Title 40.1.

(6) Jurisdiction to try and decide suits in interpleader involving personal property

where the amount of money or value of the property is not more than the maximum jurisdictional limits of the general district court. The action shall be brought in accordance with the procedures for interpleader as set forth in § 8.01-364. However, the general district court shall not have any power to issue injunctions. Actions in interpleader may be brought by either the stakeholder or any of the claimants. The initial pleading shall be either by motion for judgment or by warrant in debt. The initial pleading shall briefly set forth the circumstances of the claim and shall name as defendant all parties in interest who are not parties plaintiff.

(7) Jurisdiction to try and decide any cases pursuant to § 2.1-346 of the Virginia Freedom of Information Act (§ 2.1-340 et seq.), for writs of mandamus or for injunctions.

§ 16.1-83. Consent of parties required for trial within five days of service.—No trial of a warrant or motion for judgment under this title may be had within five days after service thereof except with the consent of the parties. *Proceedings to enforce the rights and privileges conferred by the Virginia Freedom of Information Act (§ 2.1-340 et seq.) shall be conducted within the time limitations specified in § 2.1-346.*

§ 16.1-106. Appeals from courts not of record in civil cases.—From any order entered or judgment rendered in a court not of record in a civil case in which the matter in controversy is of greater value than fifty dollars, exclusive of interest, any attorney's fees contracted for in the instrument, and costs, or when the case involves the constitutionality or validity of a statute of the Commonwealth, or of an ordinance or bylaw of a municipal corporation, *or of the enforcement of rights and privileges conferred by the Virginia Freedom of Information Act (§ 2.1-340 et seq.)*, there shall be an appeal of right, if taken within ten days after such order or judgment, to a court of record. Such appeal shall be to a court of record having jurisdiction within the territory of the court from which the appeal is taken.

The court from which an appeal is sought may refuse to suspend the execution of a judgment which refuses, grants, modifies, or dissolves an injunction in a case brought pursuant to § 2.1-346 of the Virginia Freedom of Information Act.

President of the Senate

Speaker of the House of Delegates

Approved:

Governor

1990 SESSION

VIRGINIA ACTS OF ASSEMBLY - CHAPTER 538

An Act to amend and reenact §§ 2.1-340.1, 2.1-341, 2.1-342, 2.1-343, 2.1-344, and 53.1-136 of the Code of Virginia, relating to the Virginia Freedom of Information Act and the Parole Board.

[S 332]

Approved APR 5 1990

Be it enacted by the General Assembly of Virginia:

That §§ 2.1-340.1, 2.1-341, 2.1-342, 2.1-343, 2.1-344, and 53.1-136 of the Code of Virginia are amended and reenacted as follows:

§ 2.1-340.1. Policy of chapter.—By enacting this chapter 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. 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. 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 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 public body shall make reasonable efforts to reach an agreement with the requester concerning the production of the records requested.

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, unless a different meaning clearly appears from context:

“Criminal incident information” means a general description of the criminal activity reported, the date and general location the alleged crime was committed, the identity of the investigating officer, and a general description of any injuries suffered or property damaged or stolen; however, the identity of any victim, witness, undercover officer, or investigative techniques or procedures need not but may be disclosed. The identity of any individual providing information about a crime or criminal activity under a promise of anonymity shall not be disclosed.

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

“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 54.1 for the summary suspension of professional licenses.

“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.

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

“Public body” means any of the groups, agencies or organizations enumerated in 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.

“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 citizens of this Commonwealth, 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 five work days 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. A specific reference to this chapter by the requesting citizen in his records request shall not be necessary to invoke the *provisions of this chapter and 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 requester concerning the production of the records requested.

The public body may make reasonable charges for the copying, search time and computer time expended in the supplying of such records; however, such charges shall not

exceed the actual cost to the public body in supplying such records, except that the public body may charge, on a pro rata per acre basis, for the cost of creating topographical maps developed by the public body, for such maps or portions thereof, which encompass a contiguous area greater than 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. *The public body shall make reasonable efforts to reach an agreement with the requester concerning the production of the records requested.*

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 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.

Criminal incident information relating to felony offenses shall not be excluded from the provisions of this chapter; however, where the release of criminal incident information is likely to jeopardize an ongoing criminal investigation or the safety of an individual, cause a suspect to flee or evade detection, or result in the destruction of evidence, such information may be withheld until the above-referenced damage is no longer likely to occur from release of the information.

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

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, 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 Professions or any board in that department on individual licensees or applicants. However, such material may be made available during normal working hours for copying, at the requester's expense, by the individual who is the subject thereof, in the offices of the Department of Health Professions or in the offices of any health regulatory board, whichever may possess the material.

11. Records of active investigations being conducted by the Department of Health 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

and § 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 this section;

(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. 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 persons on the waiting list for federally funded rent-assistance programs, *or (iii) filed with any local redevelopment and housing authority created pursuant to § 36-4 concerning persons participating in or persons on the waiting list for housing assistance programs funded by local governments or by any such authority.* 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.

40. *Records concerning reserves established in specific claims administered by the Department of General Services through its Division of Risk Management as provided in Article 5.1 (§ 2.1-526.1 et seq.) of Chapter 32 of Title 2.1, or by any county, city, or town.*

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. *Notices for meetings of public bodies of the Commonwealth on which there is at least one member appointed by the Governor shall state whether or not public comment will be received at the meeting, and, if so, the approximate points during the meeting public comment will be received.* 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 ~~requester~~ requester. 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) study committees or commissions appointed by the Governor, or (iv) study commissions or study committees, or any other committees or subcommittees appointed by the governing bodies or school boards of counties, cities and towns, except where the membership of any such commission, committee or subcommittee includes a majority of the governing body of the county, city or town or school board.

§ 2.1-344. Executive or closed meetings.—A. Public bodies are not required to conduct executive or closed meetings. 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 probable litigation, or other specific legal matters 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.

18. Those portions of meetings of the Virginia Health Services Cost Review Council in which the Council discusses filings of individual health care institutions which are confidential pursuant to subsection B of § 9-159.

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

B. 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.

§ 53.1-136. Powers and duties of Board.—In addition to the other powers and duties imposed upon the Board by this article, the Board shall:

1. Adopt, subject to approval by the Governor, general rules governing the granting of parole;

2. Release on parole, in accordance with its rules, for such time and upon such terms and conditions as the Board shall prescribe, persons convicted of felonies and confined under the laws of the Commonwealth in any correctional facility in Virginia when those persons become eligible and are found suitable for parole;

3. Revoke parole and order the reincarceration of any parolee when, in the judgment of the Board, he has violated the conditions of his parole or is otherwise unfit to be on parole;

4. Issue final discharges to persons released by the Board on parole when the Board is of the opinion that the discharge of the parolee will not be incompatible with the welfare of such person or of society; and

5. Make investigations and reports with respect to any commutation of sentence, pardon, reprieve or remission of fine or penalty when requested by the Governor ; , and

6. Publish monthly a statement regarding the action taken by the Board on the parole of prisoners. The statement shall list the name of each prisoner considered for parole and indicate whether parole was granted or denied.

President of the Senate

Speaker of the House of Delegates

Approved:

Governor

