

**REPORT OF THE
JOINT SUBCOMMITTEE STUDYING**

**VIRGINIA'S FREEDOM OF
INFORMATION ACT**

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



HOUSE DOCUMENT NO. 106

**COMMONWEALTH OF VIRGINIA
RICHMOND
2000**

MEMBERS

Delegate Clifton A. Woodrum, *Chairman*
Delegate Joe T. May, *Vice Chairman*
Delegate Barnie K. Day
Senator R. Edward Houck
Senator William T. Bolling
Mr. John B. Edwards
Roger C. Wiley, Esquire

Staff

Division of Legislative Services
Maria J.K. Everett, *Senior Attorney*
Amigo R. Wade, *Senior Attorney*

Office of the Clerk, House of Delegates
Anne R. Howard, *Committee Coordinator*

TABLE OF CONTENTS

| | |
|---|-----------|
| Preface | 1 |
| I. Part I. First Year of Study (HJR No. 187, 1998) | |
| A. Study Authority and Scope..... | 3 |
| B. Overview of the Virginia Freedom of Information Act | 3 |
| C. Background and Previous Studies | 6 |
| D. Work of the Joint Subcommittee | 9 |
| E. Recommendations | 25 |
| II. Part II. The Second Year of Study (HJR No. 501, 1999) | |
| A. Study Authority and Scope | 27 |
| B. Work of the Joint Subcommittee | 27 |
| C. Recommendations | 39 |
| III. Conclusion..... | 39 |
| IV. APPENDICES | |
| First Year of Study | |
| A. HJR No. 187 (1998) | |
| B. Redraft of Virginia Freedom of Information Act, Virginia Press Association | |
| C. Open Records: Comparison between redraft and current law | |
| D. Open Meetings: Comparison between redraft and current law | |
| E. Access to Criminal Records, Virginia Department of State Police | |
| F. Legislative Recommendations (HB 1985/SB 1023 and HJR 501) | |
| G. Meetings of the Joint Subcommittee | |
| H. Survey of FOIA Articles in Virginia Newspapers, June 1998 to January 1999 | |
| Second Year of Study | |
| I. HJR No. 501 (1999) | |
| J. "Sunshine Office" decision matrix | |
| K. Legislative Recommendations (HB 551/SB 340 and HB 445) | |
| L. Meetings of the Joint Subcommittee | |
| M. Survey of FOIA Articles in Virginia Newspapers, June 1999 to January 2000 | |

**REPORT OF THE
JOINT SUBCOMMITTEE STUDYING
VIRGINIA'S FREEDOM OF INFORMATION ACT**

**To: The Honorable James S. Gilmore, III, Governor of Virginia,
and
The General Assembly of Virginia**

**Richmond, Virginia
May 2000**

Preface

House Joint Resolution No. 187 (Appendix A), agreed to during the 1998 Session of the General Assembly, established a joint subcommittee to study the Virginia Freedom of Information Act (the Act). As part of the study, the resolved clause in the resolution directed the joint subcommittee to examine other provisions of the Code of Virginia affecting public access to government records and meetings in order to determine whether any revisions to the Act were necessary.

In the first year of study, the joint subcommittee met monthly and endeavored to develop a clearer and easier-to-use Freedom of Information Act—one that addressed the misunderstandings on the meaning and breadth of the law. The joint subcommittee worked to strike a balance between the public's right of access and the needs of government to function effectively. At the initial meeting of the joint subcommittee, the Virginia Press Association offered a comprehensive redraft of the Freedom of Information Act, which was adopted by the joint subcommittee for use as a vehicle for identifying issues and stimulating discussion. It was not, however, an endorsement of the Virginia Press Association position. An effective initiative of the joint subcommittee was the urging of the formation of an informal work group of interested parties to identify the areas of agreement and disagreement. This initiative provided interested parties with an opportunity to resolve disagreements outside the formal setting of joint subcommittee meetings. All interested parties were invited to participate in work group meetings and this initiative paved the way for informal, yet meaningful dialogue. As a result, the joint subcommittee's 1998 work culminated in an extensive rewrite of the Virginia Freedom of Information Act.

Another initiative of the joint subcommittee was the creation of a study website on the Internet (<http://dls.state.va.us/hjr187.htm>) at which all meeting notices, meeting summaries, copies of presentations made to the joint

subcommittee, legislative drafts, and other documents and information related to the study were posted. With access to the workings of government at issue, the joint subcommittee felt strongly that its deliberations should have the widest audience possible.

In 1999, the General Assembly continued the study of the Freedom of Information Act by enacting House Joint Resolution No. 501 (Appendix I), which directed the joint subcommittee to review current record exemptions for proprietary information and trade secrets, and examine the feasibility of (i) creating a state "sunshine office" to resolve FOIA complaints, conduct training and education seminars, issue opinions or final orders, and offer voluntary mediation of disputes and (ii) including, in the definition of "public body," private foundations that exist solely to support public institutions of higher education.

Questions raised in the first year of study resurfaced in the second year and members of the joint subcommittee again pondered whether the Act was problematic, not in the statute itself, but in its understanding by those who use it. If so, one solution might be the creation of an entity to assist the public in gaining access to public records and meetings. The joint subcommittee spent the majority of its time in the second year deliberating on the creation of such an office.

The remainder of the joint subcommittee's work in the second year focused on the issue of including private foundations as public bodies under the Act. The areas of concern raised with the joint subcommittee included the perception by some that private foundations are encroaching into the realm of the operation of public universities in that they exist solely to support public institutions of higher education and are under strict control of the boards of visitors. The joint subcommittee considered whether these foundations should be included in the Act's definition of a "public body," thereby opening their operations to the same degree to which public bodies are open.

The joint subcommittee again enlisted the work group used during the first year of study to help identify issues and resolve conflicts. The joint subcommittee's website, which proved to be a valuable public access tool, was also continued.

The legislative recommendations of the joint subcommittee represent, with few exceptions, the hard work and the compromise of all the parties who participated in this study, namely, the Local Government Attorneys of Virginia, Inc., the Virginia Association of Broadcasters, the Virginia Association of Counties, the Virginia Coalition for Open Government, the Virginia Municipal League, the Virginia Press Association, other state and local government representatives, and the public safety community--the Association of Chiefs of Police, the Commonwealth Attorneys Council, the Department of State Police, the Virginia Sheriff's Association, and numerous individual police departments. These groups not only

participated in the monthly meetings of the joint subcommittee, but met separately at least as many times to resolve areas of disagreement. All but a few issues were decided in this way. The joint subcommittee was required to decide a small percentage of the issues that the rewrite of FOIA encompassed. This is a credit to the joint subcommittee, the study participants, and their collective hard work. Due in large part to the level of professionalism and recognition that there was an opportunity for shaping the new FOIA law, the parties kept at it and found there was room for compromise. In this way, the parties came to a fuller of understanding of, and respect for, each others' positions.

This report is divided into two parts--Part I, The First Year of Study, and Part II, The Second Year of Study--which detail the work of the joint subcommittee. Also attached for the reader's information are a series of FOIA-related stories in the news.

PART I--The First Year of Study (1998-1999)

A. Study Authority and Scope

House Joint Resolution No. 187 (Appendix A), agreed to during the 1998 Session of the General Assembly, established a joint subcommittee to study the Virginia Freedom of Information Act (the Act). As part of its study of the Virginia Freedom of Information Act, the resolved clause in the resolution directed the joint subcommittee to examine other provisions of the Code of Virginia affecting public access to government records and meetings in order to determine whether any revisions to the Act were necessary.

The joint subcommittee was composed of seven members including three members from the House of Delegates, appointed by the Speaker of the House; two members of the Senate of Virginia, appointed by the Senate Committee on Privileges and Elections; one press representative appointed by the Speaker of the House; and one local government representative recommended by the Virginia Municipal League and the Virginia Association of Counties and appointed by the Senate Committee on Privileges and Elections.

B. Overview of the Virginia Freedom of Information Act

The basic purposes of the Freedom of Information Act are to ensure the people and the press of the Commonwealth ready access to records in the custody of public officials and free entry to meetings of public bodies where public business is being conducted. Essentially, the Virginia Freedom of Information Act was enacted to protect the public's "right to know" about the working of their government. Exceptions to the applicability of the Act are statutorily mandated to be narrowly

construed, and rights and privileges conferred by the Act are to be liberally construed.¹

The Virginia Freedom of Information Act (Chapter 21 (§ 2.1-340 et seq.) of Title 2.1) was enacted by the 1968 Session of the General Assembly. The Act provides for public access to public records and governmental meetings. The Act makes disclosure the general rule and permits only the information specifically exempted to be withheld. The policy of the Act provides that disclosure requirements be construed broadly in favor of disclosure and exemptions narrowly construed. It is important to note that public bodies are not required to meet in open session by common law, the United States Constitution or the Virginia Constitution. Therefore, the establishment of the open meeting principle in the Act is purely a creature of statute.² Section 2.1-340.1 was added in 1976 and expressed the intent of the 1976 Session of the General Assembly:

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.

Section 2.1-342 provided that unless specifically exempted under the Act or other provision of law, all official records shall be open to inspection and copying by

¹ Report of the House Subcommittee Studying the Virginia Freedom of Information Act and Telecommunications, *House Document No. 19* at 4 (1983).

² Report of the Joint Subcommittee Studying the Freedom of Information Act and Public Access to Government Records and Meetings, *House Document No. 70* at 7 (1989).

any citizen of the Commonwealth. Section 2.1-341, the definition section of the Act, is key to understanding which public bodies are subject to the Act.³

"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 public body, including 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 public body (i) at any place or function where no part of the purpose of such gathering or attendance is the discussion or transaction of any public business, and such gathering or attendance was not called or prearranged with any purpose of discussing or transacting any business of the public body or (ii) at a public meeting whose purpose is to inform the electorate and not to transact public business or to hold discussions relating to the transaction of public business, even though the performance of the members individually or collectively in the conduct of public business may be a topic of discussion or debate at such public meeting. The 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. (Emphasis added).

"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.

³ The definitions of "meetings," "official records," and "public body" shown here are as in effect on July 1, 1998. The definitions of "meeting" and "public body" were changed during the 1999 Session.

"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. Corporations organized by the Virginia Retirement System are "public bodies" for purposes of this chapter.

When it was originally enacted in 1968, the Act listed only five categories of materials that were exempt from the provisions of the Act. As of 1998, there were 73 categories of exempt records. Likewise, in the original Act, there were seven purposes for which an executive or closed session could be held. In 1998, there were 27 purposes for which an executive or closed meeting could be allowed under the Act.

C. Background and Previous Studies

Since its enactment in 1968, the Virginia Freedom of Information Act has been the subject of six studies. The first of these, conducted in 1979, came about as a result of House Joint Resolution No. 12, passed during the 1978 Session of the General Assembly, which requested a joint subcommittee from the House and Senate Committees on General Laws to study the laws of the Commonwealth dealing with public information, specifically the statutory conflicts between the Freedom of Information and the Privacy Protection Acts. In its report, House Document No. 14 (1979), the joint subcommittee found that conflicts between the Freedom of Information and Privacy Protection Acts arose primarily in two instances—disclosure of letters of recommendation and reference in government personnel files, and disclosure of medical and psychological records. Under the Freedom of Information Act, an individual has a right of access to his/her own personnel files and medical records. Under the Privacy Protection Act, however, an individual was denied access to letters of recommendation and reference contained in his/her personnel file, and to his/her medical records, although in the latter case, the individual could authorize the inspection of his/her medical records by a physician or psychologist. The majority of the joint subcommittee recommended that the legal conflicts between the Freedom of Information and Privacy Protection Acts be resolved by allowing access by individuals to (i) letters of recommendation and reference in personnel files and (ii) medical and psychological records with the proviso maintained that doctors may make a notation in the file to the effect that such records be kept confidential where they may be damaging to the patient.

In 1982, the General Assembly passed House Resolution No. 11, which requested that a subcommittee of the House Committee on General Laws be appointed to study the Virginia Freedom of Information Act and the need for amendments to the Act as it related to the advances of telecommunications. In its report, House Document No. 19 (1983), the subcommittee found that there is little

or no use of teleconferencing by local or state public bodies, therefore it could not advocate or encourage the use of teleconferencing by public bodies for public meetings. However, the subcommittee believed that any meeting held through teleconferencing by a public body in which the business of the citizens of the Commonwealth is discussed or conducted should be subject to the Virginia Freedom of Information Act and should be conducted in a manner that would not violate the Act or any other provision of law.⁴

The 1982 study, begun as a result of House Resolution No. 11, was reconstituted during 1983 due to the concern of the members of the interpretation of the decision in Roanoke City School Board v. Times-World Corporation and John J. Chamberlain, 307 SE 2d (Virginia, 1983), which held that the school board did not violate the Freedom of Information Act. The teleconference held by the school board did not constitute a “meeting” under the Act because the members were not physically assembled. The basis of the court’s decision was that because there was no common law right of public or press to attend meetings of governmental bodies, there can be no legal or constitutional objection to a public body transacting business through a teleconference call in the absence of a statutory prohibition.⁵ In its final report, House Document No. 33 (1984), the subcommittee recommended an amendment to the Act that would prohibit the use of teleconferencing by public bodies for public meetings. The subcommittee, however, supported the use of teleconferencing by public bodies for administrative purposes such as staff briefings and interviews on the basis that such administrative meetings are not public meetings and therefore not subject to the Act.⁶ This is the origin of the prohibition of teleconferencing in the Act, a prohibition that lasts to this day for nonstate entities.

In 1988, the General Assembly passed House Joint Resolution No. 100 to establish 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. In its report, House Document No. 70 (1989), the joint subcommittee recommended amendments to nine of the 12 sections that comprised the Act. These amendments included:

1. Clarifying that the exemptions contained in the Act are discretionary by the custodian of the public record (§ 2.1-340.1).
2. Clarifying that a public body shall release official records unless it elects to exercise an exemption authorized by the Act (§ 2.1-342).

⁴ Report of the House Subcommittee Studying the Virginia Freedom of Information Act and Telecommunications, *House Document No. 19* at 5 (1983).

⁵ Report of the House Subcommittee Studying the Virginia Freedom of Information Act and Telecommunications, *House Document No. 33* at 2 (1984).

⁶ *Id.* at 3.

3. Allowing advance payment of charges for completing nonexempt record requests (§ 2.1-342).
4. Clarifying that official records maintained by the public body on a computer or other electronic data processing system shall be available to the public at reasonable cost, and that public bodies are not required to create a record where such record does not exist (§ 2.1-342).
5. Providing that a "nonresponse" by a public body to a request for official records is a violation of the Act (§ 2.1-342).
6. Standardizing notices for meetings, including notices for special, emergency and continued meetings (§ 2.1-343).
7. Clarifying that voting by secret ballot is a violation of the Act (§ 2.1-343).
8. Clarifying that public bodies are not required to conduct executive or closed meetings (§ 2.1-344).
9. Establishing a certification process for executive session meetings (§ 2.1-344.1).
10. Providing that the Act shall not be applicable when the requested information is the specific subject of active litigation (§ 2.1-345.1).
11. Requiring courts to award court costs and reasonable attorney's fees to the petitioning citizen if the court finds denial of official records to be in violation of the Act (§ 2.1-346).
12. Increasing the cap on the civil penalty from \$500 to \$1,000 for violation of the Act (§ 2.1-346.1).
13. Requesting the Office of the Attorney General to conduct a series of educational seminars on the Act and to consider the publication of a manual explaining the Act (HJR No. 247 (1989)).⁷

The joint subcommittee created pursuant to House Joint Resolution No. 100 was continued with the passage of House Joint Resolution No. 246 (1989) to address several concerns not resolved in the first year of study, specifically, public access to police records, other exemptions from the Act and judicial review of agency decisions under the Act. In its final report, House Document No. 73 (1990), the joint subcommittee recommended amendments which included:

1. Providing for the disclosure of certain criminal incident information (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.
2. Requiring the Parole Board (which is exempt from the provisions of the Act) to publish a monthly statement regarding the action taken by the Board on the parole of prisoners.

⁷ Report of the Joint Subcommittee Studying the Freedom of Information Act and Public Access to Government Records and Meetings, *House Document No. 70* at 31 (1989).

3. Requiring public bodies to make reasonable efforts to reach an agreement with a requester concerning the production of requested records.
4. Exempting personal information filed with any local redevelopment and housing authority by persons participating in housing programs funded by local governments or housing authorities.
5. Allowing portions of certain meetings held by the Virginia Health Services Cost Review Council and the Board of Corrections to be held in executive or closed session.
6. Authorizing rights conferred by the Act to be enforced in general district court as well as circuit court.⁸

In a related study, the Department of Information Technology (DIT), pursuant to Senate Joint Resolution No. 68, was requested to study the feasibility and associated costs of creating a state government database index as required by § 2.1-342 of the Act (Chapter 469 of the 1996 Acts of Assembly), and to identify issues related to the creation of that index. DIT recommended in its report, Senate Document No. 10 (1997), that the General Assembly consider (i) use of specific definitions for “database” and “created” as these definitions will have significant impact on which records are affected; (ii) requiring only databases created on or after July 1, 1997, to be indexed, as indexing those databases created before that date would be cost prohibitive; and (iii) the possible implications of data mining to protect the Commonwealth from being held accountable for unforeseen results derived from such activity, and to provide a mechanism by which the most flagrant parties may be forced to stop their activity.⁹

D. Work of the Joint Subcommittee

June 12, 1998

During its organizational meeting the joint subcommittee considered its charge under HJR No. 187, and staff presented an overview and legislative history of the Virginia Freedom of Information Act (the Act), advising the joint subcommittee that the last comprehensive study of the Act was conducted in 1988. With the advent of technological changes, the methods of collecting, processing, and keeping official records have changed dramatically, with the effect of occasionally limiting public access to government records and meetings.

⁸ Report of the Joint Subcommittee Studying the Freedom of Information Act and Public Access to Government Records and Meetings, *House Document No. 73* at 9 (1990).

⁹ Report of the Department of Information Technology, Analysis of Feasibility of and Cost Associated with Requiring Public Bodies to Compile Indices of Certain Computer Databases, *Senate Document No. 10* at 13 (1997).

Virginia Press Association Draft

The Virginia Press Association (VPA) presented its redraft of the Act to the joint subcommittee, indicating that the purposes of the draft were to protect and expand the rights of the public and to reaffirm the Act's fundamental principle of openness. The VPA identified six problem areas, which were addressed in its redraft: clarification of definitions, tightening of the working papers exemption, limitation of the discussion of real estate issues, uniform treatment of computer records, criminal records, and trade secrets. It was noted that in many instances, the Act is easier to use as a barrier than as a door. A copy of the VPA redraft of the Act appears as Appendix B.

Virginia Coalition for Open Government

A representative of the Virginia Coalition for Open Government reported to the joint subcommittee that countless record custodians work with average citizens, advocacy groups, and journalists throughout the Commonwealth to make public documents quickly and easily accessible, often on-line, and frequently at no additional taxpayer cost. Other data overseers, however, do not fully comply with the Act, failing to disclose criminal incident information, responding slowly to routine record requests, and charging excessive labor costs for requested documents.

Recommendations from the Coalition included (i) a reorganization of the Act to make it more accessible to citizens and to state clearly the responsibilities of government, (ii) the creation of a comprehensive notice system for public meetings, (iii) the placement of agendas and agenda materials on-line, (iv) minimum requirements for minute-taking, (v) the imposition of reasonable fees for providing documents, and (vi) the automatic recovery of attorneys' fees to a prevailing citizen. Finally, the Coalition suggested that the joint subcommittee explore several approaches used by other states in ensuring compliance with public access laws, including the creation of (i) a quasi-independent FOIA office, (ii) a FOIA enforcement agency, (iii) an expanded FOIA role for the Attorney General, or (iv) some hybrid of these approaches.

Citizen Comments

Several private citizens addressed the joint subcommittee, relaying their individual experiences in trying to gain access to public records and meetings. The majority of these remarks concerned the areas of excessive fees imposed for record production, inadequate meeting notices, and the need for stiffer penalties for violations of FOIA by state and local governments.

Virginia Municipal League

A representative of the Virginia Municipal League (VML) opined that the Act is basically a good law with some areas that need to be clarified. The joint subcommittee was cautioned that the balances between competing interests must be taken into account in order to make the Act workable for both sides.

At the conclusion of the meeting, the joint subcommittee decided to use the redraft of the Act presented by the Virginia Press Association (VPA) as a basis to stimulate discussion, but did not endorse the VPA position. The joint subcommittee also expressed an interest in examining other state FOIA laws, specifically in the areas of penalties for violations, alternative remedies and dispute resolution, and the creation of assisting agencies. It was decided that a website for the study should be established to enhance public access to, and participation in, the work of the joint subcommittee.

July 15, 1998

The joint subcommittee held its second meeting and compared the freedom of information laws of selected states focusing on (i) the existence of an assisting agency relative to the enforcement or implementation of the laws, (ii) the use of alternative dispute resolution to resolve disputes and controversies that arise in the day-to-day implementation of freedom of information laws, and (iii) the fines or penalties provided in cases of violations. In Virginia, no agency has enforcement or implementation authority relative to the open meeting and access to public records requirements under the Act. In addition, while Virginia law does provide for public bodies to make reasonable efforts to reach agreement with requesters regarding public records, there is no statutory provision mandating alternative dispute resolution nor does there exist a statewide informal or voluntary program to resolve such disputes.

The states selected by the joint subcommittee for comparison included Connecticut, Florida, Georgia, Hawaii, Kentucky, Maryland, New York, North Carolina and Washington. What follows is a summary of the aforementioned states' FOI laws as they relate to (i) the existence of an assisting agency, (ii) the availability of alternative dispute resolution, and (iii) the penalties for violation.

Connecticut

In Connecticut, there is a single Freedom of Information Act covering both open meetings and access to public records requirements.

- Assisting agency: Freedom of Information Commission.
- Alternative dispute resolution: The Commission operates an ombudsman program.
- Penalties and fines: Criminal penalties for failure to comply with an order of the Commission and willful destruction of a public record without

the approval required by the law. Civil penalty may be imposed against the custodian or other official for unreasonable denial of a public record. Action taken at a meeting not held in compliance with the Act may be voided by the Commission.

Florida

In Florida, there are two statutes, one governing open meetings and the other, access to public records.

- **Assisting agency:** The Office of the Attorney General operates an informal and voluntary Public Mediation Program for open meetings and open records disputes.
- **Alternative dispute resolution:** Yes, through the Public Mediation Program.
- **Penalties and fines:** There are criminal and noncriminal penalties for knowingly violating the open meetings and open records laws. Any official action taken at a meeting not held in accordance with the law is void. If the court finds that an agency has violated the law, it must award attorneys' fees. In addition, except in cases where the board sought and took the advice of its attorney, attorneys' fees may be assessed against individual members of the board.

Georgia

In Georgia, there are two statutes, one governing open meetings and the other, access to public records.

- **Assisting agency:** None. The Office of the Attorney General may bring civil or criminal action to enforce open meetings and open records laws.
- **Alternative dispute resolution:** No statewide program.
- **Penalties and fines:** Criminal penalties for knowingly conducting or participating in an unlawful public meeting.

Hawaii

In Hawaii, there are two statutes, one governing open meetings and the other, access to public records.

- **Assisting agency:** The Office of Information Practices (OIP), located in the Office of the Lieutenant Governor.
- **Alternative dispute resolution:** Yes, through the OIP.
- **Penalties and fines:** The court must award attorneys' fees and costs to any person who prevails against a public agency in a public records case. In addition, there are criminal penalties for the intentional disclosure of a record if the person or agency had actual knowledge that the disclosure is prohibited and for intentionally gaining access to a public record by false pretenses. In open meetings cases, the award of attorneys' fees is discretionary. There is a criminal penalty for willful violation of the open meetings law and any final action taken at an unlawful meeting is voidable upon proof that the violation was willful. In addition, the law

provides for the possible summary removal of the member upon conviction.

Kentucky

In Kentucky, there are two statutes, one governing open meetings and the other, access to public records.

- **Assisting agency:** The Office of the Attorney General serves as an impartial tribunal with the authority to issue legally binding decisions in regard to open meetings and access to public records issues.
- **Alternative dispute resolution:** Yes.
- **Penalties and fines:** In open meetings cases, the court may award up to \$100 for each violation in addition to attorneys' fees. A member of a public body who attends a meeting that the member knows is held in violation of the law may be subject to a fine and any official action taken at an unlawful meeting is voidable by the court. In public records cases the court may award up to \$25 for each day the person was denied access to the records in addition to attorneys' fees. There are also criminal penalties for willful concealment or destruction of a public record.

Maryland

In Maryland, there are two statutes, one governing open meetings and the other, access to public records.

- **Assisting agency:** The Open Meetings Compliance Board. The Board is advisory and limited to open meetings issues.
- **Alternative dispute resolution:** Available only with regard to open meeting issues.
- **Penalties and fines:** There is a civil penalty for participating in a meeting not held in accordance with the Open Meetings law, and any official action taken at an unlawful meeting may be voided by the court. In addition, there are criminal penalties for willful violation of the public records law.

New York

In New York, there are two statutes, one governing open meetings and the other, access to public records.

- **Assisting agency:** The Advisory Committee on Open Government.
- **Alternative dispute resolution:** Yes.
- **Penalties and fines:** Criminal penalties for willful concealment or destruction of a public record with intent to prevent public inspection.

North Carolina

In North Carolina, there are two statutes, one governing open meetings and the other, access to public records.

- Assisting agency: The Sunshine Office operated by the Office of the Attorney General.
- Alternative dispute resolution: Yes, through the Sunshine Office.
- Penalties and fines: In public records cases, the court may order that attorneys' fees assessed against an agency be paid personally by any public employee or public official who knowingly or intentionally committed, permitted, or caused a violation of the public records law. There are criminal penalties for failing to turn over public records once a term of office is over and for removing, altering, or destroying a public record.

Washington

In Washington, there are two statutes, one governing open meetings and the other, access to public records.

- Assisting agency: In all public records cases, except denials by local government agencies, the requester may ask the Office of the Attorney General to provide a written opinion on whether the record is exempt.
- Alternative dispute resolution: No statewide program.
- Penalties and fines: The court must award attorney fees to any person who prevails against a public agency. In open meetings cases, the court may impose a civil penalty of \$100 against a member of a public body who knowingly attends an unlawful meeting and any official action taken at an unlawful meeting is void. In public records cases the court may award up to \$100 per day for each day the right to inspect or copy the public record was denied.

Richmond Times-Dispatch

William Ruberry, former training and technology director for the *Richmond Times-Dispatch*, made a presentation titled *Records in the Information Age—Access to Electronic “file drawers.”* Noting that today's records are increasingly stored in electronic form, Mr. Ruberry indicated that the benefits of electronic records include less storage space required, easy retrieval of records, and flexibility in updating and revising information. Another benefit of electronic records is that one format often can be changed easily into another format. Access to electronic records, however, is not without certain impediments. Namely, the lack of uniformity in defining what is the actual cost to a public body in supplying requested records; the frequent storage of records in obscure or proprietary formats, the latter invented by private companies whose programs to read the databases must be purchased for access to the data; and the view that extracting information from a database is tantamount to creating a new record—which is not required by the Act. Mr. Ruberry opined that large businesses, newspapers, and law firms have greater resources to overcome these impediments than the average citizen.

The joint subcommittee reviewed the proposed redraft of the Act originally offered by the Virginia Press Association and, at the conclusion of this review, identified numerous changes in the draft, which are discussed below. Some members of the joint subcommittee posited that perhaps the problem with the Act might not be in the law itself but in its understanding by those who use it. If so, a solution might be to appoint an entity to assist the public in gaining access to public records and meetings instead of changing the statute. Staff-prepared comparisons between the open records and open meeting provisions of the Act versus provisions in the redraft used by the joint subcommittee can be found as Appendices C and D.

Controversial Issues in redraft

In the proposed redraft, the joint subcommittee and interested parties identified the following as controversial issues in need of resolution:

- **Foundations.** Private foundations, especially private foundations that support colleges and universities, are perceived by some to be encroaching into the realm of the operation of public universities. Such foundations exist solely to support universities and are under strict control of the boards of visitors. Should they be open to the same degree as other public bodies? Are they agencies of the Commonwealth? Where is the line to be drawn?
- **Conclusive presumption.** The redraft provided that in any enforcement action there is a conclusive presumption that public officials have read and are familiar with the provisions of the Act.
- **Written requests for records.** The redraft specifically provided that requests for records need not be in writing.
- **“Gotcha provision.”** The proposed redraft provided that any exemption not identified in public body’s initial response to a request for records shall be waived and may not be asserted thereafter for any purpose, including the defense of any enforcement action.
- **Clear and convincing evidence.** The redraft proposed that public bodies bear the burden of proving by clear and convincing evidence that a claimed exemption has been properly invoked.
- **Working papers exemption.** The current exemption for working papers has been viewed as too broad and prevents the release of records that have little relationship to the executive privilege this exemption originally sought to address. The redraft proposed a significant narrowing of what constitutes "working papers."
- **Trade secrets.** Currently, there are 16 exemptions under the Act for proprietary records of named agencies. The proposed redraft contained a single, category exemption for trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.) and provided for a two-year

“declassification” of the trade secret, thus rendering them releasable after that period.

- **Criminal records.** The redraft consolidated all FOIA provisions relating to criminal records into one comprehensive section.
- **Minutes required in executive session.** Currently, no minutes are required to be taken in an executive session. Although not releasable in the redraft, it proposed to make such minutes available as evidence in any enforcement action. One concern with this amendment was the potential for creation of a new source of evidence.
- **Consultation with legal counsel.** The proposed redraft generally limited consultation with legal counsel to discussions covered only under the attorney-client privilege. In the open records context, the redraft sought to limit the current exemption to discussions involving active investigations or litigation. In an open meeting context, a public body would be authorized to meet in executive session only for actual or imminently threatened litigation.
- **Executive session.** The proposed redraft limited when a public body would be authorized to meet in an executive session to discuss real estate issues by eliminating the discussion or consideration of the use of real property as a proper purpose for an executive session.

At the conclusion of the meeting, Chairman Woodrum requested that interested parties meet separately to try to narrow the issues relating to the proposed redraft.

August 26, 1998

The topic of third meeting of the joint subcommittee was access to records. Speaking on behalf of the Virginia Municipal League, Jack Edwards, James City Board of Supervisors, reported that from the local government perspective, public decisions ought to be made in public. However, there are times when it is desirable not to present financial, legal or other information in public when such information would be detrimental to the public welfare. Mr. Edwards expressed concerned that any unreasonable restriction on the operation of public bodies would result in public officials not getting the information they need to do their jobs. On the specific issue of access to records, concern was also raised that any unreasonable restriction on a public body to maintain files, etc., would result in serving an individual's interest to the detriment of the public generally. Mr. Edwards reported that citizens want good, sensible solutions to their problems; most of which can be done in public except where it's detrimental to the public welfare. Elected officials have to be responsive or they can be replaced by the voters--that is the ultimate test. The assumption should be that public officials are decent people trying to do a good job and find solutions to problems. He requested the joint subcommittee not to make the jobs of public officials any harder. Mr. Edwards concluded that he had seen the working draft of the joint subcommittee and identified specific areas of concern,

including raising the standard of proof in a legal challenge to clear and convincing evidence, narrowing the legal exemption for closed meetings, and not giving public bodies the option to require a request for records to be in writing.

Local Government Attorneys of Virginia, Inc.

Mr. Wilburn C. Dibling, Jr., Roanoke City Attorney, spoke on behalf of the Local Government Attorneys of Virginia, Inc. (LGA). Mr. Dibling indicated that as gatekeepers of the Act at the local government level, local government attorneys understand the need for openness in government, but believe that the interest of the public is not well served if every document or discussion is made public. Concerning the proposed amendments to the Act, Mr. Dibling stated that the LGA is concerned that these amendments interfere with the attorney-client relationship and represent bad public policy. Citing four specific examples to illustrate his point, Mr. Dibling indicated that it is the desire of local government attorneys to practice preventive law. The provision of early legal counsel resolves legal issues, avoiding costly and time-consuming litigation. Controversy is also averted. Local government attorneys need the ability to communicate frankly and confidentially with their clients orally as well as in writing. Mr. Dibling addressed specific areas of concern to the LGA contained in the proposed amendments, including the restatement of the policy of the Act, definitions of "personal working papers" and "public body," charges a public body may impose for providing records, the production of computer records, and the release of criminal records, but indicated that this list was not exhaustive and that the LGA was prepared to present a balanced draft of specific provisions that might assist the joint subcommittee in its deliberations.

Law-enforcement professionals

The joint subcommittee also heard testimony from the law-enforcement community concerning its reaction to the proposed amendments to the criminal records portion of the Act. Captain R. Lewis Vass, Virginia Department of State Police, provided the joint subcommittee with a written review of the proposed working draft of FOIA and a comparison of how the current law and the redraft treat criminal records and criminal investigations (Appendix E). The practical effect of the proposed changes was discussed. Concern was expressed that the proposed amendments to the criminal records provisions of the Act would have a serious negative impact on law-enforcement's ability to conduct criminal investigations and to protect officers, undercover operatives, and victims. Because the current language of the Act concerning criminal records has been developed over many years, Captain Vass believed it accurately reflects the desired balance between the public's right to know and the effective conduct of criminal investigations.

Public comments received at the meeting included (i) the concern that electronic records are not being released as readily as paper records once were; (ii) the overreaching application of the working papers exemption; (iii) the lack of alternative procedures for enforcement of the Act; (iv) the need to make the Act more citizen friendly and less stacked in favor of public bodies; and (v) the concern for release of scholastic records.

September 17, 1998

The topic of the fourth meeting of the joint subcommittee was access to meetings. The executive director of Common Cause of Virginia addressed the joint subcommittee, commending it for its work during the interim and offering suggestions for ways to improve public access to the workings of government under the Act. The first suggestion related to the creation of a "sunshine" or Freedom of Information Office, possibly in the legislative branch, which would hear complaints, resolve disputes, coordinate training of public officials, issue advisory opinions, and recommend changes to Virginia's FOIA. Citing Vermont, Kentucky, and Georgia as examples, he also recommended that the Act specify the time by when minutes of public meetings would be made available.

On the issue of access to records of public employment disputes, it was suggested that Virginia, like North Carolina, should require state agencies to make annual reports to the Department of Personnel and Training concerning the costs of settlements, awards, attorney fees, litigation expenses, and staff time costs associated with the defense or settlement of employee grievances and related personnel actions. This alternative would preserve the confidentiality of the individuals involved while making information about such matters generally available.

Finally, it was recommended that a public body be allowed to go into executive or closed session only upon the vote of two-thirds of the members of the public body. Similarly, there should be an opportunity for public comment at each public meeting unless at least two-thirds of the members of the public body vote not to permit public comment, stating the reasons therefor and including such reasons in the minutes.

Local Government Attorneys

Appearing for a second time before the joint subcommittee, the chairman of the ad hoc committee on FOIA of the Local Government Attorneys of Virginia, Inc. (LGA) renewed LGA's strenuous objection to what they perceive as an erosion of the attorney-client relationship proposed in the redraft. The LGA indicated that the redraft makes it impossible for local government attorneys to provide timely legal advice to their clients and is not in the public interest. The joint subcommittee was

reminded that the attorney-client privilege belongs to the client, not the attorney, and is designed to protect communications from a client to the attorney. The attorney-client privilege does not provide protection for preventive legal advice needed by local governing bodies concerning litigation about to be filed against a locality.

Another area of concern cited was the amendment to the probable litigation exemption for which a public body may convene in an executive session. Under the proposed amendment, "imminently threatened litigation" would replace the current standard of "probable litigation" for which a public body may convene an executive session. It was felt that changing this standard would result in denying local government attorneys the ability to provide legal advice to their clients concerning litigation that is reasonably certain to be filed. As a result, public bodies would be denied the benefit of preventive legal advice to which all other potential litigants are entitled. Another perceived detriment resulting from changing this standard would be the limitation of discussions between local government attorneys and their clients about litigation to be filed on behalf of the local government.

Also discussed with the joint subcommittee were local governments' concerns with the proposed redraft on the issue of the posting of notice of public meetings in every office of the public body. Such a requirement was characterized as "overkill." The alternative suggested was posting notice on a bulletin board in the office of the clerk of the governing body as well as posting notice on any electronic bulletin board maintained by the public body.

Other concerns expressed with the proposed redraft included the taking of minutes in executive session, the elimination of the minute-taking exemption for committees of the General Assembly and local governing bodies, and the restriction of discussion of real estate transactions in executive session to instances "where discussion in an open meeting would adversely affect the value of the property." In the latter case, the LGA believed the proposed redraft sets an inappropriate standard in that even if the value of the property is not affected, the public body may need to have confidential discussions with staff concerning that property. The LGA renewed its request for a balanced approach to revision of Virginia's FOIA.

Public Comment

During the public comment portion of the meeting, the joint subcommittee heard from a representative of the Virginia Chapter of the Sierra Club, who presented the results of an informal survey of the agenda and meeting notices provided by the City of Richmond and the Counties of Henrico and Chesterfield. The survey revealed that proper notice was not given in some instances of what was characterized as "semi-secret" meetings where the public body would meet informally at a time earlier than the "formal" meeting (for which notice was given

and an agenda provided). The Sierra Club also criticized as vague the mere reference to real estate used by public bodies to convene in executive session.

The joint subcommittee was briefed by the attorney who represented *The Roanoke Times*¹⁰ about the suit brought under the Act to challenge the Bedford County School Board's decision to convene in executive session to discuss the adoption of a school drug testing policy. At issue in the suit, was the "advice of counsel" exemption used by the Bedford County School Board to convene the executive session. Members of the school board testified that they were unaware of the subject matter of the executive session involved. The major problem cited with the "advice of counsel" exception is that it is too broad and effectively allows public bodies to convene in executive session for controversial issues by classifying them as requiring legal advice.

The League of Women Voters of Montgomery County presented the result of its study of executive sessions used by public bodies in Montgomery County and the Towns of Blacksburg and Christiansburg. It was reported that half of the 13 public agencies surveyed did not use executive sessions. Where executive sessions were convened, however, the following exemptions were cited most often: personnel matter (58 sessions), legal matters (48 sessions), real property acquisition or use (35 sessions), and student matters (12 sessions). The survey results were cited to indicate that there is wide gap between the public's perception of the appropriateness of the use of executive sessions and that of public officials.

October 14, 1998

Convening its fifth meeting, the joint subcommittee shifted its focus to the definition of "public body" and the inclusion of private foundations as "public bodies" under the Act. The joint subcommittee heard from representatives of the Virginia Tech Foundation, the University of Virginia, and Virginia Commonwealth University concerning the impact the proposed amendments to the Act would have on public institutions of higher education. Principally, they discussed the impact of including private, albeit university-controlled, foundations in the definition of "public body" under the Act, resulting in increased public access to records and meetings of these foundations.

The three universities represented at the meeting concurred that, in their opinion, increased public access to foundation records would negatively impact private contributions because some donors are unwilling to make charitable contributions to state agencies. Concern was also raised that personal financial information about individual contributors would be disclosed. Because these contributions are so important to universities in maintaining a margin of

¹⁰ Roanoke City School Board v. Times-World Corporation and John J. Chamberlain, 307 SE 2d (Virginia, 1983).

excellence, their diminution would substantially effect the quality of public education in Virginia and increase demands on tuition and, ultimately, on Virginia's taxpayers. It was pointed out that the foundations file federal tax reports (Form 990), which include information such as the names and compensation of the five highest paid employees of the foundation and detailed accounts of the sources and uses of foundation funds. Another concern expressed was that including university-related foundations in the definition of "public body" would lead to the creation of "maverick" or unaffiliated foundations that would not be controlled by a university's board of visitors.

In rebuttal, the Virginia Press Association (VPA) averred that university-related foundations are encroaching into the realm of the operation of public universities. Foundations exist solely to support specific universities and are under the strict control of the board of visitors of that university. As a result, the line between them is increasingly difficult to draw. The big issue for the VPA was not individual contributors but that university-related foundations increasingly are acting as agencies of the Commonwealth.

Virginia Commonwealth University and the University of Virginia also expressed opposition to the elimination of their respective records exemption for the operation of their medical centers. As proposed, the amendment to the Act would combine records of these medical centers and proprietary records of other agencies into a single exemption for trade secrets. The proposed "trade secret" exemption was based on the definition of "trade secret" found in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), but did not appear to include protection for a medical center's own proprietary data and strategic plans or propriety information about their joint venturers and other business partners.

Also of concern to these universities was the proposed amendment to the "working papers" exemption available to the university presidents (as well as the Governor, Lieutenant Governor, members of the General Assembly and chief executive officers of local governing bodies). The joint subcommittee heard that these high-level public officials share a common need to evaluate, in confidence, policies, proposals, and third party communications. While the universities agree that a clearer standard may be needed regarding the rather broad "working papers" exemption, they believed the proposed amendments too restrictive and not in the public interest.

Work Group Progress Report

The work group reached consensus on several specific areas of the proposed redraft which generally included agreement on the policy statement for the Act, the definition of "public body," charges for search time and supplying records, requiring a deposit for large requests for records, and the handling of electronic records.

There was agreement that consideration of inclusion of university-related foundations as public bodies should be deferred until the second year of study.

Public Comment

During the public comment portion of the meeting, the joint subcommittee heard from a representative of the Portsmouth Redevelopment and Housing Authority expressing concern that the proposed elimination of the records exemption for redevelopment and housing authorities would result in the release of personal information (name, date of birth, social security number, bank accounts, etc.) about individuals making application for or receiving housing assistance. To subject these persons to such an invasion of privacy, simply on the basis of their need for housing assistance, was characterized as unfair and unjustified.

The Virginia Economic Development Partnership Authority was represented at the meeting and commented that the proposed consolidation of several records exemptions into a single "trade secrets" exemption would not fully cover the operations of the Authority or local economic development organizations.

November 11, 1998

Convening its sixth meeting, the joint subcommittee conducted a work session at which it began deliberations on the proposed redraft of the Act. The joint subcommittee was advised of the agreement(s) reached by the work group on several areas of the proposed redraft. The work group generally agreed that requests for records would not be required to be in writing, thereby retaining current law; the narrowing of certain record exemptions; the reinstatement of the record exemption for the Virginia Housing Development Authority and other housing authorities; increasing from \$10,000 to \$20,000 the floor below which salaries of public employees would not be released; when and where notice of public meetings would be posted; clarifying that the burden of proof in enforcement actions under the Act would be on the public body to establish an exemption by a preponderance of the evidence; and increasing the civil penalties for violations of the Act from \$25 to \$100 for the first offense, and \$250 to \$500 for a subsequent violation.

Decisions of the Joint Subcommittee

After lengthy discussion, the joint subcommittee voted to adopt the work group's recommendations concerning (i) the record exemption for legal memoranda and other attorney work product compiled specifically for use in litigation or in an active administrative investigation concerning a matter that is properly the subject of a closed meeting under the Act, (ii) the reinstatement of the record exemption for the Virginia Housing Development Authority and other housing authorities, and

(iii) increasing the civil penalties for violations of the Act from \$25 to \$100 for the first offense, and \$250 to \$500 for a subsequent violation. In a departure from the proposed redraft, however, the joint subcommittee voted to increase the ceiling for a subsequent violation of the Act from \$1,000 to \$2,500, citing the fact that the maximum penalty for a Class 1 misdemeanor is \$2,500. The joint subcommittee also decided to reinstate the notice provisions for special or emergency meetings of public bodies as contained in current law, and adopted the language in the proposed redraft that eliminated the discussion or consideration of the *condition and use* of real estate as purposes for which public bodies may convene in executive session. As a result, only the discussion or consideration of the *acquisition or disposition* of real estate would be a proper purpose for which public bodies may convene in executive session. A controversial provision in the proposed redraft requiring the taking of minutes in executive session was rejected by the joint subcommittee. Finally, the joint subcommittee voted to reinstate current law, which provides that in an enforcement action, a court may consider the reliance of a public body on an opinion of the Attorney General or a decision of a court that substantially support the public body's position. By consensus, the joint subcommittee decided to defer until 1999 the consideration of (i) the inclusion of certain foundations as public bodies, (ii) the creation of a "Sunshine Office," and (iii) the treatment of electronic records.

December 21, 1998

The joint subcommittee conducted a work session for its seventh meeting and continued to deliberate on amendments to the Act. Staff presented a final work group progress report that identified the areas of consensus as well as those issues for which no consensus was reached. The joint subcommittee deliberated and ultimately voted on whether to include the following issues, unresolved by the work group, in the legislation to be recommended by the joint subcommittee to the 1999 Session of the General Assembly.

The first issue concerned the definition of scholastic records and the release of "directory" information (i.e., name, address, date and place of birth, participation in officially recognized activities and sports, etc.). The definition of scholastic records in the redraft attempted to conform state law to the federal Family Educational Rights and Privacy Act (20 USC 1232 g). As to the release of directory information, the VPA-proposed amendment attempted to overturn the decision of the Virginia Supreme Court in the Wall v. Fairfax County School Board case¹¹. In that case, the Court held that the individual vote total in a student council election was not releasable under the Act since it concerned information about an identifiable student. The joint subcommittee rejected these amendments in favor of current law, which gives local school boards the flexibility and discretion to decide what information will be released.

¹¹ 252 Va. 156 (1996).

The second issue dealt with what became known as the "gotcha provision," which provided that any exemption not identified in public body's initial response to a request for records shall be waived and may not be asserted thereafter for any purpose, including the defense of any enforcement action. Although the joint subcommittee included this provision in its recommended redraft of the Act, it was later removed in the House Committee on General Laws.

The third issue facing the joint subcommittee was the exemption from release of annual salary information of public employees earning \$10,000 or less. Consideration was given to increasing that amount to \$20,000. Staff told the joint subcommittee that that provision was contained in the original enactment of the Act and would equal \$27,500 in today's dollars. The joint subcommittee voted to retain the current \$10,000 threshold in the Act believing that public access to the annual salaries of public employees earning more than \$10,000 should be preserved.

The joint subcommittee voted to retain current law that allows an exemption from the taking of minutes for 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. Additionally, the joint subcommittee clarified that draft minutes were public records and subject to the provisions of the Act.

The joint subcommittee deferred consideration of consolidating the record exemptions for proprietary information into a single, category exemption for trade secrets until its next meeting, at which time the agencies that currently have an exemption for proprietary or other related records would be given an opportunity to discuss with the joint subcommittee the merits of consolidating their exemptions into a general trade secrets exemption.

January 11, 1999

The topic for the joint subcommittee's final meeting of the first year was limited to the (i) consolidation of the numerous proprietary exemptions into a single trade secret exemption and (ii) reconciliation of § 15.2-1722 and the Act as it relates to criminal records. Seven agencies appeared before joint subcommittee in defense of their respective exemptions, asserting that the definition of "trade secret" was not broad enough to protect confidential proprietary information (i) submitted to a public body or (ii) prepared by a public body. The joint subcommittee, by consensus,

agreed with the presenting agencies that use of a general "trade secret" exemption, as drafted, did not provide protection for other confidential proprietary information (i.e., business work plans, product development, volume and nature of sales, etc.) and agreed to retain the current agency-specific exemptions.

The final issue before the joint subcommittee concerned the clarification of the law relating to access to criminal incident logs, arrest information, and other routine law-enforcement matters. Specifically, § 15.2-1722 directs sheriffs and chiefs of police of every locality to ensure, in addition to other records required by law, the maintenance of adequate personnel, arrest, investigative, reportable incidents, and noncriminal incidents records necessary for the efficient operation of a law-enforcement agency. This section provided that, "Except for 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 of arrest, the records required to be maintained by this section shall be exempt from the provisions of Chapter 21 (§ 2.1-340 et seq.) of Title 2.1." This latter provision was in direct conflict with the criminal records portion of the Act. It was agreed that the conflict would be resolved in favor of the Act and that any criminal record exemption should be stated in the Act itself. As a result, a single section in the Act was dedicated to access to criminal records by consolidating all criminal records exemptions there.

At the conclusion of the meeting, the joint subcommittee agreed to continue its study for an additional year and recommended the introduction of a continuing resolution to, among other things, examine the appropriateness of the (i) creation of a state "sunshine office" to resolve FOIA complaints, conduct training and education seminars, issue opinions on final orders, and offer voluntary mediation of disputes, and (ii) inclusion in the definition of "public body" private foundations that exist solely to support colleges and universities and are under strict control of the boards of visitors.

E. Year 1—Recommendations of the Joint Subcommittee

The joint subcommittee conducted monthly meetings from June 1998 through January 1999, working in concert with the work group and receiving public comment on each issue under consideration. The joint subcommittee worked to strike a balance between the public's right of access and the needs of government to function effectively. The joint subcommittee recommended to the 1999 Session of the General Assembly a comprehensive rewrite of the Freedom of Information Act to reflect that balance. Generally, the rewrite eliminated redundant terminology, reorganized definitions, clarified provisions relating to requests for records, and gathered the rules governing access to criminal records into a single section.

Introduced during the 1999 Session, House Bill No. 1985 and its Senate companion, Senate Bill No. 1023 (Appendix F):

1. Clarify the definitions of “public body” and “public records.”
2. Add a requirement that public officials read and familiarize themselves with FOIA.
3. Clarify the procedure to be used by public bodies in responding to a FOIA request.
4. Provide that any exemption not identified in the public body’s initial response for a request for records is waived, including in the defense of any action brought to enforce FOIA.
5. Clarify what charges may be assessed by a public body for supplying requested records.
6. Clarify that public records maintained by a public body in an electronic data processing system or database shall be made available to a requester at reasonable cost.
7. Clarify that excision of exempt fields of information from a database or conversion of data from one available format to another is not the creation of a new public record.
8. Create a new section within FOIA to deal exclusively with the release of criminal records.
9. Clarify the scholastic records exemption.
10. Narrow the working papers exemption for the Governor, Lieutenant Governor, Attorney General, members of the General Assembly, and other high ranking government officials by defining “working papers” as those records prepared by or for named public officials for their personal deliberative use, and providing that no record that is otherwise open to inspection shall be deemed exempt by virtue of the fact that it has been attached to or incorporated within any working paper or correspondence.
11. Clarify the exemptions for legal opinions of local government attorneys and legal memoranda compiled specifically for use in litigation.
12. Combine current exemptions for the Virginia Museum of Fine Arts, the ABC Board, and the Department of Corrections relating to security manuals, surveillance techniques, and architectural/engineering drawings of their facilities, etc., into a single exemption.
13. Add a requirement that notice of meetings of public bodies be placed in a prominent public location at which notices are regularly posted and in the office of the clerk or chief administrator of the public body, with the use of electronic postings encouraged
14. Narrow the real property open meeting exemption to discussions or consideration of the acquisition or disposition (and not the condition or use) of real property.
15. Clarify the consultation with legal counsel exemption for open meetings by defining the term "probable litigation."

16. Clarify the procedure to be followed by a public body in convening in a closed session.

17. Provide that in a FOIA enforcement action in general district court, a corporate petitioner may appear through its officer, director, or managing agent without the assistance of counsel.

18. Provide that in a FOIA enforcement action, the public body shall bear the burden of proof to establish an exemption by a preponderance of the evidence.

19. Increase the penalties for FOIA violations from a minimum a \$25 to \$100, and for a subsequent violation, from a minimum of \$250 to \$500, and increases the maximum penalty for a subsequent violation from \$1,000 to \$2,500.

PART II—Year Two of Study (1999-2000)

A. Study Authority and Scope

House Joint Resolution No. 501 (Appendix I), agreed to during the 1999 Session of the General Assembly, continued the joint subcommittee studying the Virginia Freedom of Information Act. As part of its continuing study, the resolve clause in the resolution directed the joint subcommittee to review current exemptions for proprietary information and trade secrets, and examine the feasibility of the (i) creation of a state "sunshine office" to resolve FOIA complaints, conduct training and education seminars, issue opinions or final orders, and offer voluntary mediation of disputes, and (ii) inclusion in the definition of "public body" private foundations that exist solely to support colleges and universities and are under strict control of the boards of visitors. The membership of the joint subcommittee remained the same as composed in 1998.

B. Work of the Joint Subcommittee

June 2, 1999

Beginning its second year of study, the joint subcommittee developed a tentative work plan for its second year, including the identification and prioritization of issues, and the topic and number of future meetings. The principle focus of the second year of study was the feasibility and desirability of the creation of a "sunshine office" in Virginia.

In Virginia, no agency has implementation or enforcement authority relative to the open meeting or open record requirements under the Freedom of Information Act (the Act). While Virginia law does provide for public bodies to make reasonable efforts to reach agreement with requestors regarding public records, there is no statutory provision mandating alternative dispute resolution nor does there exist a

statewide informal or voluntary program to resolve disputes that may arise in the day-to-day operation of public bodies.

Many states have created a "sunshine office," and each model varies in its organizational structure and setting and in the breadth of powers the office wields. Each state offers a different model ranging from an office within the office of the attorney general to the creation of an advisory committee. Most offices issue advisory opinions, conduct training for state and local public officials, and publish educational materials. The state offices selected for review include: Connecticut, Florida, Georgia, Hawaii, Indiana, Kentucky, Maryland, New York, North Carolina, Washington.

“Sunshine” Offices—Various State Models

Connecticut

Agency: Freedom of Information Commission.

Freedom of Information Commission.

- Composed of five members, appointed by the Governor with the advice and consent of either house of the General Assembly; no more than three members of the same political party; members serve four year staggered terms.
- Responsible for the investigation and review all alleged violations of the Act.
- Commission powers and duties:
 - * Issue final orders regarding the Act;
 - * Declare null and void any action taken at any meeting that a person was denied the right to attend;
 - * Require the production or copying of any public record;
 - * Render advisory opinions of general applicability under the Act;
 - * Required by statute to provide annual training for public agencies; and
 - * Provide for informal settlement of disputes through an ombudsman program.
- Appeals may be taken from final orders of the Commission.
- The Commission produces a citizens guide to the Act and conducts more than 100 workshops and training programs annually.

Florida

Agency: The Office of the Attorney General operates an informal and voluntary Public Mediation Program for open meetings and open records disputes.

Public Mediation Program:

16. Clarify the procedure to be followed by a public body in convening in a closed session.

17. Provide that in a FOIA enforcement action in general district court, a corporate petitioner may appear through its officer, director, or managing agent without the assistance of counsel.

18. Provide that in a FOIA enforcement action, the public body shall bear the burden of proof to establish an exemption by a preponderance of the evidence.

19. Increase the penalties for FOIA violations from a minimum a \$25 to \$100, and for a subsequent violation, from a minimum of \$250 to \$500, and increases the maximum penalty for a subsequent violation from \$1,000 to \$2,500.

PART II—Year Two of Study (1999-2000)

A. Study Authority and Scope

House Joint Resolution No. 501 (Appendix I), agreed to during the 1999 Session of the General Assembly, continued the joint subcommittee studying the Virginia Freedom of Information Act. As part of its continuing study, the resolve clause in the resolution directed the joint subcommittee to review current exemptions for proprietary information and trade secrets, and examine the feasibility of the (i) creation of a state "sunshine office" to resolve FOIA complaints, conduct training and education seminars, issue opinions or final orders, and offer voluntary mediation of disputes, and (ii) inclusion in the definition of "public body" private foundations that exist solely to support colleges and universities and are under strict control of the boards of visitors. The membership of the joint subcommittee remained the same as composed in 1998.

B. Work of the Joint Subcommittee

June 2, 1999

Beginning its second year of study, the joint subcommittee developed a tentative work plan for its second year, including the identification and prioritization of issues, and the topic and number of future meetings. The principle focus of the second year of study was the feasibility and desirability of the creation of a "sunshine office" in Virginia.

In Virginia, no agency has implementation or enforcement authority relative to the open meeting or open record requirements under the Freedom of Information Act (the Act). While Virginia law does provide for public bodies to make reasonable efforts to reach agreement with requestors regarding public records, there is no statutory provision mandating alternative dispute resolution nor does there exist a

statewide informal or voluntary program to resolve disputes that may arise in the day-to-day operation of public bodies.

Many states have created a "sunshine office," and each model varies in its organizational structure and setting and in the breadth of powers the office wields. Each state offers a different model ranging from an office within the office of the attorney general to the creation of an advisory committee. Most offices issue advisory opinions, conduct training for state and local public officials, and publish educational materials. The state offices selected for review include: Connecticut, Florida, Georgia, Hawaii, Indiana, Kentucky, Maryland, New York, North Carolina, Washington.

"Sunshine" Offices—Various State Models

Connecticut

Agency: Freedom of Information Commission.

Freedom of Information Commission.

- Composed of five members, appointed by the Governor with the advice and consent of either house of the General Assembly; no more than three members of the same political party; members serve four year staggered terms.
- Responsible for the investigation and review all alleged violations of the Act.
- Commission powers and duties:
 - * Issue final orders regarding the Act;
 - * Declare null and void any action taken at any meeting that a person was denied the right to attend;
 - * Require the production or copying of any public record;
 - * Render advisory opinions of general applicability under the Act;
 - * Required by statute to provide annual training for public agencies; and
 - * Provide for informal settlement of disputes through an ombudsman program.
- Appeals may be taken from final orders of the Commission.
- The Commission produces a citizens guide to the Act and conducts more than 100 workshops and training programs annually.

Florida

Agency: The Office of the Attorney General operates an informal and voluntary Public Mediation Program for open meetings and open records disputes.

Public Mediation Program:

- The Office of the Attorney General also operates an informal and voluntary public mediation program created within the office by statute.
- Duties of the Program include:
 - * Recommend needed legislation;
 - * Assist Department of State in preparation of training seminars; and
 - * Report to the legislature the number and source of inquiries, the number and types of disputes relative to electronically stored public records, the number of disputes mediated and any legislation necessary to improve the mediation program.

Attorney General's Office produces and routinely updates a manual that serves as a reference guide to judicial decisions, statutes, and advisory Attorney General Opinions relating to the Public Records Law and the Sunshine Law. It is available at no cost via the Internet. Hard copies are printed by the First Amendment Foundation and sold to recover printing costs.

Under the Open Government Sunset Review Act of 1995, new exemptions or substantial amendment of existing exemptions for both laws are repealed after five years unless the Legislature takes action to reenact the exemption.

| |
|----------------|
| Georgia |
|----------------|

Agency: None. However, the Office of the Attorney General may bring civil or criminal action to enforce open meetings and open records laws.

Legislation effective July 1, 1998, authorizes the Attorney General to bring enforcement actions, either civilly or criminally, to enforce compliance with the Open Meetings and Open Records laws.

| |
|---------------|
| Hawaii |
|---------------|

Agency: The Office of Information Practices (OIP), located in the Office of the Lieutenant Governor.

Office of Information Practices:

- Legislation, effective July 1, 1998, established a temporary Office of Information Practices administratively attached to the Office of the Lieutenant Governor to bring together the administration of open meetings and open records requirements under one agency.
- Duties of the Office include:
 - * Receive and resolve complaints under the UIPA and Open Meetings Law;
 - * Provide advisory opinions to the public and to government agencies;
 - * Act as an appeals agency to mediate any disputes over access to government records;

- * Adopt rules to implement the UIPA and the Open Meetings Law;
 - * Educate the public and government agencies about the UIPA and the Open Meetings Law;
 - * Develop a uniform public records report describing each set of records every government agency routinely uses or maintains, and coordinate completion by all government agencies; and
 - * Report to the Governor and Legislature each year on its activities and recommend legislative changes.
- Opinions and rulings issued by the OIP are admissible in any circuit court action brought by any person aggrieved by an agency's denial of access to public records.

Open Records:

- Alternative method to appeal the denial of a public record is provided through the OIP prior to seeking judicial enforcement.
- The OIP does not have the authority to compel the agency to disclose records.

| |
|----------------|
| Indiana |
|----------------|

Agency: Public Access Counselor—statutory office; attorney appointed by the Governor for four-year term but may be removed for cause. Responsible for open records and open meetings laws, or any other state statute or rule governing access to public meetings or public records.

Public Access Counselor's powers and duties:

- Establish and administer a program to train public officials and educate the public on the rights of the public and the responsibilities of public agencies under public access laws. May be contracted out.
- Conduct research.
- Prepare interpretive and educational materials and programs in cooperation with the office of the attorney general.
- Distribute to newly elected/appointed public officials the public access laws and educational materials concerning the public access laws.
- Respond to informal inquiries made by the public and public bodies by telephone, in writing, in person, by fax, or by electronic mail concerning the public access laws.
- Issue advisory opinions to interpret the public access laws upon request of a person or public body within 30 days of request. No opinion, however, may be issued where lawsuit has been filed pursuant to public access laws.
- Make legislative recommendations to the General Assembly to improve public access.
- Submit an annual report to the General Assembly.

No requirement that an aggrieved party exhaust administrative remedies before pursuing lawsuit under public access laws.

Currently, the Indiana Attorney General, in cooperation with the Hoosier State Press Association, publish "*The Open Door Law and the Access to Public Records Act*," which includes an overview of both laws, answers to some commonly asked questions, and information about contacting the Public Access Counselor.

Kentucky

Agency: The Office of the Attorney General serves as an impartial tribunal with the authority to issue legally binding decisions in regard to open meetings and access to public records issues.

Attorney General:

- Any person who believes a public agency has violated the open meetings act and any person who has been denied a request for public records may appeal to the Attorney General.
- The Attorney General must issue a decision within 60 days stating whether the agency has violated either of the Acts.
- Both the complaining party and the agency may appeal the decision, however if no appeal is filed within 30 days, the decision has the force and effect of law.
- The Attorney General acts as an impartial tribunal in open records and open meetings appeals.

Maryland

Agency: The Open Meetings Compliance Board. The Board is advisory and limited to open meetings issues only.

Open Meetings Compliance Board:

- Composed of three members, appointed by the Governor and confirmed by the Senate. At least one member must be an attorney. Members serve three-year, staggered terms.
- The Office of the Attorney General provides staff for the Board.
- Powers and duties of the Board include:
 - * Receive, review, and resolve complaints;
 - * Issue written advisory opinions on whether or not a violation has occurred;
 - * Evaluate how well public bodies comply with the Open Meetings Law and recommend improvements in the law to the legislature;
 - * Work with the Office of the Attorney General and other interested groups to develop and conduct educational programs for staff and attorneys representing public bodies; and

- * Hold informal conferences to resolve disputes prior to issuing a written opinion. The opinions are advisory only. The Board does not have the power to compel any specific actions by a public body.

A person may bypass the Board and initiate court action.

New York

Agency: The Advisory Committee on Open Government, established within the New York Department of State is responsible for overseeing the implementation of the Freedom of Information Law and the Open Meeting Law.

Advisory Committee on Open Government.

- Composed of 11 members, five from government and six from the public. Of the six public members at least two must be or have been representatives of the news media.
- Duties of the Advisory Committee include
 - * Furnishing written and oral advice to agencies, the public, and the news media;
 - * Issuing regulations;
 - * Mediating disputes; and
 - * Submitting an annual report to the Governor and the Legislature describing the Committee's experience under each of the statutes and recommendations for improving them.
- The Committee produces a pamphlet on the Freedom of Information Law, the Open Meetings Law, and the Personal Privacy Protection Law.

North Carolina

Agency: The Sunshine Office operated by the Office of the Attorney General.

Sunshine Office:

- Established in the Citizens Rights Section of the Attorney General's Office to assist the public and government agencies to understand and apply the public records and open meetings laws.
- The Sunshine Office also mediates disputes between the public and government agencies involving access to public documents and meetings.
- Participation in mediation is voluntary and the office has no enforcement authority.

Washington

Agency: In all public records cases, except denials by local government agencies, the requestor may ask the Office of the Attorney General to provide a written opinion on whether the record is exempt.

Public Records Act:

- When a state agency denies a requesting party the opportunity to inspect or copy a record, the party may request a review by the Attorney General, who must provide a written opinion on whether the record is exempt. (This right of review does not extend to denials by local agencies).
- The Attorney General's determination is not legally binding on the agency or the requester.

The Office of the Attorney General, working with Allied Daily Newspapers and local government organizations, produces a citizens' guide that gives a brief explanation of the laws.

In addition, the office also produces a comprehensive manual intended to clarify provisions of the law and prevent future disagreements.

Discussion

By consensus, the joint subcommittee agreed that if a sunshine office were to be established in Virginia it would be preferable to create such an office as an independent agency that would not be subject to direct political pressure while it serves Virginia citizens and state and local public bodies. Although four of the 10 state sunshine office models reviewed were affiliated with that state's Attorney General's office, this model was not favored by the joint subcommittee because of the perception of a conflict of interest. In Virginia, the Office of the Attorney General is responsible for the representation of state agencies, but may be required, if tasked with a sunshine office role, to rule against those same state agencies as it relates to Freedom of Information Act disputes. It was made clear that the issues weighing against placement of a sunshine office in the Office of the Attorney General were of a structural nature and not an operational one.

Support for the further examination of the creation of a sunshine office was expressed by the Virginia Coalition for Open Government, Virginia Association of Broadcasters, the Virginia Municipal League, and the Virginia Press Association.

July 8, 1999

At its second meeting, the joint subcommittee heard from Robert J. Freeman, Executive Director of the New York State Committee on Open Government, concerning the operation of his office. Mr. Freeman explained that very few states have offices that operate like the New York Committee on Open Government. He indicated that his office is responsible for New York's privacy law as well as its open government laws, and provides oral and written legal advice in the form of advisory opinions. When asked about the existence of a conflict between opinions issued by his office and those of the New York Attorney General, he responded that there is no forum shopping in New York—the Attorney General sends all requests for opinions on its open government laws to Mr. Freeman as do other New York state

agencies that issue opinions. Mr. Freeman clarified that this arrangement was a result of an understanding among the several agencies and not a statutory mandate.

The Committee on Open Government, for which Mr. Freeman serves as Executive Director, is comprised of 11 members: four ex officio heads of state agencies; one elected local government official appointed by the Governor; four members of the public, two of whom must be or have been representatives of the news media appointed by the Governor; and two additional members of the public, one each appointed by the leaders of each chamber of the New York legislature. Mr. Freeman's office receives approximately 8,000 calls per year, 2,000 of which are from the media. Approximately one-third of all calls come from local government officials. The annual cost for the operation of his office is approximately \$165,000 to \$170,000.

Mr. Freeman opined that the success of any "sunshine office" depended on three factors--strong leadership, especially in the beginning; a commitment to the role as educator; and a reputation for impartiality.

The joint subcommittee discussed at length the issues attendant to developing a "sunshine office" in Virginia, including the identification of policy issues related to the organizational structure and setting of any "sunshine office," and determination of its appropriate powers and duties. The joint subcommittee utilized a decision matrix (Appendix J) to assist them in their deliberations and to ensure careful consideration of the full array of organizational models and policy options. The advantages and disadvantages of each policy decision was also examined.

August 16, 1999

The purpose of the joint subcommittee's third meeting was to receive public comment on the possibility of creating a "sunshine office" in Virginia. Was such an office desirable in Virginia? If so, what form should it take? What responsibilities should it have? Were there suggested models for a "sunshine office"? Or, were there problems that needed to be identified?

The joint subcommittee heard from representatives of the Virginia Association of Broadcasters, the Virginia Coalition for Open Government, the Virginia Press Association. These representatives supported the creation of small, independent office in the legislative branch and emphasized the importance of training, the quick resolution of the Act disputes, and the issuance of nonbinding, advisory opinions as proper functions for such an office.

Several county attorneys expressed reservations about a "sunshine office" having the power to issue advisory opinions. They argued that such opinions should have only prospective application, be given no weight as evidence, and should not be admissible in a court proceeding. Additionally, there was discussion that a request for an advisory opinion should toll the statutory time required for response for a request for records.

The meeting concluded with a review of a preliminary draft creating a "sunshine office" based largely on the New York State Committee on Open Government model. This model consists of 11-member committee authorized to issue advisory opinions and publish educational materials. The joint subcommittee encouraged the interested parties to continue to submit amendments to, or comments on, the "sunshine office" draft.

September 10, 1999

For its fourth meeting, the joint subcommittee conducted a work session to attempt to finalize the "sunshine office" draft. Amendments favored by the joint subcommittee would require the "sunshine office" to provide training to public officials, citizens, and the media concerning the requirements of the Act.

A representative of the Governor's office stated that the idea of a "sunshine office" was acceptable to the Administration, especially the training and education component. The Administration, however, would like representatives of executive branch employees, appointed by the Governor, to serve on the "sunshine office" advisory body.

The issue of the admissibility of advisory opinions issued by the "sunshine office" was also discussed. There was consensus that, with the creation of the "sunshine office," the goal was to attempt to provide a process to resolve disputes without litigation and to provide a guide for future activity. There was also consensus that if there is pending litigation, the "sunshine office" would not render an opinion. Discussion on this and other issues raised at the third meeting continued; however, no final decisions were made by the joint subcommittee.

The joint subcommittee also began discussion of the inclusion of foundations that support public institutions of higher education and other public-private partnerships as "public bodies" under the Act. Should they be open to the same degree as other public bodies? It was noted by the Virginia Press Association that private foundations are encroaching in the realm of the operation of public universities. Foundations exist solely to support universities and are under strict control of the boards of visitors. Are they agencies of the Commonwealth?

November 12, 1999

The topics discussed at the joint subcommittee's fifth meeting were (i) the inclusion of private foundations that support Virginia's public institutions of higher education as public bodies under the Freedom of Information Act and (ii) the creation of a "sunshine office" in Virginia.

Persons representing the various foundations established at the University of Virginia (UVA), Virginia Tech, Virginia Commonwealth University (VCU), and the Virginia Military Institute (VMI) generally expressed the opinion that private foundations should not be subject to same scrutiny as public bodies under the Act because they are not operational units of the colleges and universities, but provide financial support through private donations. The reality is that the vast majority of a state university's operating budget does not come from public funds. It was stated that approximately 75 percent of the total operating budget for a state university comes from foundations and the tuition paid by students. Additionally, these representatives strongly believed that the need for legislation had not been demonstrated and that any change in the status quo might adversely affect private support of Virginia's institutions of higher education. It was pointed out that financial and other information about these foundations is already disclosed in the IRS Federal Tax Form 990 as well as in the annual reports prepared by the foundations.

The joint subcommittee discussed the potential for conflicts of interest in situations where contributors to state universities are also those who have contractual relationships with the university. In response, it was noted that the Virginia Public Procurement and the Conflicts of Interest Acts would control those relationships. Additionally, concern was expressed that universities may yield to pressures exerted by large contributors. To address this concern, the foundation representatives indicated that the respective boards of visitors hold positions of public trust (i.e., are fiduciaries) and do not turn down "gifts with strings" if they feel it improper or not in furtherance of the university's mission. It was pointed out that there were usually strings attached with gifts, generally in the form of a building or particular program.

In response to a proposal including these foundations as public bodies under the Act offered by the Virginia Press Association, UVA presented a compromise proposal representing the consensus of Virginia's public institutions of higher education, with the exception of VMI. It was made clear that this counter proposal was offered only to the extent the joint subcommittee felt legislation was necessary.

The Virginia Press Association (VPA) indicated that it was not their intention to have private foundations subject to the meeting provisions of the Act, but, in a records context, believed that the public has a right to know *how* the money is

spent. On the conflict of interest issue, the VPA pointed out that if Virginia colleges and universities are funded in large part by private donations, then the recipients must pay attention to what the donors say. It is when private donations attempt to dictate public policy that the problem arises. VPA pointed out that setting an amount at which disclosure would be required would be difficult since currently there is no access to this type of financial information.

Lacking consensus among the interested parties on either proposal, Delegate Woodrum asked that the representatives of UVA, Virginia Tech, VCU, and VMI, along with the VPA, meet separately to narrow the issues that divided them and arrive at a consensus. Delegate Woodrum asked the parties to consider the feasibility of making persons who do business with a college or university to disclose how much they are giving to that institution instead of requiring all contributors to disclose the amount of their contributions.

Sunshine Office

Delegate Woodrum challenged the work group to iron out the remaining details for the creation of a "sunshine office" in Virginia. Speaking for the joint subcommittee, Delegate Woodrum noted that a lot of framework might not be necessary above that which was already in the draft. If, after creation, the enabling legislation needs to be adjusted, there will be opportunities to make those adjustments. The draft was patterned after the New York State Committee on Open Government which has been in operation for 25 years and is well regarded for its effective and efficient operation.

December 28, 1999

At its sixth meeting, the joint subcommittee finalized the draft for the creation of a "sunshine office." Still at issue, however, was the size and composition of the proposed Virginia Freedom of Information Advisory Council and the admissibility of any advisory opinions rendered by the Council.

Forrest M. Landon, representing the Virginia Coalition for Open Government, urged the joint subcommittee to consider increasing the citizen representation on the Council, citing that the Freedom of Information Act was the "public's" law and should not therefore be stacked in favor of government representation. He also provided a handout that indicated that all editorial pages across Virginia were in favor of the creation of the Council.

As to the size of the Council, the joint subcommittee discussed the relative merits of creating a five- to seven-member Council versus the 12-member Council proposed in draft. The joint subcommittee decided to keep the membership at 12 to provide more input from persons who have an interest in the Act as well as

recognizing that the size of the Council would not effect its ability to operate effectively since (i) it was an advisory council and (ii) staff for the Council would be performing the day-to-day operations of the Council. Next in the discussion was consideration of the composition of the Council. Because the Office of the Attorney General also issues opinions and to facilitate cooperation between the two offices, it was decided to include the Attorney General or his designee on the Council. The Librarian of Virginia was suggested for inclusion since he oversees the Virginia Public Records Act and sets the record retention schedules for state and local governments. Also suggested for inclusion were representatives of state and local governments and the news media. The joint subcommittee accepted these suggestions and composed the Council as follows: the Attorney General or his designee; the Librarian of Virginia or his designee; the Director of the Division of Legislative Services or his designee; four members appointed by the Speaker of the House of Delegates, one of whom shall be a member of the House of Delegates, and three citizen members, at least one of whom shall be or have been a representative of the news media; three members appointed by the Senate Committee on Privileges and Elections, one of whom shall be a member of the Senate, one of whom shall be or have been an officer of local government, and one citizen member; and two citizen members appointed by the Governor, one of whom shall not be a state employee. The local government representative shall be selected from a list recommended by the Virginia Association of Counties and the Virginia Municipal League. The citizen members may be selected from a list recommended by the Virginia Press Association, the Virginia Association of Broadcasters, and the Virginia Coalition for Open Government, after due consideration of such list by the appointing authorities.

Finally, at issue was the admissibility of any advisory opinion rendered by the Council. Arguments were made that these opinions should not be admissible or that their admissibility should be limited to those actions not involving the parties for whom the opinion was rendered. The chairman suggested leaving the draft silent on the issue of admissibility, following current law, and allowing the court, on a case-by-case basis, to decide the admissibility issue and assign the weight of the opinion, if any. In support of leaving the proposed statute silent, the Virginia Press Association noted that this was a necessary step to ensure the institutional credibility of a newly created office and to serve the purpose for which it was created, namely, a tool for the public and government officials alike to get answers to their questions in an expedited manner. In a divided vote, the majority of the joint subcommittee voted to leave the statute silent, thereby leaving the question of admissibility up to the court.

At the conclusion of their deliberations, the joint subcommittee voted to recommend the creation of the Virginia Freedom of Information Advisory Council to the 2000 Session of the General Assembly (Appendix K).

January 11, 2000

Concluding its second year of study, the joint subcommittee considered its final issue--the inclusion of private foundations that support public colleges and universities as public bodies under the Act. While the pros and cons of this issue had been discussed¹² over the course of the study and a work group had been formed, composed of Virginia's public institutions of higher education and the Virginia Press Association, to attempt to reach a compromise on this issue, no compromise was reached. On the recommendation of the Virginia Press Association and the Virginia Association of Broadcasters, the joint subcommittee took no action on this issue.

C. Year 2--Recommendations of the Joint Subcommittee

After conducting monthly meetings from June 1999 through January 2000, at which public comment was received, and working in concert with the work group, the joint subcommittee worked to determine the feasibility and desirability of the creation of a "sunshine office" in Virginia. Finding that the creation of a small, independent office that emphasized the importance of training, the quick resolution of FOIA disputes, and the issuance of nonbinding, advisory opinions were both feasible and desirable, the joint subcommittee recommended to the 2000 Session of the General Assembly the creation of the Virginia Freedom of Information Advisory Council to assist (i) the citizens of the Commonwealth in gaining ready access to records in the custody of public officials and free entry to meetings of public bodies wherein public business is being conducted and (ii) state and local government officials in meeting their statutory obligations through training, publication of educational materials, and quick response to questions. As a result, HB 551 and its Senate companion, SB 340 (Appendix K), were introduced in the 2000 Session. Additionally, the joint subcommittee recommended the introduction of HB 445 (Appendix K), which provided several housekeeping amendments to the Act.

PART III--Conclusion

During the course of its two-year study, the joint subcommittee received material and heard testimony from a large number of individuals and groups, maintained a website for increased public awareness of, and participation in, the work of the joint subcommittee, and successfully urged the resolution of controversial issues by study participants. The process educated all. The joint subcommittee would like to express its gratitude to all participants for their hard work and dedication.

¹² See November 12, 1999, Meeting of the Joint Subcommittee at page 36 supra.

Respectfully submitted,
Clifton A. Woodrum, *Chairman*
Joe T. May, *Vice Chairman*
Barnie K. Day
R. Edward Houck
William T. Bolling
John B. Edwards
Roger C. Wiley, Esquire

PART IV—Appendices

First Year of Study

- A. HJR No. 187 (1998)
- B. Redraft of Virginia Freedom of Information Act, Virginia Press Association
- C. Open Records: Comparison between redraft and current law
- D. Open Meetings: Comparison between redraft and current law
- E. Access to Criminal Records, Virginia Department of State Police
- F. Legislative Recommendations (HB 1985/SB 1023 and HJR 501)
- G. Meetings of the Joint Subcommittee
- H. Survey of FOIA Articles in Virginia Newspapers, June 1998 to January 1999

Second Year of Study

- I. HJR No. 501 (1999)
- J. "Sunshine Office" decision matrix
- K. Legislative Recommendations (HB 551/SB 340 and HB 445)
- L. Meetings of the Joint Subcommittee
- M. Survey of FOIA Articles in Virginia Newspapers, June 1999 to January 2000

\\DLAS1\SYSDATA\DLSDATA\FINGOVT\STUDIES\99STUDYS\HJR501-F\FOIAFINALRPT.doc

HOUSE JOINT RESOLUTION NO. 187

Establishing a joint subcommittee to study the Virginia Freedom of Information Act.

Agreed to by the House of Delegates, February 17, 1998
Agreed to by the Senate, March 10, 1998

WHEREAS, House Joint Resolution No. 416, agreed to by the 1997 Session of the General Assembly, established a joint subcommittee to study the Virginia Freedom of Information Act; and

WHEREAS, circumstances prevented the organization of the joint subcommittee created under HJR No. 416; and

WHEREAS, the need for careful consideration of the many complex administrative and policy issues related to the Virginia Freedom of Information Act (FOIA) has not diminished, and indeed, appears greater today; and

WHEREAS, the FOIA has been the subject of at least four studies since its enactment in 1968, with each study committee recommending important changes to ensure public access to the workings of government; and

WHEREAS, as a result of various amendments every year since 1968, there are currently over 100 exceptions contained in the FOIA which permit executive sessions or exempt the disclosure of certain official documents; and

WHEREAS, the Code of Virginia is replete with other exemptions to the FOIA which are not found in the FOIA itself, resulting in conflicting statutory interpretations and general confusion; and

WHEREAS, with the advent of technological changes, the methods of collection, processing, and keeping official records have changed dramatically, with the effect, on occasion, of limiting public access to government records and meetings; and

WHEREAS, the importance of the right of the people of the Commonwealth to have free access to the affairs of their government cannot be overstated; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That a joint subcommittee be established to study the Virginia Freedom of Information Act. The joint subcommittee shall be composed of 7 members, which shall include 5 legislators and 2 citizens as follows: 3 members of the House of Delegates to be appointed by the Speaker of the House according to Rule 16 of the House Rules; 2 members of the Senate to be appointed by the Senate Committee on Privileges and Elections; 1 press or media representative to be appointed by the Speaker of the House; and 1 local government representative recommended by the Virginia Municipal League and the Virginia Association of Counties to be appointed by the Senate Committee on Privileges and Elections.

In conducting its study, the joint subcommittee shall, among other things, examine other provisions of the Code of Virginia affecting public access to government records and meetings in order to determine whether any revisions to the Virginia Freedom of Information Act are necessary.

The direct costs of this study shall not exceed \$6,250.

The Division of Legislative Services shall provide staff support for the study. All agencies of the Commonwealth shall provide assistance to the joint subcommittee, upon request.

The joint subcommittee shall complete its work in time to submit its findings and recommendations to the Governor and the 1999 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.

Implementation of this resolution is subject to subsequent approval and certification by the Joint Rules Committee. The Committee may withhold expenditures or delay the period for the conduct of the study.

Draft Revision
Virginia Freedom of Information Act
Prepared for the
Joint Legislative Subcommittee
created by H.J.R. 187

2.1-

340.1

“... 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.”

Friday, June 12, 1998
10 a.m., House Room C
General Assembly Building
Richmond, Virginia

V i r g i n i a
PRESS
A s s o c i a t i o n

804-550-2361

DRAFT

1 A BILL to amend and reenact §§ 2.1-340.1, 2.1-241, 2.1-341.1, 2.1-341.2, 2.1-342, 2.1-342.2,
2 2.1-343, 2.1-343.1, 2.1-343.2, 2.1-344, 2.1-344.1, 2.1-346, 2.1-346.1, 2.1-116.05, 2.1-
3 382, 9-362, 15.2-1722, 19.2-368.3, 23-50.16:32, 32.1-283.1, 52-8.3, and 54.1-2517 of
4 the Code of Virginia, to amend the Code of Virginia by adding a section numbered 2.1-
5 342.01, and to repeal §§ 2.1-342.1 and 2.1-345 of the Code of Virginia, relating to the
6 Freedom of Information Act.

7 **Be it enacted by the General Assembly of Virginia:**

8 **1. That §§ 2.1-340.1, 2.1-241, 2.1-341.1, 2.1-341.2, 2.1-342, 2.1-342.2, 2.1-343, 2.1-343.1,**
9 **2.1-343.2, 2.1-344, 2.1-344.1, 2.1-346, 2.1-346.1, 2.1-116.05, 2.1-382, 9-362, 15.2-1722,**
10 **19.2-368.3, 23-50.16:32, 32.1-283.1, 52-8.3, and 54.1-2517 of the Code of Virginia are**
11 **amended and reenacted, and that the Code of Virginia is amended by adding a section**
12 **numbered 2.1-342.01 as follows:**

13 § 2.1-340.1. Policy of chapter.

14 The affairs of government shall not be conducted in an atmosphere of secrecy. Public
15 records are the property of the people of the Commonwealth, and the people are to be the
16 beneficiary of any action taken at any level of government. By enacting this chapter, the
17 General Assembly ensures the people of ~~this~~ the Commonwealth ready access to records in
18 the custody of public officials and free entry to meetings of public bodies wherein the business
19 of the people is being conducted. ~~Committees or subcommittees of public bodies created to~~
20 ~~perform delegated functions of a public body or to advise a public body shall also conduct their~~
21 ~~meetings and business pursuant to this chapter. The affairs of government are not intended to~~
22 ~~be conducted in an atmosphere of secrecy since at all times the public is to be the beneficiary~~
23 ~~of any action taken at any level of government. Unless the~~ a public body or public official
24 specifically elects to exercise an exemption provided by this chapter or any other statute.
25 every meeting shall be open to the public and ~~all reports, documents and other material,~~ a

DRAFT

all public records shall be available for disclosure inspection and copying upon request. All public records and meetings shall be presumed open, and it is the intention of the General Assembly that public officials exercise their discretion whenever possible to avoid the invocation of any exemption. In any action to enforce the provisions of this chapter, the public body or public official invoking an exemption shall bear the burden of proving by clear and convincing evidence that a claimed exemption has been properly invoked.

~~This~~The provisions of this chapter shall be liberally construed to promote an increased awareness by all persons of governmental activities and afford every opportunity to citizens to witness the operations of government. Any exception or exemption from applicability public access to records of meetings shall be narrowly construed in order that no thing which should be public may be hidden from any person, and no matter shall be hidden from the public unless specifically made exempt pursuant to this chapter or other specific provision of law. This chapter shall not be construed to discourage the free discussion by government officials or employees of public matters with the citizens of the Commonwealth.

~~The public body~~All public bodies and public officials shall make reasonable efforts to reach an agreement with the a 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 the context~~As used in this chapter unless the context requires a different meaning:

~~"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 unless disclosure is prohibited or~~

DRAFT

1 ~~restricted under § 19.2-11.2. The identity of any individual providing information about a crime~~
2 ~~or criminal activity under a promise of anonymity shall not be disclosed.~~

3 ~~"Executive meeting" or "closed meeting"~~ "Closed meeting" means a meeting from
4 which the public is excluded.

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

7 "Meeting" or "meetings" means the meetings including work sessions, when sitting
8 physically, or through telephonic or video equipment pursuant to § 2.1-343.1, as a body or
9 entity, or as an informal assemblage of (i) as many as three members, or (ii) a quorum, if less
10 than three, of the constituent membership, wherever held, with or without minutes being taken,
11 whether or not votes are cast, of any public body, ~~including any legislative body, authority,~~
12 ~~board, bureau, commission, district or agency of the Commonwealth or of any political~~
13 ~~subdivision of the Commonwealth, including cities, towns and counties; municipal council~~
14 ~~governing bodies of counties, school boards and planning commissions; boards of visitors of~~
15 ~~state institutions of higher education; and other organizations, corporations or agencies in the~~
16 ~~Commonwealth, supported wholly or principally by public funds. The notice provisions of this~~
17 ~~chapter shall not apply to the said informal meetings or gatherings of the members of the~~
18 ~~General Assembly. Nothing in this chapter shall be construed to make unlawful the gathering~~
19 ~~or attendance of two or more members of a public body (i) at any place or function where no~~
20 ~~part of the purpose of such gathering or attendance is the discussion or transaction of any~~
21 ~~public business, and such gathering or attendance was not called or prearranged with any~~
22 ~~purpose of discussing or transacting any business of the public body or (ii) at a public meeting~~
23 ~~whose purpose is to inform the electorate and not to transact public business or to hold~~
24 ~~discussions relating to the transaction of public business, even though the performance of the~~
25 ~~members individually or collectively in the conduct of public business may be a topic of~~
26 ~~discussion or debate at such public meeting. The gathering of employees of a public body~~
27 shall not be deemed a "meeting" subject to the provisions of this chapter.

DRAFT

~~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.

"Personal working papers" means those records which are prepared by a public official solely for his private deliberative use, or prepared at the personal request of the public official by a subordinate for the sole private use of the public official.

~~"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 legislative body; any 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. It shall include any committee or subcommittee which has private sector members or citizen members. Corporations organized by the Virginia Retirement System are "public bodies" for purposes of this chapter.~~

For the purposes of this chapter, the following entities shall be deemed "public bodies:"
(i) all foundations which exist for the primary purpose of supporting (a) a public institution of higher education or (b) any governmental function; (ii) all public-private joint ventures which

DRAFT

1 receive more than twenty-five percent of their funds from or through a public body; and (iii) the
2 State Corporation Commission and any corporation organized by the Virginia Retirement
3 System.

4 "Public records" means all writings and recordings which consist of letters, words or
5 numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating,
6 photography, magnetic impulse, optical or magneto-optical form, mechanical or electronic
7 recording or other form of data compilation, however stored, and regardless of physical form or
8 characteristics, prepared or owned by, or in the possession of a public body or its officers,
9 employees or agents in the transaction of public business.

10 "Scholastic records" means those records, files, documents, and other materials
11 containing information ~~about~~ directly related to a student and maintained by a public body
12 which is an educational agency or institution or by a person acting for such agency or
13 institution, ~~but,~~ However, for the purpose of access by a student, ~~does~~ "scholastic records"
14 shall not include (i) financial records of a parent or guardian nor (ii) records of instructional,
15 supervisory, and administrative personnel and educational personnel ancillary thereto, which
16 are in the sole possession of the maker thereof and which are not accessible or revealed to
17 any other person except a substitute. "Scholastic records" shall not include the student's
18 name, address, date and place of birth, major field of study, participation in officially
19 recognized activities and sports, weight and height of members of athletic teams, dates of
20 attendance, degrees and awards received, and the most recent previous educational
21 institution attended by the student. Nor shall it include any information, such as student
22 election returns, which relates to a student body at large rather than an individual.

23 § 2.1-341.1. Notice of chapter; presumption in enforcement actions.

24 A. Any person elected, reelected, appointed or reappointed to any body not excepted
25 from this chapter shall be furnished by the public body's administrator or legal counsel with a
26 copy of this chapter within two weeks following election, reelection, appointment or
27 reappointment.

DRAFT

2 B. In any action to enforce the provisions of this chapter, the court shall conclusively
3 presume that public officials have read and are familiar with the provisions of this chapter.

4 § 2.1-341.2. Public bodies and records to which chapter inapplicable: voter registration
5 and election records.

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

7 1. The Virginia Parole Board, except that (i) information from the Virginia Parole Board
8 providing the number of inmates considered by such Board for discretionary parole, the
9 number of inmates granted or denied parole, and the number of parolees returned to the
10 custody of the Department of Corrections solely as a result of a determination by such Board
11 of a violation of parole shall be open to inspection and available for release, on a monthly
12 basis, as provided by § 2.1-342, and (ii) all records concerning the finances of the Virginia
13 Parole Board shall be public records and subject to the provisions of this chapter. The
14 information required by clause (i) shall be furnished by offense, sex, race, age of the inmate,
15 and the locality in which the conviction was obtained, upon the request of the party seeking
16 the information;

17 2. Petit juries and grand juries;

18 3. Family assessment and planning teams established pursuant to § 2.1-753; and

19 4. The Virginia State Crime Commission.

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

23 § 2.1-342. ~~Official~~ Public records to be open to inspection; procedure for requesting
24 records and responding to request; charges; ~~exceptions to application of chapter.~~

25 A. Except as otherwise specifically provided by law, all ~~official~~ public records shall be
26 open to inspection and copying by any citizens of the Commonwealth during the regular office
27 hours of the custodian of such records. Access to such records shall not be denied to citizens
28 of the Commonwealth, representatives of newspapers and magazines with circulation in the

DRAFT

1 Commonwealth, and representatives of radio and television stations broadcasting in or into the
2 Commonwealth. The custodian of such records shall take all necessary precautions for their
3 preservation and safekeeping. ~~Any public body covered under~~

4 B. A request for public records shall identify the requested records with reasonable
5 specificity. The request need not be in writing or make reference to this chapter in order to
6 invoke the provisions of this chapter shall make an initial response to citizens requesting
7 records open to inspection within five work days after the receipt of the request by the public
8 body or to impose the time limits for response by a public body. Any public body which is
9 subject to this chapter and which is the custodian of the requested records. Such citizen
10 request shall designate the requested records with reasonable specificity. A specific reference
11 to this chapter by the requesting citizen in his request shall not be necessary to invoke the
12 provisions of this chapter and the time limits for response by the public body. The response by
13 the public body within such five work days shall be shall immediately, if feasible, but in a.
14 cases within five working days of receiving a request, make one of the following responses:

15 1. The requested records ~~shall~~will be provided to the requesting citizen requester.

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

20 3. ~~If the public body determines that an exemption applies to a portion of the requested~~
21 ~~records, it may delete or excise that portion of the records to which an exemption applies, but~~
22 ~~shall disclose the remainder of the requested records and provide to the requesting citizen a~~
23 ~~written explanation as to why these portions of the record are not available to the requesting~~
24 ~~citizen with the explanation making specific reference to the applicable Code sections which~~
25 ~~make that portion of the requested records exempt. Any reasonably segregatable portion of an~~
26 ~~official record shall be provided to any person requesting the record after the deletion of the~~
27 ~~exempt portion. The requested records will be entirely withheld because their release is~~

DRAFT

1 prohibited by law or the custodian has exercised his discretion to withhold the records in
2 accordance with the chapter. Such response shall (i) be in writing, (ii) identify with reasonable
3 particularity the volume and subject matter of withheld records, and (iii) cite, as to each
4 category of withheld records, the specific Code section which authorizes the withholding of the
5 records. Any exemption not identified in the public body's initial response shall be waived and
6 may not be asserted thereafter for any purpose, including the defense of any action brought to
7 enforce this chapter.

8 3. The requested records will be provided in part and withheld in part because the
9 release of part of the records is prohibited by law or the custodian has exercised his discretion
10 to withhold a portion of the records in accordance with this chapter. Such response shall (i) be
11 in writing, (ii) identify with reasonable particularity the subject matter of withheld portions, and
12 (iii) cite, as to each category of withheld records, the specific Code section which authorizes
13 the withholding of the records. Any exemption not identified in the public body's initial
14 response shall be waived and may not be asserted thereafter for any purpose, including the
15 defense of any action brought to enforce this chapter. When a portion of a requested record is
16 withheld, the public body may delete or excise only that portion of the record to which an
17 exemption applies and shall release the remainder of the record.

18 ~~4. If the public body determines that it is practically impossible~~ It is not practically
19 possible to provide the requested records or to determine whether they are available within the
20 five-work-day period, the public body shall so inform the requesting citizen and shall have.
21 Such response shall be in writing and specify the conditions which make a response
22 impossible. If response is made within five working days, the public body shall have an
23 additional seven work days in which to provide one of the three preceding responses.

24 ~~Nothing in this section shall prohibit any public body from petitioning C.~~ Any public
25 body may petition the appropriate court for additional time to respond to a request for records
26 when the request is for an extraordinary volume of records and a response by the public body
27 within the time required by this chapter will prevent the public body from meeting its

DRAFT

1 operational responsibilities. Before proceeding with ~~this~~ the petition, however, the public body
2 shall make reasonable efforts to reach an agreement with the requester concerning the
3 production of the records requested.

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

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

10 ~~The~~ F. A public body may make reasonable charges for the copying, search time and
11 computer time expended in the supplying of such records its actual cost incurred in accessing,
12 duplicating or supplying the records. No public body shall impose any extraneous,
13 intermediary or surplus fees or expenses to recoup the general costs associated with creating
14 or maintaining records or transacting the general business of the public body, including routine
15 labor or administrative costs incurred in responding to a request. Any duplicating fee charged
16 by a public body in excess of fifteen cents per nine-inch or fourteen-inch page supplied shall
17 be deemed excessive and shall constitute a violation of this chapter. The public body may
18 also make a reasonable charge for preparing documents the cost incurred in supplying
19 records produced from a geographic information system at the request of anyone other than
20 the owner of the land that is the subject of the request. However, such charges shall not
21 exceed the actual cost to the public body in supplying such records or documents, except that
22 the public body may charge, on a pro rata per acre basis, for the cost of creating topographical
23 maps developed by the public body, for such maps or portions thereof, which encompass a
24 contiguous area greater than fifty acres. ~~Such~~ All charges for the supplying of requested
25 records shall be estimated in advance at the request of the citizen. ~~The public body may~~
26 require the advance payment of charges which are subject to advance determination.

DRAFT

1 In any case where a public body determines in advance that ~~search and copying~~
2 charges for producing the requested ~~documents~~ records are likely to exceed \$200, the public
3 body may, before continuing to process the request, require the ~~citizen requesting the~~
4 ~~information requester~~ to agree to payment of ~~an amount not to exceed the advance~~
5 ~~determination by five percent~~ a reasonable deposit, not to exceed fifty dollars. The deposit
6 shall be credited toward the final cost of supplying the requested records. The period within
7 which the public body ~~must~~ shall respond under this section shall be tolled for the amount of
8 time that elapses between notice of the advance determination and the response of the ~~citizen~~
9 ~~requesting the information requester~~.

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

13 G. Records maintained by a public body in an electronic data processing system,
14 computer database, or any other structured collection of data shall be made available to a
15 requester at a reasonable cost, not to exceed the actual cost in accordance with subsection F.
16 No public body shall design any electronic or other database in a format which combines
17 exempt and nonexempt records in a manner which denies public access to any record which
18 is otherwise made available under this chapter.

19 H. Beginning July 1, 1997, every ~~Every~~ public body of state government shall compile,
20 and annually update, an index of computer databases which contains at a minimum those
21 databases created by them on or after July 1, 1997. "Computer database" means a structured
22 collection of data or ~~documents-records~~ residing in a computer. Such index shall be ~~an official~~
23 a public record and shall include, at a minimum, the following information with respect to each
24 database listed therein: a list of data fields, a description of the format or record layout, the
25 date last updated, a list of any data fields to which public access is restricted, a description of
26 each format in which the database can be copied or reproduced using the public body's
27 computer facilities, and a schedule of fees for the production of copies in each available form.

DRAFT

1 The form, context, language, and guidelines for the indices and the databases to be indexed
2 shall be developed by the Director of the Department of Information Technology in
3 consultation with the ~~State Librarian of Virginia~~ and the State Archivist. The public body shall
4 not be required to disclose its software security, including passwords.

5 ~~Public bodies shall not be required to create or prepare a particular requested record if~~
6 ~~it does not already exist. Public bodies may, but shall not be required to, abstract or~~
7 ~~summarize information from official records or convert an official record available in one form~~
8 ~~into another form at the request of the citizen. The produce records maintained in an electronic~~
9 ~~database in any tangible medium identified by the requester, if that medium is used by the~~
10 ~~public body in the regular course of business. No public body shall be required to produce~~
11 ~~records from an electronic database in a tangible format not regularly used by the public body.~~
12 ~~However, the public body shall make reasonable efforts to reach an agreement with the~~
13 ~~requester concerning the production of the records requested provide records in any form~~
14 ~~under such terms and conditions as agreed between the requester and public body, including~~
15 ~~the payment of reasonable costs. The excision of exempt fields of information from a~~
16 ~~database, the conversion of data from one available format to another, or the routine~~
17 ~~manipulation of fields of information contained in a database prior to production for the~~
18 ~~requester shall not be deemed the creation, preparation or compilation of a new public record.~~

19 ~~Failure to make any response to a request for records shall be a violation of this~~
20 ~~chapter and deemed a denial of the request.~~

21 ~~B. § 2.1-342.01. Exclusions to application of chapter.~~

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

24 ~~1. Memoranda, correspondence, evidence and complaints related to criminal~~
25 ~~investigations; adult arrestee photographs when necessary to avoid jeopardizing an~~
26 ~~investigation in felony cases until such time as the release of such photograph will no longer~~
27 ~~jeopardize the investigation; reports submitted to the state and local police, to investigators~~

DRAFT

1 authorized pursuant to ~~§ 53.1-16~~ and to the campus police departments of public institutions of
2 higher education as established by Chapter 17 (~~§ 23-232 et seq.~~) of Title 23 in confidence;
3 portions of records of local government crime commissions that would identify individuals
4 providing information about crimes or criminal activities under a promise of anonymity; records
5 of local police departments relating to neighborhood watch programs that include the names,
6 addresses, and operating schedules of individual participants in the program that are provided
7 to such departments under a promise of confidentiality; and all records of persons imprisoned
8 in penal institutions in the Commonwealth provided such records relate to the imprisonment.
9 Information in the custody of law enforcement officials relative to the identity of any individual
10 other than a juvenile who is arrested and charged, and the status of the charge or arrest, shall
11 not be excluded from the provisions of this chapter.

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

18 ~~2-~~ Confidential records of all investigations of applications for licenses and permits, and
19 all licensees and permittees made by or submitted to the Alcoholic Beverage Control Board,
20 the State Lottery Department, the Virginia Racing Commission, or the Charitable Gaming
21 Commission.

22 ~~3-2.~~ State income, business, and estate tax returns, personal property tax returns,
23 scholastic and confidential records held pursuant to § 58.1-3.

24 3. Scholastic records and personnel records containing information concerning
25 identifiable individuals, except that such access shall not be denied to the person who is the
26 subject thereof, and medical or, in the case of scholastic records, the parent or legal guardian
27 of the student. The parent or legal guardian of a student may prohibit, by written request, the

DRAFT

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

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

12 4. Medical and mental records, except that such records can ~~can~~ may be personally
13 reviewed by the subject person or a physician of the subject person's choice; ~~however~~
14 However, the subject person's mental records may not be personally reviewed by such person
15 when the subject person's treating physician has made a part of such person's records a
16 written statement that in his opinion a review of such records by the subject person would be
17 injurious to the subject person's physical or mental health or well-being.

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

DRAFT

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 copying~~ as provided in ~~subsection A of this section~~ § 2.1-342. 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~~ the right of access may be asserted by the subject person.

~~4. Memoranda, working papers and correspondence (i) held by or requested from~~ 5. The personal working papers of the Governor, Lieutenant Governor, and the Attorney General; the members of the General Assembly or the Division of Legislative Services or (ii) held or requested 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 institution of higher education. This exclusion shall not apply to memoranda, studies or other papers held or requested by the mayor or other chief executive officer of any political subdivision which are specifically concerned with the evaluation of performance of the duties and functions of any locally elected official and were prepared after June 30, 1992, nor shall this exclusion apply to agenda packets prepared and distributed to public bodies for use at a meeting.

~~Except as provided in § 30-28.18, memoranda, working papers and correspondence of a member of the General Assembly held by the Division of Legislative Services shall not be released by the Division without the prior consent of the member; the mayor or chief executive officer of any political subdivision of the Commonwealth; or the president or other chief executive officer of any state-supported institution of higher education.~~

DRAFT

1 ~~5. Written opinions of the city, county and town attorneys of the cities, counties and~~
2 ~~towns in the Commonwealth and any other writing~~ 6. Records protected by the attorney-client
3 privilege.

4 ~~6. Memoranda,~~ 7. Legal memoranda and working papers and records compiled
5 specifically for use in litigation or ~~as a part of~~ for use in an active administrative investigation
6 concerning a matter which is properly the subject of ~~an executive or a~~ a closed meeting under §
7 2.1-344 and ~~material furnished in confidence with respect thereto.~~

8 ~~7-8.~~ Confidential letters and statements of recommendation placed in the records of
9 educational agencies or institutions respecting (i) admission to any educational agency or
10 institution, (ii) an application for employment, or (iii) receipt of an honor or honorary
11 recognition.

12 ~~8-9.~~ Library records which can be used to identify both (i) any library patron who has
13 borrowed material from a library and (ii) the material such patron borrowed.

14 ~~9-10.~~ Any test or examination used, administered or prepared by ~~any a~~ a public body for
15 purposes of evaluation of (i) any student or any student's performance, (ii) any employee or
16 employment seeker's qualifications or aptitude for employment, retention, or promotion, or (iii)
17 qualifications for any license or certificate issued by ~~any a~~ a public body.

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

24 When, in the reasonable opinion of such public body, any such test or examination no
25 longer has any potential for future use, and the security of future tests or examinations will not
26 be jeopardized, ~~such the~~ test or examination shall be made available to the public. Howeve
27 minimum competency tests administered to public school children shall be made available to

DRAFT

1 the public contemporaneously with statewide release of the scores of those taking such tests,
2 but in no event shall such tests be made available to the public later than six months after the
3 administration of such tests.

4 ~~40-11.~~ Applications for admission to examinations or for licensure and scoring records
5 maintained by the Department of Health Professions or any board in that department on
6 individual licensees or applicants. However, such material may be made available during
7 normal working hours for copying, at the requester's expense, by the individual who is the
8 subject thereof, in the offices of the Department of Health Professions or in the offices of any
9 health regulatory board, whichever may possess the material.

10 ~~41-12.~~ Records of active investigations being conducted by the Department of Health
11 Professions or by any health regulatory board in the Commonwealth.

12 ~~42. Memoranda, legal opinions, working papers and records-13. Records~~ recorded in
13 or compiled exclusively for ~~executive or~~ use in closed meetings lawfully held pursuant to § 2.1-
14 344. However, no record which is otherwise open to inspection under this chapter may be
15 deemed exempt by virtue of the fact that it has been reviewed or discussed in a closed
16 meeting.

17 ~~43-14.~~ Reports, documentary evidence and other information as specified in §§ 2.1-
18 373.2 and 63.1-55.4.

19 ~~14. Proprietary information gathered by or for the Virginia Port Authority as provided in~~
20 ~~§ 62.1-132.4 or § 62.1-134.1.~~

21 15. Contract cost estimates prepared for the confidential use of the Department of
22 Transportation in awarding contracts for construction or the purchase of goods or services and
23 records, ~~documents-records~~ and automated systems prepared for the Department's Bid
24 Analysis and Monitoring Program.

25 ~~16. Vendor proprietary information software which may be in the official records of a~~
26 ~~public body. For the purpose of this section, "vendor proprietary software" means computer~~

DRAFT

1 ~~programs acquired from a vendor for purposes of processing data for agencies or politic~~
2 ~~subdivisions of the Commonwealth.~~

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

10 ~~18.~~ Financial statements not publicly available filed with applications for industrial
11 development financings.

12 ~~19.~~ 17. Lists of registered owners of bonds issued by a political subdivision of the
13 Commonwealth, whether the lists are maintained by the political subdivision itself or by
14 single fiduciary designated by the political subdivision.

15 ~~20.~~ Confidential proprietary records, voluntarily provided by private business pursuant
16 to a promise of confidentiality from the Department of Business Assistance, the Virginia
17 Economic Development Partnership or local or regional industrial or economic development
18 authorities or organizations, used by the Department, the Partnership, or such entities for
19 business, trade and tourism development; and memoranda, working papers or other records
20 related to businesses that are considering locating or expanding in Virginia, prepared by the
21 Partnership, where competition or bargaining is involved and where, if such records are made
22 public, the financial interest of the governmental unit would be adversely affected.

23 ~~21.~~ 18. Information which was filed as confidential under the Toxic Substances
24 Information Act (§ 32.1-239 et seq.), as such Act existed prior to July 1, 1992.

25 ~~22.~~ Documents as specified in ~~§ 58.1-3.~~

26 ~~23.~~ 19. Confidential records, including victim identity, provided to or obtained by staf
27 a rape crisis center or a program for battered spouses.

DRAFT

1 | ~~24-20.~~ Computer software developed by or for a state agency, state-supported
2 | institution of higher education or political subdivision of the Commonwealth.

3 | ~~25-21.~~ Investigator notes, and other correspondence and information, furnished in
4 | confidence with respect to an active investigation of individual employment discrimination
5 | complaints made to the Department of Personnel and Training; ~~however.~~ However, nothing in
6 | this section shall prohibit the disclosure of information taken from inactive reports in a form
7 | which does not reveal the identity of charging parties, persons supplying the information or
8 | other individuals involved in the investigation.

9 | ~~26-22.~~ Fisheries data which would permit identification of any person or vessel, except
10 | when required by court order as specified in § 28.2-204.

11 | ~~27-23.~~ Records of active investigations being conducted by the Department of Medical
12 | Assistance Services pursuant to Chapter 10 (§ 32.1-323 et seq.) of Title 32.1.

13 | ~~28-24.~~ ~~Documents-records~~ and writings furnished by a member of the General
14 | Assembly to a meeting of a standing committee, special committee or subcommittee of his
15 | house established solely for the purpose of reviewing members' annual disclosure statements
16 | and supporting materials filed under § 2.1-639.40 or of formulating advisory opinions to
17 | members on standards of conduct, or both.

18 | ~~29-25.~~ Customer account information of a public utility affiliated with a political
19 | subdivision of the Commonwealth, including the customer's name and service address, but
20 | excluding the amount of utility service provided and the amount of money paid for such utility
21 | service.

22 | ~~30-26.~~ Investigative notes and other correspondence and information furnished in
23 | confidence with respect to an investigation or conciliation process involving an alleged
24 | unlawful discriminatory practice under the Virginia Human Rights Act (§ 2.1-714 et seq.);
25 | ~~however.~~ However, nothing in this section shall prohibit the distribution of information taken
26 | from inactive reports in a form which does not reveal the identity of the parties involved or
27 | other persons supplying information.

DRAFT

1 ~~31-27.~~ Investigative notes; proprietary information not published, copyrighted or
2 patented; information obtained from employee personnel records; personally identifiable
3 information regarding residents, clients or other recipients of services; and other
4 correspondence and information furnished in confidence to the Department of Social Services
5 in connection with an active investigation of an applicant or licensee pursuant to Chapters 9 (§
6 63.1-172 et seq.) and 10 (§ 63.1-195 et seq.) of Title 63.1; ~~however.~~ However, nothing in this
7 section shall prohibit disclosure of information from the records of completed investigations in
8 a form that does not reveal the identity of complainants, persons supplying information, or
9 other individuals involved in the investigation.

10 ~~32. Reports, manuals, specifications, documents, minutes or recordings of staff~~
11 ~~meetings or other information or materials of the Virginia Board of Corrections, the Virginia~~
12 ~~Department of Corrections or any institution thereof to the extent, as determined by the~~
13 ~~Director of the Department of Corrections or his designee or of the Virginia Board of Juvenile~~
14 ~~Justice, the Virginia Department of Juvenile Justice or any facility thereof to the extent as~~
15 ~~determined by the Director of the Department of Juvenile Justice, or his designee, that~~
16 ~~disclosure or public dissemination of such materials would jeopardize the security of any~~
17 ~~correctional or juvenile facility or institution, as follows:~~

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

19 ~~(ii) Engineering and architectural drawings of correctional and juvenile facilities, and~~
20 ~~operational specifications of security systems utilized by the Departments, provided the~~
21 ~~general descriptions of such security systems, cost and quality shall be made available to the~~
22 ~~public;~~

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

25 ~~(iv) Internal security audits of correctional and juvenile facilities, but only to the extent~~
26 ~~that they specifically disclose matters described in (i), (ii), or (iii) above or other specif~~

DRAFT

1 ~~operational details the disclosure of which would jeopardize the security of a correctional or~~
2 ~~juvenile facility or institution;~~

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

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

13 ~~(vii) Logs or other documents containing information on movement of inmates, juvenile~~
14 ~~clients or employees; and~~

15 ~~(viii) Documents disclosing contacts between inmates, juvenile clients and law~~
16 ~~enforcement personnel.~~

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

20 ~~33. Personal information, as defined in § 2.1-370, (i) filed with the Virginia Housing~~
21 ~~Development Authority concerning individuals who have applied for or received loans or other~~
22 ~~housing assistance or who have applied for occupancy of or have occupied housing financed,~~
23 ~~owned or otherwise assisted by the Virginia Housing Development Authority, (ii) concerning~~
24 ~~persons participating in or persons on the waiting list for federally funded rent assistance~~
25 ~~programs, or (iii) filed with any local redevelopment and housing authority created pursuant to~~
2 ~~§ 36-4 concerning persons participating in or persons on the waiting list for housing assistance~~

DRAFT

1 ~~programs funded by local governments or by any such authority. However, access to one~~
2 ~~own information shall not be denied.~~

3 ~~34-28. Documents-records~~ regarding the siting of hazardous waste facilities, except as
4 provided in § 10.1-1441, if disclosure of them would have a detrimental effect upon the
5 negotiating position of a governing body or on the establishment of the terms, conditions and
6 provisions of the siting agreement.

7 ~~35-29. Appraisals and cost estimates of real property subject to a proposed purchase,~~
8 ~~sale or lease, prior to the completion of such purchase, sale or lease.~~

9 ~~36-30. Records containing information on the site specific location of rare, threatened,~~
10 ~~endangered or otherwise imperiled plant and animal species, natural communities, caves, and~~
11 ~~significant historic and archaeological sites if, in the opinion of the public body which has the~~
12 ~~responsibility for such information, disclosure of the information would jeopardize the~~
13 ~~continued existence or the integrity of the resource. This exemption shall not apply to requer~~
14 ~~from the owner of the land upon which the resource is located.~~

15 ~~37-31. Official records-Records~~, memoranda, working papers, graphics, video or audio
16 tapes, production models, data and information of a proprietary nature produced by or for or
17 collected by or for the State Lottery Department relating to matters of a specific lottery game
18 design, development, production, operation, ticket price, prize structure, manner of selecting
19 the winning ticket, manner of payment of prizes to holders of winning tickets, frequency of
20 drawings or selections of winning tickets, odds of winning, advertising, or marketing, where
21 such official records have not been publicly released, published, copyrighted or patented.
22 Whether released, published or copyrighted, all game-related information shall be subject to
23 public disclosure under this chapter upon the first day of sales for the specific lottery game to
24 which it pertains.

25 ~~38-32. Official records-Records~~ of studies and investigations by the State Lottery
26 Department of (i) lottery agents, (ii) lottery vendors, (iii) lottery crimes under §§ 58.1-4C
27 through 58.1-4018, (iv) defects in the law or regulations which cause abuses in the

DRAFT

1 administration and operation of the lottery and any evasions of such provisions, or (v) the use
2 of the lottery as a subterfuge for organized crime and illegal gambling where such official
3 records have not been publicly released, published or copyrighted. All studies and
4 investigations referred to under subdivisions (iii), (iv) and (v) shall be ~~subject to public~~
5 ~~disclosure under this chapter open to inspection and copying~~ upon completion of the study or
6 investigation.

7 ~~39. Those portions of engineering and construction drawings and plans submitted for~~
8 ~~the sole purpose of complying with the building code in obtaining a building permit which~~
9 ~~would identify specific trade secrets or other information the disclosure of which would be~~
10 ~~harmful to the competitive position of the owner or lessee; however, such information shall be~~
11 ~~exempt only until the building is completed. Information relating to the safety or environmental~~
12 ~~soundness of any building shall not be exempt from disclosure.~~

13 ~~40. [Repealed.]~~

14 ~~41-33.~~ Records concerning reserves established in specific claims administered by the
15 Department of General Services through its Division of Risk Management as provided in
16 Article 5.1 (§ 2.1-526.1 et seq.) of Chapter 32 of this title, or by any county, city, or town.

17 ~~42-34.~~ Information and records collected for the designation and verification of trauma
18 centers and other specialty care centers within the Statewide Emergency Medical Services
19 System and Services pursuant to Article 2.1 (§ 32.1-111.1 et seq.) of Title 32.1.

20 ~~43-35.~~ Reports and court documents required to be kept confidential pursuant to §
21 37.1-67.3.

22 ~~44. [Repealed.]~~

23 ~~45-36.~~ Investigative notes; correspondence and information furnished in confidence
24 ~~with respect to an investigation; and official records otherwise e. exempted by this chapter or any~~
25 ~~Virginia statute, provided to or produced by or for the to the (i) Auditor of Public Accounts and~~
26 ~~the (ii) Joint Legislative Audit and Review Commission; or investigative notes,~~
27 ~~correspondence, documentation and information furnished and provided to or produced by or~~

DRAFT

1 ~~for the (iii)~~ Department of the State Internal Auditor with respect to an investigation initiated
2 through the State Employee Fraud, Waste and Abuse Hotline. ~~Nothing in this chapter shall~~
3 ~~prohibit disclosure of information from the records~~ Records of completed investigations shall
4 be disclosed in a form that does not reveal the identity of complainants, or persons supplying
5 information ~~or other individuals involved in the investigation; however, disclosure, unless such~~
6 to investigators pursuant to a promise of anonymity. Unless disclosure is prohibited by this
7 section, ~~of information from the records of completed investigations~~ the records disclosed shall
8 include, but ~~is not~~ be limited to, the agency involved, the identity of the person who is the
9 subject of the complaint, the nature of the complaint, and the actions taken to resolve the
10 complaint. ~~In the event~~ If an investigation does not lead to corrective action, the identity of the
11 person who is the subject of the complaint may be released only with the consent of the
12 subject person.

13 ~~46-37.~~ 46-37. Data formerly required to be submitted to the Commissioner of Health relati
14 to the establishment of new or the expansion of existing clinical health services, acquisition of
15 major medical equipment, or certain projects requiring capital expenditures pursuant to former
16 § 32.1-102.3:4.

17 ~~47-38.~~ 47-38. Documentation or other information which describes the design, function,
18 operation or access control features of any security system, whether manual or automated,
19 which is used to control access to or use of any automated data processing or
20 telecommunications system.

21 ~~48. Confidential financial statements, balance sheets, trade secrets, and revenue and~~
22 ~~cost projections provided to the Department of Rail and Public Transportation, provided such~~
23 ~~information is exempt under the federal Freedom of Information Act or the federal Interstate~~
24 ~~Commerce Act or other laws administered by the Interstate Commerce Commission or the~~
25 ~~Federal Rail Administration with respect to data provided in confidence to the Interstate~~
26 ~~Commerce Commission and the Federal Railroad Administration.~~

DRAFT

1 | ~~49-39.~~ In the case of corporations organized by the Virginia Retirement System, (i)
2 | proprietary information provided by, and financial information concerning, coventurers,
3 | partners, lessors, lessees, or investors, and (ii) records concerning the condition, acquisition,
4 | disposition, use, leasing, development, coventuring, or management of real estate the
5 | disclosure of which would have a substantial adverse impact on the value of such real estate
6 | or result in a competitive disadvantage to the corporation or subsidiary.

7 | ~~50. Confidential proprietary records related to inventory and sales, voluntarily provided~~
8 | ~~by private energy suppliers to the Department of Mines, Minerals and Energy, used by that~~
9 | ~~Department for energy contingency planning purposes or for developing consolidated~~
10 | ~~statistical information on energy supplies.~~

11 | ~~51. Confidential proprietary information furnished to the Board of Medical Assistance~~
12 | ~~Services or the Medicaid Prior Authorization Advisory Committee pursuant to Article 4 (§ 32.1-~~
13 | ~~331.12 et seq.) of Chapter 10 of Title 32.1.~~

14 | ~~52. [Repealed.]~~

15 | ~~53. Proprietary, commercial or financial information, balance sheets, trade secrets, and~~
16 | ~~revenue and cost projections provided by a private transportation business to the Virginia~~
17 | ~~Department of Transportation and the Department of Rail and Public Transportation for the~~
18 | ~~purpose of conducting transportation studies needed to obtain grants or other financial~~
19 | ~~assistance under the Intermodal Surface Transportation Efficiency Act of 1991 (P.L. 102-240)~~
20 | ~~for transportation projects, provided such information is exempt under the federal Freedom of~~
21 | ~~Information Act or the federal Interstate Commerce Act or other laws administered by the~~
22 | ~~Interstate Commerce Commission or the Federal Rail Administration with respect to data~~
23 | ~~provided in confidence to the Interstate Commerce Commission and the Federal Railroad~~
24 | ~~Administration. However, the exemption provided by this subdivision shall not apply to any~~
25 | ~~wholly owned subsidiary of a public body.~~

DRAFT

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

4 ~~55. Reports, documents, memoranda or other information or materials which describe~~
5 ~~any aspect of security used by the Virginia Museum of Fine Arts to the extent that disclosure~~
6 ~~or public dissemination of such materials would jeopardize the security of the Museum or any~~
7 ~~warehouse controlled by the Museum, as follows:~~

8 ~~a. Operational, procedural or tactical planning documents, including any training~~
9 ~~manuals to the extent they discuss security measures;~~

10 ~~b. Surveillance techniques;~~

11 ~~c. Installation, operation, or utilization of any alarm technology;~~

12 ~~d. Engineering and architectural drawings of the Museum or any warehouse;~~

13 ~~e. Transportation of the Museum's collections, including routes and schedules; or~~

14 ~~f. Operation of the Museum or any warehouse used by the Museum involving the:~~

15 ~~(1) Number of employees, including security guards, present at any time; or~~

16 ~~(2) Busiest hours, with the maximum number of visitors in the Museum.~~

17 ~~56. Reports, documents, memoranda or other information or materials which describe~~
18 ~~any aspect of security used by the Virginia Department of Alcoholic Beverage Control to the~~
19 ~~extent that disclosure or public dissemination of such materials would jeopardize the security~~
20 ~~of any government store as defined in Title 4.1, or warehouse controlled by the Department of~~
21 ~~Alcoholic Beverage Control, as follows:~~

22 ~~(i) Operational, procedural or tactical planning documents, including any training~~
23 ~~manuals to the extent they discuss security measures;~~

24 ~~(ii) Surveillance techniques;~~

25 ~~(iii) The installation, operation, or utilization of any alarm technology;~~

26 ~~(iv) Engineering and architectural drawings of such government stores or warehouse;~~

27 ~~(v) The transportation of merchandise, including routes and schedules; and~~

DRAFT

1 ~~(vi) The operation of any government store or the central warehouse used by the~~
2 ~~Department of Alcoholic Beverage Control involving the:~~

3 ~~a. Number of employees present during each shift;~~

4 ~~b. Busiest hours, with the maximum number of customers in such government store;~~

5 ~~and~~

6 ~~c. Banking system used, including time and place of deposits.~~

7 ~~57.40. Information required to be provided pursuant to § 54.1-2506.1.~~

8 ~~58. Confidential information designated as provided in subsection D of § 11.52 as trade~~
9 ~~secrets or proprietary information by any person who has submitted to a public body an~~
10 ~~application for prequalification to bid on public construction projects in accordance with~~
11 ~~subsection B of § 11.46.~~

12 ~~59.41. All information and records acquired during a review of any child death by the~~
1 ~~State Child Fatality Review Team established pursuant to § 32.1-283.1.~~

14 ~~60.42. Investigative notes, correspondence, documentation and information provided~~
15 ~~to or produced by or for the committee or the auditor with respect to an investigation or audit~~
16 ~~conducted pursuant to § 45.1-765.2, 15.2-825. Nothing in this section shall prohibit disclosure~~
17 ~~of information from the records of completed investigations or audits in a form that does not~~
18 ~~reveal the identity of complainants or persons supplying information pursuant to a promise of~~
19 ~~anonymity.~~

20 ~~61.43. Financial, medical, rehabilitative and other personal information concerning~~
21 ~~applicants for or recipients of loan funds submitted to or maintained by the Assistive~~
22 ~~Technology Loan Fund Authority under Chapter 11 (§ 51.5-53 et seq.) of Title 51.5.~~

23 ~~62. Confidential proprietary records which are voluntarily provided by a private entity~~
24 ~~pursuant to a proposal filed with a public entity under the Public-Private Transportation Act of~~
25 ~~1995 (§ 56.556 et seq.), pursuant to a promise of confidentiality from the responsible public~~
26 ~~entity, used by the responsible public entity for purposes related to the development of a~~
27 ~~qualifying transportation facility; and memoranda, working papers or other records related to~~

DRAFT

1 ~~proposals filed under the Public Private Transportation Act of 1995, where, if such records~~
2 ~~were made public, the financial interest of the public or private entity involved with such~~
3 ~~proposal or the process of competition or bargaining would be adversely affected. In order for~~
4 ~~confidential proprietary information to be excluded from the provisions of this chapter, the~~
5 ~~private entity shall (i) invoke such exclusion upon submission of the data or other materials for~~
6 ~~which protection from disclosure is sought, (ii) identify the data or other materials for which~~
7 ~~protection is sought, and (iii) state the reasons why protection is necessary. For the purposes~~
8 ~~of this subdivision, the terms public entity and private entity shall be defined as they are~~
9 ~~defined in the Public Private Transportation Act of 1995.~~

10 ~~63. Records of law enforcement agencies, to the extent that such records contain~~
11 ~~specific tactical plans, the disclosure of which would jeopardize the safety or security of law-~~
12 ~~enforcement personnel or the general public; engineering plans, architectural drawings, or~~
13 ~~operational specifications of governmental law enforcement facilities, including but not limit~~
14 ~~to courthouses, jails, and detention facilities, to the extent that disclosure could jeopardize the~~
15 ~~safety or security of law enforcement offices; however, general descriptions shall be provided~~
16 ~~to the public upon request.~~

17 ~~64. All records of the University of Virginia or the University of Virginia Medical Center~~
18 ~~which contain proprietary, business related information pertaining to the operations of the~~
19 ~~University of Virginia Medical Center, including its business development or marketing~~
20 ~~strategies and its activities with existing or future joint venturers, partners, or other parties with~~
21 ~~whom the University of Virginia Medical Center has formed, or forms, any arrangement for the~~
22 ~~delivery of health care, if disclosure of such information would be harmful to the competitive~~
23 ~~position of the Medical Center.~~

24 ~~65. 44. Patient level data collected by the Board of Health and not yet processed,~~
25 ~~verified, and released, pursuant to § 32.1-276.9, to the Board by the nonprofit organization~~
26 ~~with which the Commissioner of Health has contracted pursuant to § 32.1-276.4.~~

DRAFT

1 ~~66. Records of the Medical College of Virginia Hospitals Authority pertaining to any of~~
2 ~~the following: (i) an individual's qualifications for or continued membership on its medical or~~
3 ~~teaching staffs; proprietary information gathered by or in the possession of the Authority from~~
4 ~~third parties pursuant to a promise of confidentiality; contract cost estimates prepared for~~
5 ~~confidential use in awarding contracts for construction or the purchase of goods or services;~~
6 ~~data, records or information of a proprietary nature produced or collected by or for the~~
7 ~~Authority or members of its medical or teaching staffs; financial statements not publicly~~
8 ~~available that may be filed with the Authority from third parties; the identity, accounts or~~
9 ~~account status of any customer of the Authority; consulting or other reports paid for by the~~
10 ~~Authority to assist the Authority in connection with its strategic planning and goals; and the~~
11 ~~determination of marketing and operational strategies where disclosure of such strategies~~
12 ~~would be harmful to the competitive position of the Authority; and (ii) data, records or~~
1 ~~information of a proprietary nature produced or collected by or for employees of the Authority,~~
14 ~~other than the Authority's financial or administrative records, in the conduct of or as a result of~~
15 ~~study or research on medical, scientific, technical or scholarly issues, whether sponsored by~~
16 ~~the Authority alone or in conjunction with a governmental body or a private concern, when~~
17 ~~such data, records or information have not been publicly released, published, copyrighted or~~
18 ~~patented.~~

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

25 ~~68. Confidential proprietary records which are provided by a franchisee under § 15.1-~~
26 ~~43.1 to its franchising authority pursuant to a promise of confidentiality from the franchising~~
27 ~~authority which relates to the franchisee's potential provision of new services, adoption of new~~

DRAFT

~~1 technologies or implementation of improvements, where such new services, technologies or
2 improvements have not been implemented by the franchisee on a nonexperimental scale in
3 the franchise area, and where, if such records were made public, the competitive advantage or
4 financial interests of the franchisee would be adversely affected. In order for confidential
5 proprietary information to be excluded from the provisions of this chapter, the franchisee shall
6 (i) invoke such exclusion upon submission of the data or other materials for which protection
7 from disclosure is sought, (ii) identify the data or other materials for which protection is sought,
8 and (iii) state the reason why protection is necessary.~~

9 ~~69. 45.~~ Records of the Intervention Program Committee within the Department of
10 Health Professions to the extent such records may identify any practitioner who may be, or
11 who is actually, impaired to the extent disclosure is prohibited by § 54.1-2517.

12 ~~70. 46.~~ Records submitted as a grant application, or accompanying a grant application,
13 to the Commonwealth Neurotrauma Initiative Advisory Board pursuant to Article 12 (§ 32
14 73.1 et seq.) of Chapter 2 of Title 32.1, to the extent such records contain: (i) medical or
15 mental records, or other data identifying individual patients, or (ii) proprietary business or
16 research-related information produced or collected by the applicant in the conduct of or as a
17 result of study or research on medical, rehabilitative, scientific, technical or scholarly issues,
18 when such information has not been publicly released, published, copyrighted or patented, if
19 the disclosure of such information would be harmful to the competitive position of the
20 applicant.

21 ~~71. 47.~~ Information which would disclose the security aspects of a system safety
22 program plan adopted pursuant to 49 C.F.R. Part 659 by the Commonwealth's designated Rail
23 Fixed Guideway Systems Safety Oversight agency; and information in the possession of such
24 agency the release of which would jeopardize the success of an ongoing investigation of a rail
25 accident or other incident threatening railway safety.

DRAFT

1 ~~72. Documents and other information of a proprietary nature furnished by a supplier of~~
2 ~~charitable gaming supplies to the Charitable Gaming Commission pursuant to subsection E of~~
3 ~~§ 18.2-340.34.~~

4 ~~73-48.~~ Personal information, as defined in § 2.1-379, provided to the Board of the
5 Virginia Higher Education Tuition Trust Fund or its employees by or on behalf of individuals
6 who have requested information about, applied for, or entered into prepaid tuition contracts
7 pursuant to Chapter 4.9 (§ 23-38.75 et seq.) of Title 23. Nothing in this subdivision shall be
8 construed to prohibit disclosure or publication of information in a statistical or other form which
9 does not identify individuals or provide personal information. Individuals shall be provided
10 access to their own personal information.

11 49. Records of any person which contain information that is a trade secret, including
12 but not limited to, a formula, pattern, compilation, program, device, method, technique or
13 process that (i) derives independent economic value, actual or potential, from not being
14 generally known to, and not being readily ascertainable by proper means by, other persons
15 who can obtain economic value from its disclosure or use and (ii) is the subject of efforts that
16 are reasonable under the circumstances to maintain its secrecy where (a) the disclosure of
17 such information to a public body has been compelled by law or required in order to respond
18 fully to a request for proposals and (b) such information has been clearly identified as a trade
19 secret by the provider of the information at the time of submission along with a statement of
20 reasons why trade secret protection is being sought. After a period of two years from
21 submission, however, such records shall be open to inspection and copying.

22 50. Engineering and architectural drawings, operational, procedural, tactical planning
23 or training manuals, or staff meeting minutes or other records, the disclosure of which would
24 reveal surveillance techniques, security personnel deployments, alarm systems or
25 technologies, or operational and transportation plans or protocols, to the extent such
26 disclosure would jeopardize the security or employee safety of (i) the Virginia Museum of fine
27 Arts or any of its warehouses; (ii) any government store or warehouse controlled by the

DRAFT

1 Department of Alcoholic Beverage Control; (iii) any courthouse, jail, detention or law-
2 enforcement facility, or (iv) any correctional or juvenile facility or institution under the
3 supervision of the Department of Corrections or the Department of Juvenile Justice.

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

15 ~~D-C.~~ No provision of this chapter shall be construed to afford any rights to any person
16 incarcerated in a state, local or federal correctional facility, whether or not such facility is (i)
17 located in the Commonwealth or (ii) operated pursuant to the Corrections Private Management
18 Act (§ 53.1-261 et seq.). However, this subsection shall not be construed to prevent an
19 incarcerated person from exercising his constitutionally protected rights, including but not
20 limited to his rights to call for evidence in his favor in a criminal prosecution.

21 § 2.1-342.2. Disclosure of criminal records; limitations.

22 A. Records concerning crime, criminal incidents and arrestees shall be open to
23 inspection and copying and shall be produced forthwith, notwithstanding the provisions of §
24 2.1-342. Such records shall include, but are not limited to:

- 25 1. All statistical information regarding crime or patterns of criminal activity;
- 26 2. All information concerning any reportable, noncriminal or criminal incident, whether
27 felony or misdemeanor, including a description of the activity or violation reported; the date,

DRAFT

1 time, and location of any criminal incident, activity or violation; the nature of any alleged
2 violation; whether the incident involved the use of a weapon; the identity of all investigating
3 agencies and officers; a description of any injuries suffered or property damaged or stolen; the
4 identity of all victims; and the contents of any "911" or other emergency service calls relating to
5 any criminal incident, activity or violation; or

6 3. The identity of all adult arrestees, and of all juvenile arrestees to the extent permitted
7 by law; the status of all charges or arrests; and any available photographs of adult arrestees,
8 and of juvenile arrestees to the extent permitted by law.

9 B. In the event of an active felony investigation, criminal records may be withheld to the
10 extent that the release of such records would cause a suspect to flee or evade detection,
11 result in the destruction of evidence, or would likely jeopardize the success of the
12 investigation.

13 C. State or local law-enforcement officials shall withhold information which would
14 identify any person assisting them pursuant to a promise of confidentiality or anonymity.

15 D. Upon the request of any crime victim, no law-enforcement agency, attorney for the
16 Commonwealth, court or the Department of Corrections, or any employee of any of them, shall
17 disclose crime victim information except in accordance with § 19.2-11.2.

18 § 2.1-343. Meetings to be public; notice of meetings; recordings; minutes; voting.

19 ~~Except as otherwise specifically provided by law and except as provided in §§ 2.1-344~~
20 ~~and 2.1-345, all A. All meetings of public bodies shall be public meetings, including meetings~~
21 ~~and work sessions during which no votes are cast or any decisions made. Notice including the~~
22 ~~time, date and place of each meeting shall be furnished to any citizen of the Commonwealth~~
23 ~~who requests such information. Notices for meetings of public bodies of the Commonwealth~~
24 ~~on which there is at least one member appointed by the Governor shall state whether or not~~
25 ~~public comment will be received at the meeting, and, if so, the approximate points during the~~
26 ~~meeting public comment will be received. Requests to be notified on a continual basis shall be~~
27 ~~made at least once a year in writing and include name, address, zip code and organization of~~

DRAFT

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

4 ~~Unless otherwise exempt, at least one copy of all agenda packets and materials~~
5 ~~furnished to members of a public body for a meeting shall be made available for inspection by~~
6 ~~the public at the same time such documents are furnished to the members of the public body~~
7 ~~open, except as provided in § 2.1-344.~~

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

12 C. Every public body shall give notice of the date, time, and location of its meetings by
13 placing the notice in a prominent location at each office of the public body, at the meeting site
14 and on any electronic or other bulletin board maintained by the public body. The notice shall
15 be posted at least three working days prior to the meeting. Notices for meetings of state
16 public bodies on which there is at least one member appointed by the Governor shall state
17 whether or not public comment will be received at the meeting and, if so, the approximate
18 point during the meeting when public comment will be received.

19 D. If an emergency arises and the public body is unable to meet in a regularly
20 scheduled session, the public body shall give notice of the rescheduled meeting as soon as
21 possible under the circumstances.

22 E. Any person may annually file a written request for notification with a public body.
23 The request shall include the requester's name, address, zip code, daytime telephone
24 number, and organization if any. If a public body receiving such request shall provide notice
25 of all meetings directly to each such person.

DRAFT

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

4 G. Nothing in this chapter shall be construed to prohibit the gathering or attendance of
5 two or more members of a public body (i) at any place or function where no part of the
6 purpose of such gathering or attendance is the discussion or transaction of any public
7 business, and such gathering or attendance was not called or prearranged with any purpose
8 of discussing or transacting any business of the public body or (ii) at a public forum, candidate
9 appearance, or debate, the purpose of which is to inform the electorate and not to transact
10 public business or to hold discussions relating to the transaction of public business, even
11 though the performance of the members individually or collectively in the conduct of public
12 business may be a topic of discussion or debate at such public meeting.

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

17 ~~Voting by secret or written ballot in an open meeting shall be a violation of this chapter.~~

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

DRAFT

1 deemed public records and subject to the provisions of the chapter. Audio or audio/visual
2 records of open meetings shall be public records which shall be produced forthwith.

3 § 2.1-343.1. Electronic communication meetings.

4 A. ~~It is~~ shall be a violation of this chapter for any political subdivision or any governing
5 body, authority, board, bureau, commission, district or agency of local government or any
6 committee thereof to conduct a meeting wherein the public business is discussed or
7 transacted through telephonic, video, electronic or other communication means where the
8 members are not physically assembled. Nothing in this section shall be construed to prohibit
9 the use of interactive audio or video means to expand public participation.

10 B. For purposes of ~~subsections B through F~~ of this section, "public body" means any
11 public body of the Commonwealth, ~~as provided in the definitions of "meeting" and "public~~
12 ~~body" in § 2.1-344, but excluding~~ excludes any political subdivision or any governing body,
13 authority, board, bureau, commission, district or agency of local government.

14 ~~Such~~ State public bodies may conduct any meeting, except ~~executive or closed~~
15 meetings held pursuant to § 2.1-344, wherein the public business is discussed or transacted
16 through telephonic or video means. Where a quorum of a public body of the Commonwealth is
17 physically assembled at one location for the purpose of conducting a meeting authorized
18 ~~under this subsection~~ section, additional members of such public body may participate in the
19 meeting through telephonic means provided such participation is available to the public.

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

DRAFT

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

6 | The public body shall provide the Director of the Department of Information Technology
7 | with notice of all public meetings held through telephonic or video means pursuant to this
8 | section.

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

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

26 | F. Notwithstanding the limitations imposed by subsection E ~~of this section~~, a public
27 | body may meet by telephonic or video means as often as needed if an emergency exists and

DRAFT

1 the public body is unable to meet in regular session. ~~As used in this subsection "emergence,~~
2 ~~means an unforeseen circumstance rendering the notice required by this section, or by § 2.1-~~
3 ~~343 of this chapter, impossible or impracticable and which circumstance requires immediate~~
4 ~~action.~~ Public bodies conducting emergency meetings through telephonic or video means shall
5 comply with the provisions of subsection D requiring minutes, recordation and preservation of
6 the audio or audio/visual recording of the meeting. The ~~basis for~~ nature of the emergency shall
7 be stated in the minutes.

8 § 2.1-343.2. Transaction of public business other than by votes at meetings prohibited.

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

15 Notwithstanding the foregoing, nothing contained herein shall be construed to prohibit
16 separately contacting the membership, or any part thereof, of any public body for the purpose
17 of ascertaining a member's position with respect to the transaction of public business.

18 § 2.1-344. ~~Executive or closed~~ Closed meetings authorized for certain limited purposes.

19 A. ~~Public bodies are not required to conduct executive or closed meetings. However,~~
20 ~~should a public body determine that an executive or closed meeting is desirable, such meeting~~
21 ~~shall be held.~~ may hold closed meetings only for the following purposes:

22 1. Discussion, consideration or interviews of prospective candidates for employment;
23 assignment, appointment, promotion, performance, demotion, salaries, disciplining or
24 resignation of specific public officers, appointees or employees of any public body; and
25 evaluation of performance of departments or schools of ~~state~~ public institutions of higher
26 education where such ~~matters regarding such evaluation will necessarily involve discussion~~
27 the performance of specific individuals might be affected by such evaluation. Any teacher shall

DRAFT

1 | be permitted to be present during ~~an executive session or a~~ closed meeting in which there is a
2 | discussion or consideration of a disciplinary matter which involves the teacher and some
3 | ~~student or students~~ and the student ~~or students~~ involved in the matter are present, provided
4 | the teacher makes a written request to be present to the presiding officer of the appropriate
5 | board.

6 | 2. Discussion or consideration of admission or disciplinary matters concerning any
7 | ~~student or students~~ of any ~~state~~ public institution of higher education or any state school
8 | system. However, any such student, legal counsel and, if the student is a minor, the student's
9 | parents or legal guardians shall be permitted to be present during the taking of testimony or
10 | presentation of evidence at ~~an executive or a~~ closed meeting, if such student, parents or
11 | guardians so request in writing and such request is submitted to the presiding officer of the
12 | appropriate board.

13 | 3. Discussion or consideration of the ~~condition~~, acquisition or use of real property for a
14 | public purpose, or of the disposition of publicly held real property, ~~or of plans for the future of a~~
15 | ~~state institution of higher education which could~~ where discussion in an open meeting would
16 | adversely affect the value of the property owned or desirable for ownership by such institution.

17 | 4. ~~The protection of the privacy of individuals in personal matters not related to public~~
18 | ~~business.~~

19 | ~~5.~~ Discussion concerning a prospective business or industry or the expansion of an
20 | existing business or industry where no previous announcement has been made of the
21 | business' or industry's interest in locating or expanding its facilities in the community.

22 | ~~6.~~ 5. The investing of public funds where competition or bargaining is involved, where,
23 | if made public initially, the financial interest of the governmental unit would be adversely
24 | affected.

25 | ~~7.~~ 6. Consultation with legal counsel which is protected by the attorney-client privilege
26 | ~~and briefings by staff members, consultants or attorneys, pertaining to actual or probable~~
27 | ~~litigation, or other specific legal matters requiring the provision of legal advice by counsel~~

DRAFT

1 imminently threatened litigation, where disclosure of such consultation or briefing would
2 adversely affect the bargaining or litigation posture of the public body.

3 ~~8-7.~~ In the case of boards of visitors of ~~state-public~~ institutions of higher education,
4 discussion or consideration of matters relating to gifts, bequests and fund-raising activities,
5 and grants and contracts for services or work to be performed by such institution. However,
6 the terms and conditions of any such gifts, bequests, grants and contracts made by a foreign
7 government, a foreign legal entity or a foreign person and accepted by a ~~state-public~~ institution
8 of higher education shall be subject to public disclosure upon written request to the
9 appropriate board of visitors. For the purpose of this subdivision, (i) "foreign government"
10 means any government other than the United States government or the government of a state
11 or a political subdivision thereof; (ii) "foreign legal entity" means any legal entity created under
12 the laws of the United States or of any state thereof if a majority of the ownership of the stock
13 of such legal entity is owned by foreign governments or foreign persons or if a majority of the
14 membership of any such entity is composed of foreign persons or foreign legal entities, or any
15 legal entity created under the laws of a foreign government; and (iii) "foreign person" means
16 any individual who is not a citizen or national of the United States or a trust territory or
17 protectorate thereof.

18 ~~9-8.~~ In the case of the boards of trustees of the Virginia Museum of Fine Arts and The
19 Science Museum of Virginia, discussion or consideration of matters relating to specific gifts,
20 bequests, and grants.

21 ~~10-9.~~ Discussion or consideration of honorary degrees or special awards.

22 ~~11-10.~~ Discussion or consideration of tests ~~or~~ examinations or other documents
23 ~~excluded records exempted~~ from this chapter pursuant to ~~§ 2-1-342 B-9~~ 2.1-342.01 A 10.

24 ~~12-11.~~ Discussion, consideration or review by the appropriate House or Senate
25 committees of possible disciplinary action against a member arising out of the possible
26 inadequacy of the disclosure statement filed by the member, provided the member m

DRAFT

1 request in writing that the committee meeting not be conducted in ~~executive session~~ a closed
2 meeting.

3 ~~43-12.~~ Discussion of strategy with respect to the negotiation of a siting agreement or
4 to consider the terms, conditions, and provisions of a siting agreement if the governing body in
5 open meeting finds that an open meeting will have ~~a detrimental effect~~ an adverse affect upon
6 the negotiating position of the governing body or the establishment of the terms, conditions
7 and provisions of the siting agreement, or both. All discussions with the applicant or its
8 representatives may be conducted in a closed meeting ~~or executive session~~.

9 ~~44-13.~~ Discussion by the Governor and any economic advisory board reviewing
10 forecasts of economic activity and estimating general and nongeneral fund revenues.

11 ~~45-14.~~ Discussion or consideration of medical and mental records excluded from this
12 chapter pursuant to ~~§ 2.1-342 B 3~~ 2.1-342.01 A 4, and those portions of disciplinary
13 proceedings by any regulatory board within the Department of Professional and Occupational
14 Regulation or Department of Health Professions conducted pursuant to § 9-6.14:11 or § 9-
15 6.14:12 during which the board deliberates to reach a decision.

16 ~~46-15.~~ Discussion, consideration or review of State Lottery Department matters related
17 to proprietary lottery game information and studies or investigations exempted from disclosure
18 under subdivisions ~~37 31~~ and ~~38 32~~ of subsection ~~BA~~ of ~~§ 2.1-342~~ 2.1-342.01.

19 ~~47-16.~~ Those portions of meetings by local government crime commissions where the
20 identity of, or information tending to identify, individuals providing information about crimes or
21 criminal activities under a promise of anonymity is discussed or disclosed.

22 ~~48-17.~~ Discussion, consideration, review and deliberations by local community
23 corrections resources boards regarding the placement in community diversion programs of
24 individuals previously sentenced to state correctional facilities.

25 ~~49. [Repealed.]~~

26 ~~20-18.~~ Those portions of meetings in which the Board of Corrections discusses or
27 discloses the identity of, or information tending to identify, any prisoner who (i) provides

DRAFT

1 information about crimes or criminal activities, (ii) renders assistance in preventing the escape
2 of another prisoner or in the apprehension of an escaped prisoner, or (iii) voluntarily or at the
3 instance of a prison official renders other extraordinary services, the disclosure of which is
4 likely to jeopardize the prisoner's life or safety.

5 ~~24-19.~~ Discussion of plans to protect public safety as it relates to terrorist activity.

6 ~~22. In the case of corporations organized by the Virginia Retirement System, discussion~~
7 ~~or consideration of (i) proprietary information provided by, and financial information~~
8 ~~concerning, coventurers, partners, lessors, lessees, or investors, and (ii) the condition,~~
9 ~~acquisition, disposition, use, leasing, development, coventuring, or management of real estate~~
10 ~~the disclosure of which would have a substantial adverse impact on the value of such real~~
11 ~~estate or result in a competitive disadvantage to the corporation or subsidiary.~~

12 ~~23-20.~~ Those portions of meetings in which individual child death cases are discussed
13 by the State Child Fatality Review Team established pursuant to § 32.1-283.1.

14 ~~24-21.~~ Those portions of meetings of the University of Virginia Board of Visitors and
15 those portions of meetings of any persons to whom management responsibilities for the
16 University of Virginia Medical Center have been delegated, in which there is discussed
17 proprietary, business-related information pertaining to the operations of the University of
18 Virginia Medical Center, including its business development or marketing strategies and its
19 activities with existing or future joint venturers, partners, or other parties with whom the
20 University of Virginia Medical Center has formed, or forms, any arrangement for the delivery of
21 health care, if disclosure of such information would be harmful to adversely affect the
22 competitive position of the Medical Center.

23 ~~25-22.~~ In the case of the Medical College of Virginia Hospitals Authority, discussion or
24 consideration of any of the following: the ~~condition, acquisition, use or disposition of real or~~
25 personal property where disclosure would adversely affect the value of such property;
26 operational plans that could affect the value of such property, real or personal, owned
27 desirable for ownership by the Authority; matters relating to gifts, bequests and fund-raising

DRAFT

1 activities; grants and contracts for services or work to be performed by the Authority;
2 marketing or operational strategies where disclosure of such strategies would be harmful to
3 adversely affect the competitive position of the Authority; members of its medical and teaching
4 staffs and qualifications for appointments thereto; and qualifications or evaluations of other
5 employees.

6 ~~26-23.~~ Those portions of the meetings of the Intervention Program Committee within
7 the Department of Health Professions to the extent such discussions identify any practitioner
8 who may be, or who actually is, impaired pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of
9 Title 54.1.

10 ~~27-24.~~ Meetings or portions of meetings of the Board of the Virginia
11 Higher Education Tuition Trust Fund wherein personal information, as defined in § 2.1-379,
12 which has been provided to the Board or its employees by or on behalf of individuals who
13 have requested information about, applied for, or entered into prepaid tuition contracts
14 pursuant to Chapter 4.9 (§ 23-38.75 et seq.) of Title 23 is discussed.

15 B. No resolution, ordinance, rule, contract, regulation or motion adopted, passed or
16 agreed to in ~~an executive or a~~ closed meeting shall become effective unless the public body,
17 following the meeting, reconvenes in open meeting and takes a vote of the membership on
18 such resolution, ordinance, rule, contract, regulation or motion which shall have its substance
19 reasonably identified in the open meeting. ~~This section shall not be construed to (i) require the~~
20 ~~disclosure of any contract between the Intervention Program Committee within the Department~~
21 ~~of Health Professions and an impaired practitioner entered into pursuant to Chapter 25.1 of~~
22 ~~Title 54.1 or (ii) require the board of directors of any authority created pursuant to the Industrial~~
23 ~~Development and Revenue Bond Act (§ 15.1-1373 et seq.), or any public body empowered to~~
24 ~~issue industrial revenue bonds by general or special law, to identify a business or industry to~~
25 ~~which subdivision A 5 of this section applies. However, such business or industry must be~~
26 ~~identified as a matter of public record at least thirty days prior to the actual date of the board's~~
27 ~~authorization of the sale or issuance of such bonds.~~

DRAFT

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

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

8 E. . This section shall not be construed to (i) require the disclosure of any contract
9 between the Intervention Program Committee within the Department of Health Professions
10 and an impaired practitioner entered into pursuant to Chapter 25.1 (§ 54.1-2515 et seq) of Title
11 54.1 or (ii) require the board of directors of any authority created pursuant to the Industrial
12 Development and Revenue Bond Act (§ 15.2-4900 et seq.), or any public body empowered to
13 issue industrial revenue bonds by general or special law, to identify a business or industry
14 which subdivision A 4 applies. However, such business or industry shall be identified as a
15 matter of public record at least thirty days prior to the actual date of the board's authorization
16 of the sale or issuance of such bonds.

17 § 2.1-344.1. ~~Call of closed or executive meetings~~Closed meeting procedures;
18 certification of proceedings; minutes.

19 A. No closed meeting shall become an executive or closed meeting be held unless the
20 public body proposing to convene such meeting ~~shall have~~ has taken an affirmative recorded
21 vote in ~~open session to that effect, by motion stating specifically the purpose or purposes~~
22 ~~which are to be the subject of the meeting, and reasonably identifying the substance of the~~
23 ~~matters to be discussed. A statement shall be included in the minutes of the open meeting~~
24 which shall make an open meeting approving a motion which (i) states specifically the subject
25 matter and the purpose of the meeting and (ii) makes specific reference to the applicable
26 exemption or exemptions from open meeting requirements provided in § 2.1-343 or subsectic
27 A of § 2.1-344 or in § 2.1-345, and the. The matters contained in such motion shall be set

DRAFT

1 | forth in ~~these~~ detail in the minutes of the open meeting. A general reference to the provisions
2 | of this chapter ~~or, the~~ authorized exemptions from open meeting requirements, or the subject
3 | matter of the closed meeting shall not be sufficient to satisfy the requirements for ~~an executive~~
4 | ~~or holding a~~ closed meeting.

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

11 | C. The public body holding ~~an executive or a~~ a closed meeting shall restrict its
12 | ~~consideration of matters~~ discussion during the closed ~~portions~~ meeting only to those ~~purposes~~
13 | matters specifically exempted from the provisions of this chapter and identified in the motion
14 | required by subsection A.

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

26 | E. Failure of the certification required by subsection D, ~~above~~, to receive the affirmative
27 | vote of a majority of the members of the public body present during a ~~closed or executive~~

DRAFT

1 ~~session-meeting~~ shall not affect the validity or confidentiality of such meeting with respect to
2 matters considered therein in compliance with the provisions of this chapter. The recorded
3 ~~vote and, any statement made in connection therewith, and the minutes of the closed meeting~~
4 shall upon proper authentication, constitute evidence in any proceeding brought to enforce the
5 provisions of this chapter.

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

9 G. ~~Except as specifically authorized by law, in no event may any~~ No public body may
10 take action on matters discussed in any ~~executive or closed~~ meeting, except at a ~~public an~~
11 open meeting for which notice was given as required by § 2.1-343.

12 H. Minutes ~~may be taken during executive or a closed sessions-meeting~~ of a public
13 body, ~~but shall not be required.~~ Such minutes shall not be subject to mandatory pu
14 disclosure, but may be introduced as evidence in any action to enforce the provisions of this
15 chapter.

16 § 2.1-346. Proceedings for enforcement of chapter.

17 A. Any person, including the attorney for the Commonwealth acting in his official or
18 individual capacity, denied the rights and privileges conferred by this chapter may proceed to
19 enforce such rights and privileges by filing a petition for mandamus or injunction, supported by
20 an affidavit showing good cause, addressed to the general district court or the court of record
21 of the county or city from which the public body has been elected or appointed to serve and in
22 which such rights and privileges were so denied. Failure by any person to request and receive
23 notice of the time and place of meetings as provided in § 2.1-343 shall not preclude any
24 person from enforcing his or her rights and privileges conferred by this chapter.

25 B. Any petition alleging denial of rights and privileges conferred by this chapter by a
26 board, bureau, commission, authority, district or agency of the state government or by
27 standing or other committee of the General Assembly, shall be addressed to the General

DRAFT

2 ~~District Court~~ general district court or the ~~Circuit Court~~ circuit court of the residence of the
3 aggrieved party or of the City of Richmond. In any action brought before a general district
4 court, a corporate petitioner may appear through its officer, director or managing agent without
5 the assistance of counsel, the provisions of § 8.01-xxx notwithstanding.

6 C. A- ~~The~~ petition for mandamus or injunction ~~under this chapter~~ shall be heard within
7 seven days of the date when the same is made. However, any petition made outside of the
8 regular terms of the circuit court of a county which is included in a judicial circuit with another
9 county or counties, the hearing on the petition shall be given precedence on the docket of
10 such court over all cases which are not otherwise given precedence by law.

11 D. The petition shall allege with reasonable specificity the circumstances of the denial
12 of the rights and privileges conferred by this chapter. A single instance of denial of the rights
13 and privileges conferred by this chapter shall be sufficient to invoke the remedies granted
14 herein. If the court finds the denial to be in violation of the provisions of this chapter, the
15 petitioner shall be entitled to recover reasonable costs and attorney's fees from the public
16 body if the petitioner substantially prevails on the merits of the case, unless special
17 circumstances would make an award unjust. ~~In making this determination, a court may~~
18 ~~consider, among other things, the reliance of a public body on an opinion of the Attorney~~
19 ~~General or a decision of a court that substantially supports the public body's position. The~~
20 ~~court may also impose appropriate sanctions in favor of the public body as provided in § 8.01-~~
21 ~~271.1.~~

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

§ 2.1-346.1. Violations and penalties.

26 In a proceeding commenced against members of public bodies under § 2.1-346 for a
27 violation of §§ 2.1-342, 2.1-343, 2.1-343.1, 2.1-343.2, 2.1-344 or § 2.1-344.1, the court, if it

DRAFT

1 finds that a violation was willfully and knowingly made, shall impose upon such member in his
2 individual capacity, whether a writ of mandamus or injunctive relief is awarded or not, a civil
3 penalty of not less than ~~\$25-\$100~~ nor more than \$1,000, which amount shall be paid into the
4 State Literary Fund. For a second or subsequent violation, such civil penalty shall be not less
5 than ~~\$250-\$500~~ nor more than ~~\$1,000~~ \$5,000.

6 § 15.2-1722. Certain records to be kept by sheriffs and chiefs of police.

7 A. It shall be the duty of the sheriff or chief of police of every locality to insure, in
8 addition to other records required by law, the maintenance of adequate personnel, arrest,
9 investigative, reportable incidents, and noncriminal incidents records necessary for the
10 efficient operation of a law-enforcement agency. Failure of a sheriff or a chief of police to
11 maintain such records or failure to relinquish such records to his successor in office shall
12 constitute a misdemeanor. Former sheriffs or chiefs of police shall be allowed access to such
13 files for preparation of a defense in any suit or action arising from the performance of th
14 official duties as sheriff or chief of police. The enforcement of this section shall be the duty of
15 the attorney for the Commonwealth of the county or city wherein the violation occurs. ~~Except~~
16 ~~for information in the custody of law enforcement officials relative to the identity of any~~
17 ~~individual other than a juvenile who is arrested and charged, and the status of the charge of~~
18 ~~arrest, the records required to be maintained by this section shall be exempt from the~~
19 ~~provisions of Chapter 21 (§ 2-1 340 et seq.) of Title 2-1.~~

20 B. For purposes of this section, the following definitions shall apply:

21 "Arrest records" means a compilation of information, centrally maintained in law-
22 enforcement custody, of any arrest or temporary detention of an individual, including the
23 identity of the person arrested or detained, the nature of the arrest or detention, and the
24 charge, if any.

25 "Investigative records" means the reports of any systematic inquiries or examinatio
26 into criminal or suspected criminal acts which have been committed, are being committed, or
27 are about to be committed.

DRAFT

1 "Noncriminal incidents records" means compilations of noncriminal occurrences of
2 general interest to law-enforcement agencies, such as missing persons, lost and found
3 property, suicides and accidental deaths.

4 "Personnel records" means those records maintained on each and every individual
5 employed by a law-enforcement agency which reflect personal data concerning the
6 employee's age, length of service, amount of training, education, compensation level, and
7 other pertinent personal information.

8 "Reportable incidents records" means a compilation of complaints received by a law-
9 enforcement agency and action taken by the agency in response thereto.

10 **2. That §§ 2.1-342.1 and 2.1-345 of the Code of Virginia are repealed.**

11 #

August 17, 1998

Delegate Clifton A. Woodrum
P.O. Box 1371
Roanoke, Virginia 24007

Delegate Joe T. May
P.O. Box 4104
Leesburg, Virginia 20177-8259

Delegate Barnie K. Day
Rt. 1, Box 65
Meadows of Dan, Virginia 24120

Senator R. Edward Houck
P.O. Box 7
Spotsylvania, Virginia 22553-0007

Senator William T. Bolling
P.O. Box 112
Mechanicsville, Virginia 23111-0112

Mr. John Edwards
The Smithfield Times

Roger C. Wiley, Esquire
1001 East Broad Street
Richmond, Virginia 23219

Re: Virginia Press Association Comments on Record Access Issues

Gentlemen:

The Virginia Press Association ("VPA") submits this briefing paper in anticipation of the Joint Subcommittee's August 26, 1998, meeting. The Joint Subcommittee has announced that the topic of the upcoming meeting will be access to public records. Below VPA summarizes its position on the working redraft prepared by the staff of the Joint Subcommittee ("Staff Proposal") (Appendix 1) as it pertains to access to records.

Overview of Fundamental Changes in the Staff Proposal

The revised Virginia Freedom of Information Act ("Act") proposed by staff uses the new term "public record" to replace the term "official record." This change in terminology is not substantive, but it emphasizes the concept that the citizens-at-large are the owners of records in the custody of government officials, that public officials hold records as agents for the public, and that the public official is a servant rather than an adversary of the citizen.

Key provisions of the staff proposal relating to access to public records are:

- (1) Virginia Code §2.1-341, which provides a revised and clarified definition of "public record."
- (2) Virginia Code §2.1-342, which focuses on the procedural aspects of requesting and producing public records. Major features include:
 - Retention of the basic five-day response/seven-day extension time frame, with new emphasis on encouraging the document custodian to produce records more promptly if feasible.
 - Increased particularity on the part of public bodies in their assertion of exemptions, providing for the waiver of any exemption not claimed in connection with the public body's initial response.
 - Improved access to records stored in electronic format.
- (3) Virginia Code §2.1-342.01, a new section recommended by the staff, listing the discretionary exemptions from record production requirements under the Act. Primary changes are:
 - Removal of criminal records to a separate code section 2.1-341.02.
 - Alignment of scholastic records exemption with Federal law.
 - Narrowing the exemption for the "memoranda, working papers and correspondence" of certain executive public officials.
 - Clarification of the protections for attorney work product and attorney client privileged records.
 - Consolidation of security exemptions for several agencies into a single exemption.
 - Consolidation of numerous exemptions relating to confidential or commercially sensitive records into a single "trade secrets" exemption.

A number of significant changes, both substantive and technical, are proposed with regard to public records. VPA believes that the Joint Subcommittee should give particular attention to amendments regarding (1) executive working papers, (2) legal advice, (3) criminal incident records, and (4) access to electronically stored information.

Section by Section Analysis of Proposed Record Access Changes

A. Virginia Code §2.1-340.1.

This chapter states the general policy of the Act, which remains unchanged. Current language has been relocated to emphasize the point that the General Assembly rejects an "atmosphere of secrecy."

New language reinforces the current rule that records are presumed open and public officials are encouraged to support openness in the exercise of their discretion to invoke any exemption.

The most significant change relates to the **burden of proof and standard of proof** for justifying exemptions in an action brought to enforce the Act. Under current law, a requestor bears the burden of proof to establish a violation of the Act by a preponderance of the evidence. See RF & P Corporation v. Little, 247 Va. 309, 318-19 (1994) (Appendix 2). Although no Virginia Supreme Court case has addressed this issue in the context of the Virginia Freedom of Information Act, it is a common practice to shift the burden of proof to a defendant on matters of affirmative defense (such as statute of limitations, fraud in the inducement, contributory negligence, or privilege in a defamation action).

VPA advocates shifting the burden of proof to the public body which invokes an exemption to prevent the release of a public record. Simply put, a public body should be required to justify why a particular provision was invoked. A requestor should not have to prove a negative proposition - that the public body had no basis for applying a particular exemption.

VPA also advocates application of the **clear and convincing evidence** standard of proof in cases where a public body claims an exemption. This higher burden is consistent with the policy of the Act to resolve doubts in favor of public access. It also recognizes that proof of the decisionmaking process by which the exemption was identified and applied is entirely within the hands of the public body.

Note that this shifting of the burden of proof and imposition of a higher standard of proof does not apply to all actions to enforce the Virginia Freedom of Information Act. Thus, a requestor would bear the burden of proving, for example, that a public body failed to meet any of the procedural requirements of the Act. It is only where the public body invokes a specific exemption that the body should be required to prove that the exemption is appropriate.

B. Virginia Code §2.1-341.

Two items in this definitional statute bear directly upon access to records.

First, is the new definition of "**public records**" clarifies the law. The term "public records" should replace the current "official records." The difference is one of nuance, intended to remind both public officials and judges enforcing the Act that records held by government belong to the citizens. Public officials are elected or employed representatives of the citizenry, not its adversaries.

Current law acknowledges that records held by public bodies are covered "regardless of physical form or characteristic." This language is the broadest possible definition of what constitutes a

record. The Supreme Court of Virginia has recognized that the definition encompasses material maintained on a computer system. See Associated Tax Service v. Fitzpatrick, 236 Va. 181 (1988) (requiring production of tax assessment information stored on magnetic tapes) (Appendix 3).

The sole purpose of the new definitional language is to help public officials understand, by way of example, that any form of information storage constitutes a public record. The concept for the new language comes from Rule 1001 of the Federal Rules of Evidence. (Appendix 4).

Second, the definition of "**scholastic records**" seeks to conform state law to federal law concerning educational records. The definition must be read in conjunction with proposed Virginia Code §2.1-342.01.A.3 to be understood in context. The language at page 5, lines 17 - 21 of the staff proposal comes from 20 U.S. Code § 1232g(a)(5)(A). (Appendix 5). The sole purpose of this change is to simplify the rules and remove confusing inconsistencies between federal and state law.

The other change to the definition of scholastic records would overrule the holding of the Supreme Court of Virginia in Wall v. Fairfax County School Board, 252 Va. 156 (1996) (Appendix 6). The Court held in Wall that the individual vote total in a student council election was information about an identifiable student, and therefore subject to discretionary exclusion under the current scholastic records exemption. Without addressing the rationale of the Supreme Court's decision in Wall, VPA believes that the General Assembly should make the policy decision to open the results of student elections to scrutiny.

C. Virginia Code §2.1-341.2.

This new section is a reorganization of material currently set forth in the Act. The only substantive change is to ensure openness of the financial records of the Virginia Parole Board. See staff proposal page 6, lines 11-12.

D. Virginia Code §2.1-342.

This section addresses the procedures for making and responding to requests for public records. It retains the **discretionary** role of the document custodian in determining to withhold records from the public. By subsection, this statute does the following:

Subsection A restates current law.

Subsection B restates in clearer terms the procedure for making and responding to requests for public records. It requires that all requests be made with reasonable specificity. It makes explicit the widespread understanding of current law that a request need not be in writing. It gives the custodian five days to make an initial response, but encourages him to respond more promptly if it is feasible to do so. VPA members' experience is that the vast majority of requests for public records are handled verbally, promptly and over the counter, and VPA believes the law should encourage the continuation of this approach.

Subsection B delineates the four basic responses provided by the current Act. The

custodian may respond to a request for records by: (1) producing all requested records, (2) denying the request entirely, (3) denying the request in part and honoring it in part or (4) seeking an additional seven working days to respond.

The subcommittee draft changes these options in two ways. First, the proposal requires the custodian to **identify and describe the withheld material and to articulate the grounds for nondisclosure with greater specificity**. Second, it requires prompt identification of grounds for withhold a record and **prohibits a public body from giving a series of different grounds for nondisclosure**.

These two changes are critically important from the standpoint of public confidence in the Act and efficient enforcement of the Act. The very "atmosphere of secrecy" discouraged by the General Assembly is engendered when a requester perceives that she is faced with a constantly- shifting rationale for a public body's refusal to provide a record. Moreover, it is fundamentally unfair for a requestor to arrive in court, seeking to enforce her rights under the Act, only to learn without prior notice that the public body is asserting a new reason for nondisclosure that was not previously raised.

Subsection C restates current law.

Subsection D restates the current rule - that a public body need not be burdened by the creation of records that do not already exist. The reference to Subsection G qualifies makes it clear, however, that records retained in a computer are subject to special consideration because of the public body's ability to manipulate data. Subsection G is discussed further below.

Subsection E is a restatement of current law.

Subsection F seeks to eliminate the use of the Act as a revenue enhancement tool for public bodies. It prohibits the charge of any add-on fees, and retains the approach of the current statute that a requestor may be required to pay for the actual cost imposed on the public body in responding to a request.

Subsection G states a general rule for electronically-stored records. It conforms with the rule set forth in Subsection F that the actual cost standard will apply. It also prohibits the design of storage formats which have the purpose or effect of denying public access to nonexempt records.

Subsection H restates current provisions requiring public bodies of state government to compile and maintain indices of computer data bases. It also lays to rest the argument that routine production of records maintained in a computer or other electronic format constitutes the "creation of a new record." VPA members have repeatedly encountered the response that information maintained electronically by a public body cannot be produced in a requested format because such production would constitute the creation of a new record. The staff proposal simply requires that a public body which regularly uses a particular format for the

maintenance or duplication of its records should be required to produce a record to a requester in that format. If, in the regular course of business, a particular public body can produce information by printing it on paper, by transferring it to a CD, by placing it on magnetic tape, or by placing it on a floppy disk, a requestor willing to pay the cost of transfer to any of those media should be able to request any of them.

Given the fact that computers are capable of storing exempt fields of information alongside nonexempt fields, it is not a violation, under the staff proposal, to delete or excise exempt information in order to produce it to a requester. The use of a computer program to manipulate information or delete information is not the creation of a new record under the staff proposal.

VPA urges the Joint Subcommittee to give careful consideration to this issue. Technology has advanced to the point where transfers of information from one storage format or medium to another is a routine, inexpensive event. To the extent a public body has acquired the capacity to perform these routine functions, it should be required to perform them for the benefit of a citizen requesting a copy of a public record.

E. Virginia Code §2.1-342.01.(new)

This section is newly created at the recommendation of the joint subcommittee staff, focusing primarily on the listing of discretionary exclusion from the provisions of the Act. It provides, as does current law, that any of the listed records may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law.

Primary changes in the staff proposal are as follows:

The subsection relating to **criminal information** has been removed entirely from this statute. All matters relating to access to criminal incident, investigative or statistical records have been moved to a new, freestanding Code provision. Given the complexity of the issues raised by access to criminal information, and the fact that many law enforcement agencies will want the opportunity to comment on these provisions, VPA recommends that the entire area of criminal incident information be the subject of a separate and detailed discussion. In general, however, the intention of VPA is to simplify the now confusing area of access to criminal records, to eliminate the direct conflict between the Virginia Freedom of Information Act and Virginia Code §15.1-1722 (Appendix 7), and to insure prompt access to criminal incident logs, arrest information and other routine matter that should be promptly accessible upon request to a law enforcement agency.

Subsection A.3. relating to scholastic and personnel records, is changed to conform the Act more closely to federal law.

Subsection A.3. also permits any person who has reached his or her legal majority to waive, in writing, the protection afforded by this exemption. VPA is aware of circumstances where

persons subject to personnel action have requested publication of records concerning their status, but the records have been withheld by the public body, allegedly for the protection of the very person who is seeking their release.

Subsection A.5. narrows the exemption for memoranda, working papers and correspondence of certain executives. The new subsection would continue to apply to the Governor, Lieutenant Governor, Attorney General, members of the General Assembly, mayors or chief executive officers of political subdivisions, and presidents or chief executive officers of state supported educational institutions. The proposed revision eliminates application to the Division of Legislative Services.

VPA advocates the creation of an exemption for **personal working papers of these executive officials**. VPA acknowledges that these executives, by virtue of their positions, must frequently consider matters in confidence, and are entitled to a zone of privacy in which to test their ideas, mental impressions and personal thoughts about public policy matters. To those members of the Joint Subcommittee who are familiar with the legal process, this zone of privacy is somewhat akin to the concept of "opinion work product" which protects the mental impressions, opinions, conclusions, and legal theories of an attorney from discovery during litigation.

VPA is aware of numerous circumstances where persons subject to this exemption have used it in a very aggressive fashion. Routine bureaucratic correspondence has been designated as "working papers" of the governor. One governor has taken the view that routinely generated telephone bills are "memoranda." A university president has taken the position that a document received from a separate, private entity constituted either presidential working papers or correspondence. These examples illustrate the significance of this exemption. The current language is so broad that certain persons subject to the exemption feel that it can be applied to justify the withholding of almost any form of record. VPA strongly urges the Joint Subcommittee to investigate this exemption carefully and to narrow it in an effort to provide a more appropriate balance between legitimate privacy interests and public access.

Subsection A.6. has been clarified to address the **attorney/client privilege** directly. Written opinions of city, county and town attorneys prepared at the request of their clients would presumably continue to be covered by this exemption, and the proposed revision merely eliminates surplus language.

Subsection A.7. is clarified to remove confusing or redundant language.

Subsection A.12. is revised to simplify and clarify language. It is also revised to eliminate the practice of taking a record which is otherwise not exempt and hiding it from public disclosure by discussing it in a closed meeting. This practice, while not permitted by current law, has occurred from time to time in the past, and should be expressly addressed and eliminated.

Subsection A.49. is a new exemption for **trade secrets**. The concept underlying this exemption is taken directly from the Uniform Trade Secrets Act, Virginia Code §59.1-336. (Appendix 8). This exemption puts the burden on a party supplying information to a public body, where such submission is compelled by law or necessary to respond to a request for proposals, to clearly identify trade secret information at the time it is submitted. This exemption would permit protection of such material for up to two years.

Subsection A.50. is a consolidation of four current exemptions, all dealing with **security** for certain public buildings. It provides for no substantive change in the law.

Subsection B and C are restatements of current law.

Conclusion

VPA believes that the proposed revision strengthens and clarifies procedures for obtaining access to records, for responding to record requests, and for clarifying the level of communication and trust between requesters and public officials. In connection with the items discussed above, VPA believes that the joint subcommittee should give particular attention to:


- criminal incident information
- narrowing of the working papers exemption
- access to electronic records
- simplification of trade secret exemptions.

The VPA looks forward to discussing these issues and providing specific examples of the manner in which the law has been applied in several key areas at the next hearing of the Joint Subcommittee.

Respectfully submitted,

Ginger Stanley, Executive Director
Virginia Press Association

cc: Maria J. K. Everett, Esq.




FOIA--OPEN RECORDS

COMPARISON

(CURRENT LAW vs PROPOSED REDRAFT)

HJR 187 (1998)



| RELATING TO | CURRENT LAW | PROPOSED REDRAFT |
|---|--|--|
| <p>Policy of FOIA (§ 2.1-340.1)</p> | <p>Affairs of government not intended to be conducted in atmosphere of secrecy</p> | <p>Affairs of government shall not be conducted in atmosphere of secrecy</p> <p>Intent of General Assembly that public officials avoid invoking any exemption.</p> <p>Public body bears burden of proving by clear and convincing evidence that a claimed exemption has been properly invoked.</p> |
| <p>Notice of chapter; presumption in enforcement actions (§ 2.1-341.1)</p> | <p>Elected, appointed, etc. officials to be furnished copy of FOIA w/in 2 weeks of election.</p> | <p>Same.</p> |
| | | <p>Adds conclusive presumption in any enforcement action that the public official has read and is familiar with provisions of FOIA.</p> |
| <p>Process for requesting records (§ 2.1-342)</p> | <p>Identify the requested records with reasonable specificity, but does not require specific reference to FOIA to invoke FOIA or time limits for response.</p> | <p>Same.</p> |
| | | <p>Adds that the request need not be in writing.</p> |

| RELATING TO | CURRENT LAW | PROPOSED REDRAFT |
|-------------|-------------|------------------|
|-------------|-------------|------------------|

| | | |
|--|--|--|
| | <u>Time limits for response:</u> | |
| | Initial response--5 working days of receipt of request. | Same. But adds that public body shall respond immediately, if feasible, but in all cases respond w/in 5 working days. |
| | If not practically possible w/in 5 days, w/notice to requester, public body has an additional 7 working days to respond. | Same. Adds condition that if the response is made w/in 5 days, then the public body shall have 7 additional days to respond. |
| | Public body may petition court for additional time to respond b/c of extraordinary volume of request or request would prevent public body from meeting its operational requirements. | Same. |
| | <u>Allowable responses:</u> 1. Requested records will be provided. | 1.Same. |
| | 2. All requested records exempt from release. Written response to requester so stating with specific Code reference. | 2.Same. Adds requirement that notice to requester identify with reasonable particularity the volume and subject matter of withheld records |
| | 3. Portion of requested records exempt and remainder releasable. Written response to requester so stating with specific Code reference. | 3. Same, <i>See #2 above.</i> |
| | | <ul style="list-style-type: none"> • Adds that any exemption not identified in the public body's initial response shall be waived and |

| RELATING TO | CURRENT LAW | PROPOSED REDRAFT |
|-------------|--|--|
| | | may not be asserted thereafter for any purpose, including the defense of any action brought to enforce FOIA. |
| | <u>Electronic Records:</u> Records maintained on computer or other electronic data processing system which are releasable shall be made reasonably accessible to the public at reasonable cost. | Revised to read: Records maintained by a public body in an electronic data processing system, computer database, or any other structured collection of data shall be made available to a requester at reasonable cost, not to exceed the actual cost incurred. |
| | | Adds requirement that no public body shall design any electronic or other database in an format which combines exempt and nonexempt records in a manner which denies public access to any record which is otherwise releasable under FOIA. |
| | <u>Creation of new records:</u> Public body shall not be required to create or prepare a requested record if it does not already exist. | Revised to read: Public bodies shall produce records maintained in an electronic database in any tangible medium identified by the requester if that medium is used by the public body in the regular course of business. |
| | Public bodies may abstract or summarize information or convert a record available in one form into another at the | Revised to read: The excision of exempt fields of information from a database, the conversion of data from one available |

| RELATING TO | CURRENT LAW | PROPOSED REDRAFT |
|---------------------------------|---|--|
| | request of a citizen | format to another, or the routine manipulation of fields of information contained in a database prior to production for the requester shall not be deemed the creation, preparation or compilation of a new public record. |
| Charges for records (§ 2.1-342) | Public body may make reasonable charges for the copying, search time and computer time expended in supplying records. | <ul style="list-style-type: none"> • Charges are based on actual cost incurred in accessing, duplicating or supplying the records. • No public body shall impose any extraneous, intermediary or surplus fees or expenses to recoup the general costs associated with creating or maintaining records or transacting its general business. • Duplicating fees charged in excess of 15 cents per nine-inch or fourteen-inch page shall be deemed excessive and shall constitute a violation of FOIA. |
| | Public body may require the advance payment of charges which are subject to advance determination | Deletes this requirement. |
| | For charges over \$200, the public body may, before continuing to process the request, require the requester to agree to payment. | Same. But limits advance payment to an amount not to exceed \$50. |

| RELATING TO | CURRENT LAW | PROPOSED REDRAFT |
|---|--|--|
| Records exempt from FOIA (§ 2.1-342.01) | 1. Memoranda, correspondence, evidence and complaints related to criminal investigations, etc. | Substantially revises this exemption and creates a separate section on criminal records. See Appendix B for text of redraft. |
| | 2. Confidential records of all investigations of applications for licenses and permits, and all licensees and permittees made by or submitted to the Alcoholic Beverage Control Board, the State Lottery Department, the Virginia Racing Commission, or the Charitable Gaming Commission. | Same. |
| | 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..... 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 | Same as to tax returns, and includes confidential records held pursuant to § 58.1-3. Both scholastic and personnel records included as one exemption apart from tax records. Generally the same, except as noted below. Scholastic records—Adds that parent/legal guardian may, in writing, prohibit release of individual student information until he reaches 18 years. Adds that anyone 18 years who is the subject of a scholastic or personnel record may waive, in writing, the protections |

| RELATING TO | CURRENT LAW | PROPOSED REDRAFT |
|-------------|-------------|------------------|
|-------------|-------------|------------------|

| | | |
|--|---|---|
| | <p>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.</p> | <p>afforded under FOIA and the public body is required to open these waived records.</p> <p>NOTE: The definition of "scholastic records" has been revised, but will be dealt with discussion of the definitional section of FOIA at a later meeting.</p> |
| | <p>4. Memoranda, working papers and correspondence (i) held by or requested from members of the General Assembly or the Division of Legislative Services or (ii) held or requested 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 institution of higher education. This exclusion shall not apply to memoranda, studies or other papers held or requested by the mayor or other chief executive officer of any political subdivision which are specifically concerned with the evaluation of performance of the duties and functions of any locally elected official and were prepared after June</p> | <p>Substantially revised to limit what records are exempt and who holds these records. [Revised text: "The personal working papers of the Governor, Lt. Gov., Attorney General, members of the General Assembly, the mayor or chief executive officer of any political subdivision of VA, and the president or other chief executive officer of any state-supported institution of higher education.]</p> |

| RELATING TO | CURRENT LAW | PROPOSED REDRAFT |
|-------------|---|---|
| | <p>30, 1992, nor shall this exclusion apply to agenda packets prepared and distributed to public bodies for use at a meeting.</p> <p>Except as provided in § 30-28.18, memoranda, working papers and correspondence of a member of the General Assembly held by the Division of Legislative Services shall not be released by the Division without the prior consent of the member.</p> | Eliminated. |
| | <p>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.</p> | Revised to read: Records protected by the attorney-client privilege. |
| | <p>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.</p> | <p>Revised to read: Legal memoranda and working papers compiled.....</p> <p>Eliminates "material furnished in confidence with respect thereto."</p> |
| | <p>7. Confidential letters and statements of recommendation placed in the records of educational</p> | Same. |

| RELATING TO | CURRENT LAW | PROPOSED REDRAFT |
|-------------|-------------|------------------|
|-------------|-------------|------------------|

| | | |
|--|---|--------------|
| | <p>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.</p> | |
| | <p>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.</p> | <p>Same.</p> |
| | <p>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.</p> <p>.....</p> <p>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,</p> | <p>Same.</p> |

| RELATING TO | CURRENT LAW | PROPOSED REDRAFT |
|-------------|--|--|
| | <p>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.</p> | |
| | <p>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.</p> | <p>Same.</p> |
| | <p>11. Records of active investigations being conducted by the Department of Health Professions or by any health regulatory board in the Commonwealth.</p> | <p>Same.</p> |
| | <p>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.</p> | <p>Revised to read: Records recorded in or compiled....</p> <p>Adds that no record which is otherwise open under FOIA may be deemed exempt b/c it has been</p> |

| RELATING TO | CURRENT LAW | PROPOSED REDRAFT |
|-------------|-------------|------------------|
|-------------|-------------|------------------|

| | | |
|--|--|---|
| | | reviewed or discussed in a closed meeting. |
| | 13. Reports, documentary evidence and other information as specified in §§ 2.1-373.2 and 63.1-55.4. | Same. |
| | 14. Proprietary information gathered by or for the Virginia Port Authority | Specific exemption eliminated. Included under "category" exemption for trade secrets. |
| | 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. | Same. |
| | 16. Vendor proprietary information software which may be in the official records of a public body..... | Specific exemption eliminated. Included under "category" exemption for trade secrets. |
| | 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 | Same. |

| RELATING TO | CURRENT LAW | PROPOSED REDRAFT |
|-------------|-------------|------------------|
|-------------|-------------|------------------|

| | | |
|--|--|--|
| | <p>by the institution alone or in conjunction with a governmental body or a private concern, where such data, records or information has not been publicly released, published, copyrighted or patented.</p> | |
| | <p>18. Financial statements not publicly available filed with applications for industrial development financings.</p> | <p>Specific exemption eliminated. Included under "category" exemption for trade secrets.</p> |
| | <p>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.</p> | <p>Same.</p> |
| | <p>20. Confidential proprietary records, voluntarily provided by private business pursuant to a promise of confidentiality from the Department of Business Assistance, the Virginia Economic Development Partnership or local or regional industrial or economic development authorities or organizations, used by the Department, the Partnership, or such entities for business, trade and tourism development; and memoranda, working</p> | <p>Specific exemption eliminated. Included under "category" exemption for trade secrets.</p> |

| RELATING TO | CURRENT LAW | PROPOSED REDRAFT |
|-------------|---|--|
| | papers or other records related to businesses that are considering locating or expanding in Virginia, prepared by the Partnership, where competition or bargaining is involved and where, if such records are made public, the financial interest of the governmental unit would be adversely affected. | |
| | 21. Information which was filed as confidential under the Toxic Substances Information Act | Same. |
| | 22. Documents as specified in § 58.1-3. | Merged with exemption for tax returns. |
| | 23. Confidential records, including victim identity, provided to or obtained by staff in a rape crisis center or a program for battered spouses. | Same. |
| | 24. Computer software developed by or for a state agency, state-supported institution of higher education or political subdivision of the Commonwealth. | Same. |
| | 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..... | Same. |
| | 26. Fisheries data which | Same. |

| RELATING TO | CURRENT LAW | PROPOSED REDRAFT |
|-------------|--|------------------|
| | would permit identification of any person or vessel, except when required by court order as specified in § 28.2-204. | |
| | 27. Records of active investigations being conducted by the Department of Medical Assistance Services..... | Same. |
| | 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. | Same. |
| | 29. Customer account information of a public utility affiliated with a political subdivision of the Commonwealth..... | Same. |
| | 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 | Same. |

| RELATING TO | CURRENT LAW | PROPOSED REDRAFT |
|-------------|-------------|------------------|
|-------------|-------------|------------------|

| | | |
|--|---|--|
| | <p>Act</p> <p>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</p> | <p>Same.</p> |
| | <p>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 ... that disclosure or public dissemination of such materials would jeopardize the security of any correctional or juvenile facility or institution, as follows:</p> <p>(i) Security manuals, including emergency plans that are a part thereof;</p> <p>(ii) Engineering and architectural drawings of correctional and juvenile facilities, and operational specifications of security</p> | <p>Specific exemption eliminated. Included under "category" exemption for security manuals, etc.</p> |

| RELATING TO | CURRENT LAW | PROPOSED REDRAFT |
|-------------|-------------|------------------|
|-------------|-------------|------------------|

| | | |
|--|---|--|
| | <p>systems utilized by the Departments....</p> <p>(iii) Training manuals designed for correctional and juvenile facilities to the extent that they address procedures for institutional security, emergency plans and security equipment;</p> <p>(iv) Internal security audits of correctional and juvenile 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 or juvenile facility or institution;</p> <p>(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;</p> <p>(vi) Investigative case files by investigators authorized</p> <p>(vii) Logs or other documents containing information on movement of inmates, juvenile clients or employees; and</p> <p>(viii) Documents disclosing contacts between inmates, juvenile clients and law-</p> | |
|--|---|--|

| RELATING TO | CURRENT LAW | PROPOSED REDRAFT |
|-------------|-------------|------------------|
|-------------|-------------|------------------|

| | | |
|--|--|--------------------|
| | <p>enforcement personnel. Notwithstanding the provisions of this subdivision, reports and information regarding the general operations of the Departments, including notice that an escape has occurred, shall be open to inspection and copying as provided in this section.</p> | |
| | <p>33. Personal information, as defined in § 2.1-379, (i) filed with the Virginia Housing Development Authority concerning individuals who have applied for or received loans or other housing assistance or who have applied for occupancy of or have occupied housing financed, owned or otherwise assisted by the Virginia Housing Development Authority, (ii) concerning persons participating in or persons on the waiting list for federally funded rent-assistance programs, 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</p> | <p>Eliminated.</p> |

| RELATING TO | CURRENT LAW | PROPOSED REDRAFT |
|-------------|---|------------------|
| | information shall not be denied. | |
| | 34. Documents regarding the siting of hazardous waste facilities..... | Same. |
| | 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. | Same. |
| | 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. | Same. |
| | 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 | Same. |

| RELATING TO | CURRENT LAW | PROPOSED REDRAFT |
|-------------|-------------|------------------|
|-------------|-------------|------------------|

| | | |
|--|--|--------------|
| | <p>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.</p> | |
| | <p>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</p> | <p>Same.</p> |

| RELATING TO | CURRENT LAW | PROPOSED REDRAFT |
|-------------|---|--|
| | <p>organized crime and illegal gambling where such official records have not been publicly released, published or copyrighted.</p> <p>.....</p> | |
| | <p>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.</p> | <p>Specific exemption eliminated. Included under "category" exemption for trade secrets.</p> |
| | <p>40. [Repealed.]</p> | <p>Deleted.</p> |
| | <p>41. 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.</p> | <p>Same.</p> |
| | <p>42. Information and records collected for the designation and verification of trauma centers and other</p> | <p>Same.</p> |

| RELATING TO | CURRENT LAW | PROPOSED REDRAFT |
|-------------|-------------|------------------|
|-------------|-------------|------------------|

| | | |
|--|--|---|
| | specialty care centers within the Statewide Emergency Medical Services System and Services..... | |
| | 43. Reports and court documents required to be kept confidential pursuant to § 37.1-67.3. | Same. |
| | 44. [Repealed.] | Deleted. |
| | 45. Investigative notes; correspondence and information furnished in confidence with respect to an investigation; and official records otherwise exempted by this chapter or any Virginia statute, provided to or produced by or for the Auditor of Public Accounts and the Joint Legislative Audit and Review Commission; or investigative notes, correspondence, documentation and information furnished and provided to or produced by or for the Department of the State Internal Auditor with respect to an investigation initiated through the State Employee Fraud, Waste and Abuse Hotline. | Revised to read: “ Investigative notes, correspondence and information furnished in confidence to the (i) Auditor of Public Accounts, (ii) JLARC, or (iii) Department of the State Internal Auditor re: the fraud, waste abuse hotline. Remainder of exemption substantially the same. |
| | 46. Data formerly required to be submitted to the Commissioner of Health relating to the establishment of new or expansion of existing clinical health services, acquisition of major | Same. |

| RELATING TO | CURRENT LAW | PROPOSED REDRAFT |
|-------------|---|---|
| | medical equipment, or certain projects requiring capital expenditures | |
| | 47. Documentation or other information which describes the design, function, operation or access control features of any security system, whether manual or automated, which is used to control access to or use of any automated data processing or telecommunications system. | Same. |
| | 48. Confidential financial statements, balance sheets, trade secrets, and revenue and cost projections provided to the Department of Rail and Public Transportation, provided such information is exempt under the federal Freedom of Information Act or the federal Interstate Commerce Act or other laws administered Interstate Commerce Commission or the Federal Rail Administration | Specific exemption eliminated. Included under "category" exemption for trade secrets. |
| | 49. In the case of corporations organized by the Virginia Retirement System, (i) proprietary information provided by, and financial information concerning, coventurers, partners, lessors, lessees, or investors, and (ii) | Same. |

| RELATING TO | CURRENT LAW | PROPOSED REDRAFT |
|-------------|--|---|
| | records concerning the condition, acquisition, disposition, use, leasing, development, coventuring, or management of real estate | |
| | 50. Confidential proprietary records related to inventory and sales, voluntarily provided by private energy suppliers to the Department of Mines, Minerals and Energy, used by that Department for energy contingency planning purposes..... | Specific exemption eliminated. Included under "category" exemption for trade secrets. |
| | 51. Confidential proprietary information furnished to the Board of Medical Assistance Services or the Medicaid Prior Authorization Advisory Committee..... | Specific exemption eliminated. Included under "category" exemption for trade secrets. |
| | 52. [Repealed.] | Deleted. |
| | 53. Proprietary, commercial or financial information, balance sheets, trade secrets, and revenue and cost projections provided by a private transportation business to the Virginia Department of Transportation and the Department of Rail and Public Transportation for the purpose of conducting transportation studies needed to obtain grants or other financial assistance under the Intermodal Surface Transportation | Specific exemption eliminated. Included under "category" exemption for trade secrets. |

| RELATING TO | CURRENT LAW | PROPOSED REDRAFT |
|-------------|--|---|
| | Efficiency Act of 1991:..... | |
| | 54. Names and addresses of subscribers to Virginia Wildlife magazine, published by the Department of Game and Inland Fisheries, provided the individual subscriber has requested in writing that the Department not release such information. | Eliminated. |
| | 55. Reports, documents, memoranda or other information or materials which describe any aspect of security used by the Virginia Museum of Fine Artsas follows: a. Operational, procedural or tactical planning documents, including any training manuals to the extent they discuss security measures; b. Surveillance techniques; c. Installation, operation, or utilization of any alarm technology; d. Engineering and architectural drawings of the Museum or any warehouse; e. Transportation of the Museum's collections, including routes and schedules; or f. Operation of the Museum or any warehouse used by the Museum involving the: (1) Number of employees, including security guards. | Specific exemption eliminated. Included under "category" exemption for security manuals, etc. |

| RELATING TO | CURRENT LAW | PROPOSED REDRAFT |
|-------------|-------------|------------------|
|-------------|-------------|------------------|

| | | |
|--|---|--|
| | <p>present at any time; or (2) Busiest hours, with the maximum number of visitors in the Museum.</p> | |
| | <p>56. Reports, documents, memoranda or other information or materials which describe any aspect of security used by the Virginia Department of Alcoholic Beverage Controlas follows: (i) Operational, procedural or tactical planning documents, including any training manuals to the extent they discuss security measures; (ii) Surveillance techniques; (iii) The installation, operation, or utilization of any alarm technology; (iv) Engineering and architectural drawings of such government stores or warehouses; (v) The transportation of merchandise, including routes and schedules; and (vi) The operation of any government store or the central warehouse used by the Department of Alcoholic Beverage Control involving the: a. Number of employees present during each shift; b. Busiest hours, with the maximum number of customers in such government store; and c. Banking system used,</p> | <p>Specific exemption eliminated. Included under "category" exemption for security manuals, etc.</p> |

| RELATING TO | CURRENT LAW | PROPOSED REDRAFT |
|-------------|---|---|
| | including time and place of deposits. | |
| | 57. Information required to be provided pursuant to § 54.1-2506.1. | Same. |
| | 58. Confidential information designated as provided in subsection D of § 11-52 as trade secrets or proprietary information by any person who has submitted to a public body an application for prequalification to bid on public construction projects..... | Specific exemption eliminated. Included under "category" exemption for trade secrets. |
| | 59. All information and records acquired during a review of any child death by the State Child Fatality Review Team | Same. |
| | 60. Investigative notes, correspondence, documentation and information provided to or produced by or for the committee or the auditor with respect to an investigation or audit conducted pursuant to § 15.1-765.2..... | Same. |
| | 61. Financial, medical, rehabilitative and other personal information concerning applicants for or recipients of loan funds submitted to or maintained by the Assistive Technology Loan Fund Authority | Same. |
| | 62. Confidential proprietary records which are voluntarily provided | Specific exemption eliminated. Included under "category" |

| RELATING TO | CURRENT LAW | PROPOSED REDRAFT |
|-------------|-------------|------------------|
|-------------|-------------|------------------|

| | | |
|--|--|--|
| | <p>by a private entity pursuant to a proposal filed with a public entity under the Public-Private Transportation Act of 1995 (§ 56-556 et seq.), pursuant to a promise of confidentiality from the responsible public entity, used by the responsible public entity for purposes related to the development of a qualifying transportation facility; and memoranda, working papers or other records related to proposals filed under the Public-Private Transportation Act of 1995,In order for confidential proprietary information to be excluded from the provisions of this chapter, the private entity shall (i) invoke such exclusion upon submission of the data or other materials for which protection from disclosure is sought, (ii) identify the data or other materials for which protection is sought, and (iii) state the reasons why protection is necessary.</p> | <p>exemption for trade secrets.</p> |
| | <p>63. Records of law-enforcement agencies, to the extent that such records contain specific tactical plans, the disclosure of which would jeopardize the safety or security of law-</p> | <p>Specific exemption eliminated. Included under "category" exemption for security manuals, etc.</p> |

| RELATING TO | CURRENT LAW | PROPOSED REDRAFT |
|-------------|---|---|
| | enforcement personnel or the general public; engineering plans, architectural drawings, or operational specifications of governmental law-enforcement facilities, including but not limited to courthouses, jails, and detention facilities, | |
| | 64. All records of the University of Virginia or the University of Virginia Medical Center which contain proprietary, business-related information pertaining to the operations of the University of Virginia Medical Center,..... | Specific exemption eliminated. Included under "category" exemption for trade secrets. |
| | 65. Patient level data collected by the Board of Health and not yet processed, verified, and released,.... to the Board by the nonprofit organization with which the Commissioner of Health has contracted..... | Same. |
| | 66. Records of the Medical College of Virginia Hospitals Authority pertaining to any of the following: (i) an individual's qualifications for or continued membership on its medical or teaching staffs; proprietary information gathered by or in the possession of the Authority from third parties pursuant to a | Specific exemption eliminated. Included under "category" exemption for trade secrets. |

| RELATING TO | CURRENT LAW | PROPOSED REDRAFT |
|-------------|-------------|------------------|
|-------------|-------------|------------------|

| | | |
|--|--|--|
| | <p>promise of confidentiality; contract cost estimates prepared for confidential use in awarding contracts for construction or the purchase of goods or services; data, records or information of a proprietary nature produced or collected by or for the Authority or members of its medical or teaching staffs; financial statements not publicly available that may be filed with the Authority from third parties; the identity, accounts or account status of any customer of the Authority; consulting or other reports paid for by the Authority to assist the Authority in connection with its strategic planning and goals; and the determination of marketing and operational strategies where disclosure of such strategies would be harmful to the competitive position of the Authority; and (ii) data, records or information of a proprietary nature produced or collected by or for employees of the Authority, other than the Authority's financial or administrative records, in the conduct of or as a result of study or research on medical, scientific,</p> | |
|--|--|--|

| RELATING TO | CURRENT LAW | PROPOSED REDRAFT |
|-------------|--|--|
| | <p>technical or scholarly issues, whether sponsored by the Authority alone or in conjunction with a governmental body or a private concern, when such data, records or information have not been publicly released, published, copyrighted or patented.</p> | |
| | <p>67. Confidential proprietary information or trade secrets, not publicly available, provided by a private person or entity to the Virginia Resources Authority or to a fund administered..... by the Virginia Resources Authority.....</p> | <p>Specific exemption eliminated. Included under "category" exemption for trade secrets.</p> |
| | <p>68. Confidential proprietary records which are provided by a franchisee under § 15.2-2108 to its franchising authority..... In order for confidential proprietary information to be excluded from the provisions of this chapter, the franchisee shall (i) invoke such exclusion upon submission of the data or other materials for which protection from disclosure is sought, (ii) identify the data or other materials for which protection is sought, and (iii) state the reason why protection is necessary.</p> | <p>Specific exemption eliminated. Included under "category" exemption for trade secrets.</p> |
| | <p>69. Records of the</p> | <p>Same.</p> |

| RELATING TO | CURRENT LAW | PROPOSED REDRAFT |
|-------------|-------------|------------------|
|-------------|-------------|------------------|

| | | |
|--|---|---|
| | Intervention Program Committee within the Department of Health Professions to the extent such records may identify any practitioner who may be, or who is actually, impaired to the extent disclosure is prohibited by § 54.1-2517. | |
| | 70. Records submitted as a grant application, or accompanying a grant application, to the Commonwealth Neurotrauma Initiative Advisory Board | Same. |
| | 71. Information which would disclose the security aspects of a system safety program plan adopted pursuant to 49 C.F.R. Part 659 by the Commonwealth's designated Rail Fixed Guideway Systems Safety Oversight agency..... | Same. |
| | 72. Documents and other information of a proprietary nature furnished by a supplier of charitable gaming supplies to the Charitable Gaming Commission | Specific exemption eliminated. Included under "category" exemption for trade secrets. |
| | 73. Personal information, as defined in § 2.1-379, provided to the Board of the Virginia Higher Education Tuition Trust Fund or its employees by or on behalf of individuals who have requested information about, applied | Same. |

| RELATING TO | CURRENT LAW | PROPOSED REDRAFT |
|-------------|--|---|
| | for, or entered into prepaid tuition contracts..... | |
| | 74. Any record copied, recorded or received by the Commissioner of Health in the course of an examination, investigation or review of a managed care health insurance plan licensee pursuant to §§ 32.1-137.4 and 32.1-137.5, including books, records, files, accounts, papers, documents, and any or all computer or other recordings. | This exemption, added in 1998, was not included in the draft. |
| | | See Appendix B for text of "category" exemptions for (i) trade secrets and (ii) security manuals, etc. See Appendix B for text of new criminal records section (§ 2.1-342.2) |

Source: Maria J.K. Everett, Senior Attorney, Division of Legislative Services

**FOIA--OPEN MEETINGS
COMPARISON
(CURRENT LAW vs PROPOSED REDRAFT)
HJR 187 (1998)**

| RELATING TO | CURRENT LAW | PROPOSED REDRAFT |
|--|---|--|
| <p>§ 2.1-343—Meetings to be public; notice; recordings; minutes</p> | <p>Except as otherwise specifically provided, meetings shall be public.</p> <p>Notice shall be furnished to any requesting citizen.</p> <p>Notice for meetings where at least one gubernatorial appointee shall state whether public comment will be received.</p> <p>Notice on continuous basis shall be requested at least once a year in writing.</p> <p>Notice, reasonable under the circumstances, of special or emergency meetings shall be given at same time notice given to public body.</p> | <p><u>Revised to read:</u> All meetings of public bodies shall be open, except where closed meetings are authorized.</p> <p>Notice shall be given by placing the notice (i) in a prominent location at each office of the public body, (ii) at the meeting site, and (iii) on any electronic or other bulletin board maintained by the public body, at least three working days prior to the meeting.</p> <p>Same.</p> <p>Same. Adds that request shall include requester's daytime telephone number.</p> <p>Revised to read: If emergency arises and the public body is unable to meet in a regularly scheduled session, the public body shall give</p> |

| RELATING TO | CURRENT LAW | PROPOSED REDRAFT |
|-------------|-------------|------------------|
|-------------|-------------|------------------|

| | | |
|--|--|---|
| <p>§ 2.1-343—Meetings to be public; notice; recordings; minutes (Cont'd)</p> | <p>Unless exempt, one copy of agenda packet and materials furnished to public body shall be made available at same time such documents furnished to public body.</p> | <p>notice of the rescheduled meeting as soon as possible under the circumstances.</p> <p>Same.</p> |
| | <p>Photographing, filming, recording or reproducing an open meeting permitted. Public body may adopt rules governing placement and use of equipment to prevent interference with proceedings.</p> | <p>Same.</p> |
| | <p>Voting by secret or written ballot in open meeting is a violation of FOIA.</p> | <p>Same, but moved to § 2.1-343.2.</p> |
| | <p>Minutes shall be recorded at all public meetings, except: (i) standing or other committees of General Assembly, (ii) legislative interim study committees, (iii) study committees appointed by the Governor, or (iv) study committees appointed by local governing bodies, school boards under certain circumstances.</p> | <p>Minutes shall be recorded at both open and closed meetings. No exceptions. Minutes and all other records, including audio/visual records shall be deemed public records. Audio/visual records of open meetings shall be produced forthwith.</p> |

| RELATING TO | CURRENT LAW | PROPOSED REDRAFT |
|-------------|-------------|------------------|
|-------------|-------------|------------------|

| | | |
|--|---|---|
| <p>§ 2.1-343—Meetings to be public; notice; recordings; minutes (Cont'd)</p> | | <p>Adds:</p> <p>No meeting shall be conducted through telephonic, video, electronic or other communication means where the members are not physically assembled to discuss/transact public business except state public bodies in accordance with § 2.1-343.1 (Electronic communication meetings). [NOTE: Existing law, moved from definition of “meeting”]</p> <p>Nothing in FOIA construed to prohibit the gathering/attendance of two or more members of a public body (i) at a function where no part of the purpose of the function is to discuss/transact public business...., or (ii) at a public forum, candidate appearance or debate.... [NOTE: Existing law, with revisions to public forum clause, moved from definition of “meeting”]</p> |
| <p>§ 2.1-343.1. Electronic communication meetings</p> | <p>Violation of FOIA for any <u>local</u> public body to conduct an electronic communication meeting; although use of interactive</p> | <p>Same.</p> |

| RELATING TO | CURRENT LAW | PROPOSED REDRAFT |
|-------------|-------------|------------------|
|-------------|-------------|------------------|

| | | |
|---|---|--------------|
| <p>§ 2.1-343.1. Electronic communication meetings (Cont'd)</p> | <p>participation not prohibited.</p> | |
| | <p>State public bodies may conduct such meetings, except closed meetings. Where a quorum of the body is physically assembled at one location and additional members of the body may participate through telephonic means, provided such participation is available to the public.</p> | <p>Same.</p> |
| | <p>Notice of such meetings to be provided at least 30 days prior to the meeting.</p> | <p>Same.</p> |
| | <p>Persons attending the meeting at any meeting location shall be afforded the same opportunity to address the public body as persons attending the primary location.</p> | <p>Same.</p> |
| | <p>Interruption of the telephonic or video broadcast of the meeting shall result in the suspension of the action until public access restored.</p> | <p>Same.</p> |
| <p>No more than 25% of all meeting held annually may be telephonic or video meetings.</p> | <p>Same.</p> | |

| RELATING TO | CURRENT LAW | PROPOSED REDRAFT |
|-------------|-------------|------------------|
|-------------|-------------|------------------|

| | | |
|---|---|--|
| <p>§ 2.1-343.2. Transaction of public business other than by votes at meetings prohibited.</p> | <p>Unless specifically provided, no vote of any kind of the membership of any public body shall be taken to authorize the transaction of any public business.</p> <p>Nothing to prohibit separately contacting the membership of a public body to ascertain a member's position with respect to the transaction of public business.</p> | <p>Same.</p> <p>Same.</p> <p>Adds: No public body shall vote by secret or written ballot, and unless expressly provided in FOIA (i.e., § 2.1-343.1), no public body shall vote by telephone or other electronic communication means. [NOTE: Existing law moved from § 2.1-343]</p> |
| <p>§ 2.1-344. Closed meetings.</p> | <p>Public bodies are not required to conduct closed meetings, but may, if determined that a closed meeting is desirable only for the following purposes:</p> <p>1. Discussion, consideration or interviews of prospective candidates for employment; assignment, appointment, promotion, performance, demotion, salaries, disciplining or</p> | <p><u>Revised to read:</u> Public bodies may hold closed meetings only for the following purposes:</p> <p>1. Same.</p> |

| RELATING TO | CURRENT LAW | PROPOSED REDRAFT |
|-------------|-------------|------------------|
|-------------|-------------|------------------|

| | | |
|---|--|-----------------|
| <p>§ 2.1-344. Closed meetings. (Cont'd)</p> | <p>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.</p> <p>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, 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</p> | <p>2. Same.</p> |
|---|--|-----------------|

| RELATING TO | CURRENT LAW | PROPOSED REDRAFT |
|-------------|-------------|------------------|
|-------------|-------------|------------------|

| | | |
|---|---|---|
| <p>§ 2.1-344. Closed meetings. (Cont'd)</p> | <p>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.</p> <p>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.</p> <p>4. The protection of the privacy of individuals in personal matters not related to public business.</p> <p>5. Discussion concerning a prospective business or industry or expansion of an existing business or industry where no previous announcement has been made of the business' or industry's interest in locating or expanding its facilities in the community.</p> <p>6. The investing of public funds where competition or bargaining is involved, where, if made public initially, the financial</p> | <p>3. <u>Revised to read:</u> Discussion of the acquisition of real property for a public purpose, or disposition of publicly held real property where discussion in an open meeting would adversely affect the value of the property.</p> <p>4. Specific exemption eliminated.</p> <p>5. Same.</p> <p>6. Same.</p> |
|---|---|---|

| RELATING TO | CURRENT LAW | PROPOSED REDRAFT |
|-------------|-------------|------------------|
|-------------|-------------|------------------|

| | | |
|---|---|---|
| <p>§ 2.1-344. Closed meetings. (Cont'd)</p> | <p>interest of the governmental unit would be adversely affected.</p> <p>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.</p> <p>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</p> | <p>7. <u>Revised to read:</u> Consultation with legal counsel which is protected by the attorney-client privilege and briefings by staff members, consultants, or attorneys pertaining to actual or imminently threatened litigation, where disclosure of such consultation or briefing would adversely affect the bargaining or litigation posture of the public body.</p> <p>8. Same.</p> |
|---|---|---|

| RELATING TO | CURRENT LAW | PROPOSED REDRAFT |
|-------------|-------------|------------------|
|-------------|-------------|------------------|

| | | |
|---|--|--------------------------------|
| <p>§ 2.1-344. Closed meetings. (Cont'd)</p> | <p>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.</p> | |
| | <p>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.</p> | <p>9. Same.</p> |
| | <p>10. Discussion or consideration of honorary degrees or special awards. 11. Discussion or consideration of tests or</p> | <p>10. Same. 11. Same.</p> |

| RELATING TO | CURRENT LAW | PROPOSED REDRAFT |
|-------------|-------------|------------------|
|-------------|-------------|------------------|

| | | |
|---|--|------------------|
| <p>§ 2.1-344. Closed meetings. (Cont'd)</p> | <p>examinations or other documents excluded from this chapter pursuant to § 2.1-342 B 9.</p> | |
| | <p>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.</p> | <p>12. Same.</p> |
| | <p>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.</p> | <p>13. Same.</p> |
| <p>14. Discussion by the</p> | <p>14. Same.</p> | |

| RELATING TO | CURRENT LAW | PROPOSED REDRAFT |
|-------------|-------------|------------------|
|-------------|-------------|------------------|

| | | |
|---|--|------------------|
| <p>§ 2.1-344. Closed meetings. (Cont'd)</p> | <p>Governor and any economic advisory board reviewing forecasts of economic activity and estimating general and nongeneral fund revenues.</p> | |
| | <p>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 Professional and Occupational Regulation 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.</p> | <p>15. Same.</p> |
| | <p>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.</p> | <p>16. Same.</p> |
| <p>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</p> | <p>17. Same.</p> | |

| RELATING TO | CURRENT LAW | PROPOSED REDRAFT |
|-------------|-------------|------------------|
|-------------|-------------|------------------|

| | | |
|---|---|--|
| <p>§ 2.1-344. Closed meetings. (Cont'd)</p> | <p>anonymity is discussed or disclosed.</p> <p>18. Discussion, consideration, review and deliberations by local community corrections resources boards regarding the placement in community diversion programs of individuals previously sentenced to state correctional facilities.</p> <p>19. [Repealed.]</p> <p>20. 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.</p> <p>21. Discussion of plans to protect public safety as it relates to terrorist activity.</p> <p>22. In the case of corporations organized by the Virginia Retirement System, discussion or</p> | <p>18. Same.</p> <p>19. Deleted.</p> <p>20. Same.</p> <p>21. Same.</p> <p>22. Specific exemption eliminated.</p> |
|---|---|--|

| RELATING TO | CURRENT LAW | PROPOSED REDRAFT |
|-------------|-------------|------------------|
|-------------|-------------|------------------|

| | | |
|---|--|-----------------------------------|
| <p>§ 2.1-344. Closed meetings. (Cont'd)</p> | <p>consideration of (i) proprietary information provided by, and financial information concerning, coventurers, partners, lessors, lessees, or investors, and (ii) the condition, acquisition, disposition, use, leasing, development, coventuring, or management of real estate the disclosure of which would have a substantial adverse impact on the value of such real estate or result in a competitive disadvantage to the corporation or subsidiary.</p> <p>23. Those portions of meetings in which individual child death cases are discussed by the State Child Fatality Review Team established pursuant to § 32.1-283.1.</p> <p>24. Those portions of meetings of the University of Virginia Board of Visitors and those portions of meetings of any persons to whom management responsibilities for the University of Virginia Medical Center have been delegated, in which there is discussed proprietary, business-related information pertaining to the operations of the University of Virginia Medical Center, including its business development</p> | <p>23. Same.</p> <p>24. Same.</p> |
|---|--|-----------------------------------|

| RELATING TO | CURRENT LAW | PROPOSED REDRAFT |
|---|--|------------------|
| <p>§ 2.1-344. Closed meetings. (Cont'd)</p> | <p>or marketing strategies and its activities with existing or future joint venturers, partners, or other parties with whom the University of Virginia Medical Center has formed, or forms, any arrangement for the delivery of health care, if disclosure of such information would be harmful to the competitive position of the Medical Center.</p> <p>25. In the case of the Medical College of Virginia Hospitals Authority, discussion or consideration of any of the following: the condition, acquisition, use or disposition of real or personal property; operational plans that could affect the value of property, real or personal, owned or desirable for ownership by the Authority; matters relating to gifts, bequests and fund-raising activities; grants and contracts for services or work to be performed by the Authority; marketing or operational strategies where disclosure of such strategies would be harmful to the competitive position of the Authority; members of its medical and teaching staffs and</p> | <p>25. Same.</p> |

| RELATING TO | CURRENT LAW | PROPOSED REDRAFT |
|-------------|-------------|------------------|
|-------------|-------------|------------------|

| | | |
|---|---|--|
| <p>§ 2.1-344. Closed meetings. (Cont'd)</p> | <p>qualifications for appointments thereto; and qualifications or evaluations of other employees.</p> <p>26. Those portions of the meetings of the Intervention Program Committee within the Department of Health Professions to the extent such discussions identify any practitioner who may be, or who actually is, impaired pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of Title 54.1.</p> <p>27. Those meetings or portions of meetings of the Board of the Virginia Higher Education Tuition Trust Fund wherein personal information, as defined in § 2.1-379, which has been provided to the Board or its employees by or on behalf of individuals who have requested information about, applied for, or entered into prepaid tuition contracts pursuant to Chapter 4.9 (§ 23-38.75 et seq.) of Title 23 is discussed.</p> <p>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</p> | <p>26. Same.</p> <p>27. Same.</p> <p>Same. Second and third sentences moved to new subsection E.</p> |
|---|---|--|

| RELATING TO | CURRENT LAW | PROPOSED REDRAFT |
|-------------|-------------|------------------|
|-------------|-------------|------------------|

| | | |
|---|---|--------------|
| <p>§ 2.1-344. Closed meetings. (Cont'd)</p> | <p>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. This section shall not be construed to (i) require the disclosure of any contract between the Intervention Program Committee within the Department of Health Professions and an impaired practitioner entered into pursuant to Chapter 25.1 of Title 54.1 or (ii) require the board of directors of any authority created pursuant to the Industrial Development and Revenue Bond Act (§ 15.1-1373 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.</p> <p>C. Public officers improperly selected due to</p> | <p>Same.</p> |
|---|---|--------------|

| RELATING TO | CURRENT LAW | PROPOSED REDRAFT |
|-------------|-------------|------------------|
|-------------|-------------|------------------|

| | | |
|--|---|--|
| <p>§ 2.1-344. Closed meetings. (Cont'd)</p> | <p>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.</p> <p>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.</p> | <p>Same.</p> <p>New subsection E added. See note above.</p> |
| <p>§ 2.1-344.1. Call of closed meetings; certification of proceedings.</p> | <p>A. No meeting shall become an executive or closed meeting unless the public body proposing to convene such meeting shall have taken an affirmative recorded vote in open session to that effect, by motion stating specifically the purpose or purposes which are to be the subject of the meeting, and reasonably identifying the substance of the matters to be discussed. A statement shall be included in the minutes of the open meeting which</p> | <p>A. <u>Revised to read:</u> No closed meeting shall be held unless the public body proposing to convene such meeting has taken an affirmative recorded vote in an open meeting approving a motion which (i) state specifically the subject matter and the purpose of the meeting and (ii) makes specific reference to the applicable exemption...</p> <p>Remainder of subsection A—Same.</p> |

| RELATING TO | CURRENT LAW | PROPOSED REDRAFT |
|---|--|--|
| <p>§ 2.1-344.1. Call of closed meetings; certification of proceedings. (Cont'd)</p> | <p>shall make specific reference to the applicable exemption or exemptions from open meeting requirements provided in subsection A of § 2.1-344 or in § 2.1-345, and the matters contained in such motion shall be set forth in those minutes. A general reference to the provisions of this chapter or authorized exemptions from open meeting requirements shall not be sufficient to satisfy the requirements for an executive or closed meeting.</p> <p>B. The notice provisions of this chapter shall not apply to executive or closed meetings of any public body held solely for the purpose of interviewing candidates for the position of chief administrative officer. Prior to any such executive or closed meeting for the purpose of interviewing candidates the public body shall announce in an open meeting that such executive or closed meeting shall be held at a disclosed or undisclosed location within fifteen days thereafter.</p> <p>C. The public body</p> | <p>B. Same.</p> <p>C. Same, but adds</p> |

| RELATING TO | CURRENT LAW | PROPOSED REDRAFT |
|-------------|-------------|------------------|
|-------------|-------------|------------------|

| | | |
|---|--|---|
| <p>§ 2.1-344.1. Call of closed meetings; certification of proceedings. (Cont'd)</p> | <p>holding an executive or closed meeting shall restrict its consideration of matters during the closed portions only to those purposes specifically exempted from the provisions of this chapter.</p> <p>D. At the conclusion of any executive or closed meeting convened hereunder, the public body holding such meeting shall reconvene in open session immediately thereafter and shall take a roll call or other recorded vote to be included in the minutes of that body, certifying that to the best of the member's knowledge (i) only public business matters lawfully exempted from open meeting requirements under this chapter, and (ii) only such public business matters as were identified in the motion by which the executive or closed meeting was convened were heard, discussed or considered in the meeting by the public body. Any member of the public body who believes that there was a departure from the requirements of subdivisions (i) and (ii) above, shall so state prior to the vote, indicating the substance of the departure</p> | <p>requirement that that matters discussed in closed meeting are identified in the motion required by subsection A above.</p> <p>D. Same.</p> |
|---|--|---|

| RELATING TO | CURRENT LAW | PROPOSED REDRAFT |
|-------------|-------------|------------------|
|-------------|-------------|------------------|

| | | |
|---|---|--|
| <p>§ 2.1-344.1. Call of closed meetings; certification of proceedings. (Cont'd)</p> | <p>that, in his judgment, has taken place. The statement shall be recorded in the minutes of the public body.</p> <p>E. Failure of the certification required by subsection D, above, to receive the affirmative vote of a majority of the members of the public body present during a closed or executive session shall not affect the validity or confidentiality of such meeting with respect to matters considered therein in compliance with the provisions of this chapter. The recorded vote and any statement made in connection therewith, shall upon proper authentication, constitute evidence in any proceeding brought to enforce this chapter.</p> <p>F. A public body may permit nonmembers to attend an executive or closed meeting if such persons are deemed necessary or if their presence will reasonably aid the public body in its consideration of a topic which is a subject of the meeting.</p> <p>G. Except as specifically</p> | <p>E. Same, but adds requirement that, relating to the recorded vote, that the minutes of the closed meeting shall also constitute evidence in any enforcement proceeding.</p> <p>F. Same.</p> <p>G. Revised to read: No</p> |
|---|---|--|

| RELATING TO | CURRENT LAW | PROPOSED REDRAFT |
|---|--|--|
| <p>§ 2.1-344.1. Call of closed meetings; certification of proceedings. (Cont'd)</p> | <p>authorized by law, in no event may any public body take action on matters discussed in any executive or closed meeting, except at a public meeting for which notice was given as required by § 2.1-343.</p> <p>H. Minutes may be taken during executive or closed sessions of a public body, but shall not be required. Such minutes shall not be subject to mandatory public disclosure.</p> | <p>public body may take action on matters discussed in any closed meeting, except at an open meeting for which notice was given as required by § 2.1-343.</p> <p><u>H. Revised to read:</u> Minutes taken during a closed meeting of a public body shall not be subject to public disclosure, but may be introduced as evidence in any action to enforce the provisions of this chapter.</p> |

Source: Maria J.K. Everett, Senior Attorney, Division of Legislative Services

E:\DLSDATA\FINGOV\STUDIES_98studys\HJR187\comparisonmeetings.doc

VIRGINIA FREEDOM OF INFORMATION ACT STUDY

HOUSE JOINT RESOLUTION - 187

A review of the Virginia Freedom of Information Act (FOIA) draft legislation and a comparison of how the current law and the draft bill treat criminal records and criminal investigations

Prepared by the

VIRGINIA DEPARTMENT OF STATE POLICE

August 26, 1998

| EXISTING SECTION | PROPOSED AMENDMENT | EFFECT |
|---|---|--|
| <p>§2.1-341 - "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 unless disclosure is prohibited or restricted under §19.2-11.2. The identity of any individual providing information about a crime or criminal activity under a promise of anonymity shall not be disclosed.</p> | <p>Deletes the definition of "criminal incident information" and creates a new section (§2.1-432.2) using the term "criminal records".</p> | <p>The deletion of the definition "criminal incident information" has the effect of removing the exemption from disclosure of records concerning undercover investigations and the disclosure of information regarding victims or victim's family members in conflict with the provisions of §19.2-11.2.</p> <p>The deletion of the aforementioned definition removes the exemption provided law enforcement from the provisions of the existing section. The new language opens all criminal records, investigations and confidential information to the public upon request. (See below)</p> |
| <p>§2.1-342</p> <p>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:</p> <ol style="list-style-type: none"> 1. Memoranda, correspondence, evidence and complaints related to criminal investigations; adult arrestee photographs when necessary to avoid jeopardizing an investigation in felony cases until such time as the release of such photograph will no longer jeopardize the investigation; reports submitted to the state and | <p>Deletes the exclusion from the provisions of the act. Provisions for disclosure of criminal records which includes formerly excluded records and information.</p> <p>§2.1-342.2. Disclosure of criminal records; limitations.</p> <p>A. Records concerning crime, criminal incidents and arrestees shall be open to inspection and copying and shall be produced forthwith, notwithstanding the provisions of §2.1-342. Such records shall include, but are not limited to:</p> <ol style="list-style-type: none"> 1. All statistical information regarding crime or patterns of | <p>§2.1-342.2 - The term "criminal records" and the requirement that records concerning arrestees could be inappropriately interpreted to mean "criminal history record information" (CHRI) as defined in §9-169. This could be construed to be in conflict with the provisions of §19.2-389 as it pertains to the dissemination of CHRI.</p> <p>§2.1-342.2.A(1) - "All information" would require everything in the investigative case file to be turned over to the requester. This will have a</p> |

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; records of local police departments relating to neighborhood watch programs that include the names, addresses, and operating schedules of individual participants in the program that are provided to such departments under a promise of confidentiality; and all records of persons imprisoned in penal institutions in the 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 activity;
2. All information concerning any reportable, noncriminal or criminal incident, whether a felony or misdemeanor, including a description of the activity or violation reported; the date, time, and location of any criminal incident, activity or violation; the nature of any alleged violation; whether the incident involved the use of a weapon; the identity of all investigating agencies and officers; a description of any injuries suffered or property damaged or stolen; the identity of all victims; and the contents of any "911" or other emergency services calls relating to any criminal incident, activity or violation; or
 3. The identity of all adult arrestees, and all juvenile arrestees to the extent permitted by law; the status of all charges or arrests; and any available photographs of adult arrestees, and of juvenile arrestees to the extent permitted by law.

B. In the event of an active felony investigation, criminal records may be withheld to the extent that the release of such records would cause a suspect to flee or evade detection, result in the destruction of evidence, or would likely jeopardize the success of the investigation.

C. State or local law-enforcement officials shall withhold information which would identify any person assisting them pursuant to a promise of confidentiality or anonymity.

D. Upon the request of any crime victim, no law-enforcement agency, attorney for the Commonwealth, court or the Department of Corrections, or any employee of any of them, shall disclose crime information except in accordance with §19.2-11.2.

negative impact on agencies to investigate criminal activity and to keep information necessary to resolve the matter from public scrutiny. In numerous instances, the success of the investigation depends on the inquiry being done covertly.

Providing a description of property stolen in all instances, especially regarding robbery where large sums of money are taken, would be detrimental to the future safety of the victim. This would put the criminal element on notice that the individual or entity had access to or had money. For that reason the FBI will not release the amount of money taken in bank robberies.

The release of the contents of "any" 911 or other emergency services calls could jeopardize the confidentiality of individuals providing essential information concerning criminal activity or could result in retaliation against the individual reporting criminal activity.

§2.1-342.2.A(3) - The requirement to release of names and photographs of all arrestees will have a negative impact on the ability to conduct covert investigation and may jeopardize officer safety, undercover operatives or interfere in the apprehension of associates or conspirators.

§2.1-342.2.B - This exception should not be limited to felony investigations only. All crimes should be considered serious including misdemeanor crimes. It is as important to the victim and to society that class 1 & 2 misdemeanors be properly investigated and resolved.

Releasing information based upon whether the victim has requested that such information not be released will allow the release of information in those instances when the victim is incapacitated or otherwise does not have knowledge of this provision. Victims should not be required to ask for protections provided for under law. (§19.2-11.2)

§2.1-342.B.63. - Records of law-enforcement agencies, to the extent that such records contain specific tactical plans, the disclosure of which would jeopardize the safety or security of law-enforcement personnel or the general public; engineering plans, architectural drawings, or operational specifications of governmental law-enforcement facilities, including but not limited to courthouses, jails, and detention facilities, to the extent that disclosure could jeopardize the safety or security of law-enforcement offices; however, general descriptions shall be provided to the public upon request.

§2.1-342.01(50) - Engineering and architectural drawings, operational, procedural, tactical planning or training manuals, or staff meeting minutes or other records, the disclosure of which would reveal surveillance techniques, security personnel deployments, alarm systems or technologies, or operational and transportation plans or protocols, to the extent such disclosure would jeopardize the security or employee safety of (I) the Virginia Museum of fine arts or any of its warehouses; (ii) any government store or warehouse controlled by the Department of Alcoholic Beverage Control; (iii) any courthouse, jail, detention or law-enforcement facility, or (iv) any correctional or juvenile facility or institution under the supervision of the Department of Corrections or the Department of Juvenile Justice.

Deletes the exclusion for release of Records of law enforcement agencies containing specific tactical plans, the disclosure of which would jeopardize the safety or security of law enforcement personnel or the general public. The proposed amendment would require the release of the tactical and operations plans developed by law enforcement agencies to deal with and control riots, hostage situations, road blocks, terrorist activities. This would be a boon for the terrorist or criminal in that they would have access to all of law enforcement's plans.

§ 15.2-1722

Certain records to be kept by sheriffs and chiefs of police

A. It shall be the duty of the sheriff or chief of police of every locality to insure, in addition to other records required by law, the maintenance of adequate personnel, arrest, investigative, reportable incidents, and noncriminal incidents records necessary for the efficient operation of a law-enforcement agency. Failure of a sheriff or a chief of police to maintain such records or failure to relinquish such records to his successor in office shall constitute a misdemeanor. Former sheriffs or chiefs of police shall be allowed access to such files for preparation of a defense in any suit or action arising from the performance of their official duties as sheriff or chief of police. The enforcement of this section shall be the duty of the attorney for the Commonwealth of the county or city wherein the violation occurs. Except for 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 of arrest, the records required to be maintained by this section shall be exempt from the provisions of Chapter 21 (§2.1-340 et seq.) of Title 2.1.

B. For purposes of this section, the following definitions shall apply:

"Arrest records" means a compilation of information, centrally maintained in law-enforcement custody, of any arrest or temporary detention of an individual, including the identity of the person arrested or detained, the nature of the arrest or detention, and the charge, if any.

"Investigative records" means the reports of the

§ 15.2-1722

Certain records to be kept by sheriffs and chiefs of police

A. It shall be the duty of the sheriff or chief of police of every locality to insure, in addition to other records required by law, the maintenance of adequate personnel, arrest, investigative, reportable incidents, and noncriminal incidents records necessary for the efficient operation of a law-enforcement agency. Failure of a sheriff or a chief of police to maintain such records or failure to relinquish such records to his successor in office shall constitute a misdemeanor. Former sheriffs or chiefs of police shall be allowed access to such files for preparation of a defense in any suit or action arising from the performance of their official duties as sheriff or chief of police. The enforcement of this section shall be the duty of the attorney for the Commonwealth of the county or city wherein the violation occurs. ~~Except for 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 of arrest, the records required to be maintained by this section shall be exempt from the provisions of Chapter 21 (§2.1-340 et seq.) of Title 2.1.~~

B. For purposes of this section, the following definitions shall apply:

"Arrest records" means a compilation of information, centrally maintained in law-enforcement custody, of any arrest or temporary detention of an individual, including the identity of the person arrested or detained, the nature of the

Deleting the exemption now provided for local law enforcement personnel, arrest, investigative, reportable incidents and noncriminal incident, and local criminal history record information will have the effect of making all local records open. This will have a negative impact on the investigation conducted by local enforcement agencies and the privacy issues raised by opening criminal history record information available to the general public.

any systematic inquiries or examinations into criminal or suspected criminal acts which have been committed, are being committed, or are about to be committed.

"Noncriminal incidents records" means compilations of noncriminal occurrences of general interest to law-enforcement agencies, such as missing persons, lost and found property, suicides and accidental deaths.

"Personnel records" means those records maintained on each and every individual employed by a law-enforcement agency which reflect personal data concerning the employee's age, length of service, amount of training, education, compensation level, and other pertinent personal information.

"Reportable incidents records" means a compilation of complaints received by a law-enforcement agency and action taken by the agency in response thereto.

arrest or detention, and the charge, if any.

"Investigative records" means the reports of any systematic inquiries or examinations into criminal or suspected criminal acts which have been committed, are being committed, or are about to be committed.

"Noncriminal incidents records" means compilations of noncriminal occurrences of general interest to law-enforcement agencies, such as missing persons, lost and found property, suicides and accidental deaths.

"Personnel records" means those records maintained on each and every individual employed by a law-enforcement agency which reflect personal data concerning the employee's age, length of service, amount of training, education, compensation level, and other pertinent personal information.

"Reportable incidents records" means a compilation of complaints received by a law-enforcement agency and action taken by the agency in response thereto.

HJR 187 HOME

1999 SESSION

991501492

HOUSE BILL NO. 1985

Offered January 19, 1999

A BILL to amend and reenact §§ 2.1-116.05, 2.1-340.1, 2.1-341, 2.1-341.1, 2.1-342, 2.1-343, 2.1-343.1, 2.1-343.2, 2.1-344, 2.1-344.1, 2.1-346, 2.1-346.1, 15.2-1722, 19.2-368.3, 23-50.16:32, 32.1-283.1, 52-8.3, and 54.1-2517 of the Code of Virginia, to amend the Code of Virginia by adding sections numbered 2.1-341.2, 2.1-342.01, and 2.1-342.2, and to repeal §§ 2.1-342.1 and 2.1-345 of the Code of Virginia, relating to the Freedom of Information Act; penalties.

Patrons—Woodrum, Barlow, Croshaw, Day, DeBoer, Diamonstein and May; Senators: Bolling, Hawkins, Houck, Lambert, Trumbo and Wampler

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.1-116.05, 2.1-340.1, 2.1-341, 2.1-341.1, 2.1-342, 2.1-343, 2.1-343.1, 2.1-343.2, 2.1-344, 2.1-344.1, 2.1-346, 2.1-346.1, 15.2-1722, 19.2-368.3, 23-50.16:32, 32.1-283.1, 52-8.3, and 54.1-2517 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding sections numbered 2.1-341.2, 2.1-342.01, and 2.1-342.2, as follows:

§ 2.1-116.05. Grievance procedure generally.

A. It shall be the policy of the Commonwealth, as an employer, to encourage the resolution of employee problems and complaints. To that end, employees must be able to freely, and without retaliation, discuss their concerns with their immediate supervisors and management. To the extent that such concerns cannot be resolved informally, the grievance procedure shall afford an immediate and fair method for the resolution of employment disputes which may arise between state agencies and those employees who have access to the procedure under § 2.1-116.09.

B. As part of the Commonwealth's program of employee relations management, the Department shall develop a grievance procedure that includes not more than three successively higher grievance resolution steps and a formal hearing as provided in this chapter.

C. Prior to initiating a written grievance, the employee shall be encouraged to pursue an informal complaint with his immediate supervisor. The supervisor shall have authority to resolve the complaint if it involves actions within his control.

D. An employee may pursue a formal written grievance through the grievance resolution steps if the complaint has been presented to management within thirty calendar days of the employee's knowledge of the event that gave rise to the complaint. Employees' rights to pursue grievances shall not be used to harass or otherwise impede the efficient operations of government.

E. Upon receipt of a timely written complaint, management shall review the grievance and respond to the merits thereof. Each level of management review shall have the authority to provide the employee with a remedy. At least one face-to-face meeting between the employee and management shall be required. The persons who may be present at this meeting are the employee, the appropriate manager, an individual selected by the employee, and an individual selected by the manager. Witnesses may be called by either party.

F. Pursuant to § ~~2.1-342~~ B 3 2.1-242.01 A 4 of the Virginia Freedom of Information Act and § 2.1-382 of the Virginia Privacy Protection Act of 1976, all information relating to the actions grieved shall be made available to the employee by the agency, except as otherwise provided by law. Information pertaining to other employees that is relevant to the grievance shall be produced in such a manner as to preserve the privacy of the individuals not personally involved in the complaint or dispute.

G. All time limitations prescribed in the grievance procedure, including, but not limited to, submission of an initial complaint and employee appeal of management decisions, shall be reasonable, specific, and equally applicable to the agency and the employee. Expedited grievance procedures shall be established for terminations, demotions, suspensions, and lost wages or salaries.

H. Within five workdays of the receipt of a written notice of noncompliance, failure of the employee or the agency to comply with a substantial procedural requirement of the grievance procedure without just cause may result in a decision against the noncomplying party on any qualified

991501492

HB1985

1/19/99 18:49

1 issue. Written notice of noncompliance by the agency must be made to the agency head. The Director
 2 shall render all decisions related to procedural compliance, and such decisions shall be final.

3 I. Grievances qualified pursuant to § 2.1-116.06 that have not been resolved through the grievance
 4 resolution steps shall advance to a hearing which shall be the final step in the grievance procedure.

5 § 2.1-340.1. Policy of chapter.

6 By enacting this chapter, the General Assembly ensures the people of this ~~the~~ Commonwealth
 7 ready access to records in the custody of public officials and free entry to meetings of public bodies
 8 wherein the business of the people is being conducted. ~~Committees or subcommittees of public bodies~~
 9 ~~created to perform delegated functions of a public body or to advise a public body shall also conduct~~
 10 ~~their meetings and business pursuant to this chapter.~~ The affairs of government are not intended to be
 11 conducted in an atmosphere of secrecy since at all times the public is to be the beneficiary of any
 12 action taken at any level of government. Unless ~~the a~~ public body or public official specifically elects
 13 to exercise an exemption provided by this chapter or any other statute, every meeting shall be open to
 14 the public and all reports, documents and other material, and all public records shall be available for
 15 disclosure inspection and copying upon request. All public records and meetings shall be presumed
 16 open, unless an exemption is properly invoked.

17 This ~~The~~ provisions of this chapter shall be liberally construed to promote an increased awareness
 18 by all persons of governmental activities and afford every opportunity to citizens to witness the
 19 operations of government. Any ~~exception or exemption from applicability~~ public access to records or
 20 meetings shall be narrowly construed in order that no thing which should be public may be hidden
 21 from any person, and no record shall be withheld or meeting closed to the public unless specifically
 22 made exempt pursuant to this chapter or other specific provision of law. This chapter shall not be
 23 construed to discourage the free discussion by government officials or employees of public matters
 with the citizens of the Commonwealth.

24 The public body All public bodies and public officials shall make reasonable efforts to reach an
 25 agreement with the a requester concerning the production of the records requested.

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

28 § 2.1-341. Definitions.

29 The following terms, whenever used or referred to in this chapter, shall have the following
 30 meanings, unless a different meaning clearly appears from the contextAs used in this chapter unless
 31 the context requires a different meaning::

32 "Criminal incident information" means a general description of the criminal activity reported, the
 33 date and general location the alleged crime was committed, the identity of the investigating officer,
 34 and a general description of any injuries suffered or property damaged or stolen; however, the identity
 35 of any victim, witness, undercover officer, or investigative techniques or procedures need not but may
 36 be disclosed unless disclosure is prohibited or restricted under §19.2-11.2. The identity of any
 37 individual providing information about a crime or criminal activity under a promise of anonymity
 38 shall not be disclosed.

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

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

43 "Meeting" or "meetings" means the meetings including work sessions, when sitting physically, or
 44 through telephonic or video equipment pursuant to § 2.1-343.1, as a body or entity, or as an informal
 45 assemblage of (i) as many as three members, or (ii) a quorum, if less than three, of the constituent
 46 membership, wherever held, with or without minutes being taken, whether or not votes are cast, of
 47 any public body, including any legislative body, authority, board, bureau, commission, district or
 48 agency of the Commonwealth or of any political subdivision of the Commonwealth, including cities,
 49 towns and counties; municipal councils, governing bodies of counties, school boards and planning
 50 commissions; boards of visitors of state institutions of higher education; and other organizations;
 51 corporations or agencies in the Commonwealth, supported wholly or principally by public funds. The
 52 notice provisions of this chapter shall not apply to the said informal meetings or gatherings of the
 53 members of the General Assembly. Nothing in this chapter shall be construed to make unlawful the
 54

1 gathering or attendance of two or more members of a public body (i) at any place or function where
2 no part of the purpose of such gathering or attendance is the discussion or transaction of any public
3 business; and such gathering or attendance was not called or prearranged with any purpose of
4 discussing or transacting any business of the public body or (ii) at a public meeting whose purpose is
5 to inform the electorate and not to transact public business or to hold discussions relating to the
6 transaction of public business, even though the performance of the members individually or
7 collectively in the conduct of public business may be a topic of discussion or debate at such public
8 meeting. The gathering of employees of a public body shall not be deemed a "meeting" subject to the
9 provisions of this chapter.

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

14 "Official records" means all written or printed books, papers, letters, documents, maps and tapes,
15 photographs, films, sound recordings, reports or other material, regardless of physical form or
16 characteristics, prepared, owned, or in the possession of a public body or any employee or officer of a
17 public body in the transaction of public business.

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

19 "Public body" means any of the groups, agencies or organizations enumerated in the definition of
20 "meeting" as provided in this section, including any committees or subcommittees of the public body
21 created to perform delegated functions of the public body or to advise the public body legislative
22 body; any authority, board, bureau, commission, district or agency of the Commonwealth or of any
23 political subdivision of the Commonwealth, including cities, towns and counties; municipal councils,
24 governing bodies of counties, school boards and planning commissions; boards of visitors of stat
25 institutions of higher education; and other organizations, corporations or agencies in th
26 Commonwealth, supported wholly or principally by public funds. It shall include any committee or
27 subcommittee of the public body created to perform delegated functions of the public body or to
28 advise the public body, and shall not exclude any such committee or subcommittee because it has
29 private sector or citizen members. Corporations organized by the Virginia Retirement System are
30 "public bodies" for purposes of this chapter.

31 "Public records" means all writings and recordings which consist of letters, words or numbers, or
32 their equivalent, set down by handwriting, typewriting, printing, photostating, photography, magnetic
33 impulse, optical or magneto-optical form, mechanical or electronic recording or other form of data
34 compilation, however stored, and regardless of physical form or characteristics, prepared or owned
35 by, or in the possession of a public body or its officers, employees or agents in the transaction of
36 public business.

37 "Scholastic records" means those records, files, documents, and other materials containing
38 information ~~about~~ directly related to a student and maintained by a public body which is an
39 educational agency or institution or by a person acting for such agency or institution; ~~but, for~~ . For
40 the purpose of access by a student, ~~does not~~ "scholastic records" shall include (i) financial records of
41 a parent or guardian ~~nor~~ and (ii) records of instructional, supervisory, and administrative personnel
42 and educational personnel ancillary thereto, which are in the sole possession of the maker thereof and
43 which are not accessible or revealed to any other person except a substitute.

44 § 2.1-341.1. Notice of chapter.

45 A. Any person elected, reelected, appointed or reappointed to any body not excepted from this
46 chapter shall be furnished by the public body's administrator or legal counsel with a copy of this
47 chapter within two weeks following election, reelection, appointment or reappointment.

48 B. Public officials shall read and familiarize themselves with the provisions of this chapter.

49 § 2.1-341.2. Public bodies and records to which chapter inapplicable; voter registration and
50 election records.

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

52 1. The Virginia Parole Board, except that (i) information from the Virginia Parole Board
53 providing the number of inmates considered by such Board for discretionary parole, the number of
54 inmates granted or denied parole, and the number of parolees returned to the custody of the

1 Department of Corrections solely as a result of a determination by such Board of a violation of
 2 parole shall be open to inspection and available for release, on a monthly basis, as provided by §
 3 2.1-342, and (ii) all records concerning the finances of the Virginia Parole Board shall be public
 4 records and subject to the provisions of this chapter. The information required by clause (i) shall be
 5 furnished by offense, sex, race, age of the inmate, and the locality in which the conviction was
 6 obtained, upon the request of the party seeking the information;

7 2. Petit juries and grand juries;

8 3. Family assessment and planning teams established pursuant to § 2.1-753; and

9 4. The Virginia State Crime Commission.

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

13 § 2.1-342. Public records to be open to inspection; procedure for requesting records and responding
 14 to request; charges.

15 A. Except as otherwise specifically provided by law, all official public records shall be open to
 16 inspection and copying by any citizens of the Commonwealth during the regular office hours of the
 17 custodian of such records. Access to such records shall not be denied to citizens of the
 18 Commonwealth, representatives of newspapers and magazines with circulation in the Commonwealth,
 19 and representatives of radio and television stations broadcasting in or into the Commonwealth. The
 20 custodian of such records shall take all necessary precautions for their preservation and safekeeping.
 21 Any public body covered under

22 B. A request for public records shall identify the requested records with reasonable specificity. The
 23 request need not make reference to this chapter in order to invoke the provisions of this chapter shall
 24 make an initial response to citizens requesting records open to inspection within five work days after
 25 the receipt of the request by the public body or to impose the time limits for response by a public
 26 body. Any public body which is subject to this chapter and which is the custodian of the requested
 27 records: Such citizen request shall designate the requested records with reasonable specificity. A
 28 specific reference to this chapter by the requesting citizen in his request shall not be necessary to
 29 invoke the provisions of this chapter and the time limits for response by the public body. The
 30 response by the public body within such five work days shall be shall promptly, but in all cases
 31 within five working days of receiving a request, make one of the following responses:

32 1. The requested records shall will be provided to the requesting citizen requester.

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

37 3. If the public body determines that an exemption applies to a portion of the requested records, it
 38 may delete or excise that portion of the records to which an exemption applies, but shall disclose the
 39 remainder of the requested records and provide to the requesting citizen a written explanation as to
 40 why these portions of the record are not available to the requesting citizen with the explanation
 41 making specific reference to the applicable Code sections which make that portion of the requested
 42 records exempt. Any reasonably segregatable portion of an official record shall be provided to any
 43 person requesting the record after the deletion of the exempt portion. The requested records will be
 44 entirely withheld because their release is prohibited by law or the custodian has exercised his
 45 discretion to withhold the records in accordance with the chapter. Such response shall (i) be in
 46 writing, (ii) identify with reasonable particularity the volume and subject matter of withheld records,
 47 and (iii) cite, as to each category of withheld records, the specific Code section which authorizes the
 48 withholding of the records. Any exemption not identified in the public body's initial response shall be
 49 waived and may not be asserted thereafter for any purpose, including the defense of any action
 50 brought to enforce this chapter.

51 3. The requested records will be provided in part and withheld in part because the release of part
 52 of the records is prohibited by law or the custodian has exercised his discretion to withhold a portion
 53 of the records in accordance with this chapter. Such response shall (i) be in writing, (ii) identify with
 54 reasonable particularity the subject matter of withheld portions, and (iii) cite, as to each category of

1 withheld records, the specific Code section which authorizes the withholding of the records. Any
2 exemption not identified in the public body's initial response shall be waived and may not be asserted
3 thereafter for any purpose, including the defense of any action brought to enforce this chapter. When
4 a portion of a requested record is withheld, the public body may delete or excise only that portion of
5 the record to which an exemption applies and shall release the remainder of the record.

6 4. If the public body determines that it is practically impossible It is not practically possible to
7 provide the requested records or to determine whether they are available within the five-work-day
8 period, the public body shall so inform the requesting citizen and shall have. Such response shall be
9 in writing and specify the conditions which make a response impossible. If the response is made
10 within five working days, the public body shall have an additional seven work days in which to
11 provide one of the three preceding responses.

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

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

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

23 The F. A public body may make reasonable charges for the copying, search time and computer
24 time expended in the supplying of such records its actual cost incurred in accessing, duplicating,
25 supplying, or searching for the requested records. No public body shall impose any extraneous,
26 intermediary or surplus fees or expenses to recoup the general costs associated with creating or
27 maintaining records or transacting the general business of the public body. Any duplicating fee
28 charged by a public body shall not exceed the actual cost of duplication. The public body may also
29 make a reasonable charge for preparing documents the cost incurred in supplying records produced
30 from a geographic information system at the request of anyone other than the owner of the land that
31 is the subject of the request. However, such charges shall not exceed the actual cost to the public
32 body in supplying such records or documents, except that the public body may charge, on a pro rata
33 per acre basis, for the cost of creating topographical maps developed by the public body, for such
34 maps or portions thereof, which encompass a contiguous area greater than fifty acres. Such All
35 charges for the supplying of requested records shall be estimated in advance at the request of the
36 citizen. The public body may require the advance payment of charges which are subject to advance
37 determination.

38 In any case where a public body determines in advance that search and copying charges for
39 producing the requested documents records are likely to exceed \$200, the public body may, before
40 continuing to process the request, require the citizen requesting the information requester to agree to
41 payment of an amount not to exceed the advance determination by five percent a deposit not to
42 exceed the amount of the advance determination. The deposit shall be credited toward the final cost
43 of supplying the requested records. The period within which the public body must shall respond under
44 this section shall be tolled for the amount of time that elapses between notice of the advance
45 determination and the response of the citizen requesting the information requester.

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

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

1 H. Beginning July 1, 1997, every Every public body of state government shall compile, and
 2 annually update, an index of computer databases which contains at a minimum those databases created
 3 by them on or after July 1, 1997. "Computer database" means a structured collection of data or
 4 documents records residing in a computer. Such index shall be an official a public record and shall
 5 include, at a minimum, the following information with respect to each database listed therein: a list of
 6 data fields, a description of the format or record layout, the date last updated, a list of any data fields
 7 to which public access is restricted, a description of each format in which the database can be copied
 8 or reproduced using the public body's computer facilities, and a schedule of fees for the production of
 9 copies in each available form. The form, context, language, and guidelines for the indices and the
 10 databases to be indexed shall be developed by the Director of the Department of Information
 11 Technology in consultation with the State Librarian of Virginia and the State Archivist. The public
 12 body shall not be required to disclose its software security, including passwords.

13 Public bodies shall not be required to create or prepare a particular requested record if it does not
 14 already exist. Public bodies may, but shall not be required to, abstract or summarize information from
 15 official records or convert an official record available in one form into another form at the request of
 16 the citizen. The produce nonexempt records maintained in an electronic database in any tangible
 17 medium identified by the requester, if that medium is used by the public body in the regular course of
 18 business. No public body shall be required to produce records from an electronic database in a
 19 format not regularly used by the public body. However, the public body shall make reasonable efforts
 20 to reach an agreement with the requester concerning the production of the records requested provide
 21 records in any format under such terms and conditions as agreed between the requester and public
 22 body, including the payment of reasonable costs. The excision of exempt fields of information from a
 23 database or the conversion of data from one available format to another shall not be deemed the
 2 creation, preparation or compilation of a new public record.

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

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

29 1. Memoranda, correspondence, evidence and complaints related to criminal investigations; adult
 30 arrestee photographs when necessary to avoid jeopardizing an investigation in felony cases until such
 31 time as the release of such photograph will no longer jeopardize the investigation; reports submitted
 32 to the state and local police, to investigators authorized pursuant to §53-1-16 and to the campus
 33 police departments of public institutions of higher education as established by Chapter 17 (§23-232 et
 34 seq.) of Title 23 in confidence; portions of records of local government crime commissions that would
 35 identify individuals providing information about crimes or criminal activities under a promise of
 36 anonymity; records of local police departments relating to neighborhood watch programs that include
 37 the names, addresses, and operating schedules of individual participants in the program that are
 38 provided to such departments under a promise of confidentiality; and all records of persons
 39 imprisoned in penal institutions in the Commonwealth provided such records relate to the
 40 imprisonment. Information in the custody of law-enforcement officials relative to the identity of any
 41 individual other than a juvenile who is arrested and charged, and the status of the charge or arrest,
 42 shall not be excluded from the provisions of this chapter.

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

48 2. Confidential records of all investigations of applications for licenses and permits, and all
 49 licensees and permittees made by or submitted to the Alcoholic Beverage Control Board, the State
 50 Lottery Department, the Virginia Racing Commission, or the Charitable Gaming Commission.

51 3. State income, business, and estate tax returns, personal property tax returns, scholastic records
 52 and personnel records containing information concerning identifiable individuals, except that such
 53 access shall not be denied to the person who is the subject thereof, and medical

54 and mental records, except that such records can be personally reviewed by the subject person or a

1 physician of the subject person's choice; however, the subject person's mental records may not be
2 personally reviewed by such person when the subject person's treating physician has made a part of
3 such person's records a written statement that in his opinion a review of such records by the subject
4 person would be injurious to the subject person's physical or mental health or well-being.

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

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

24 4. Memoranda, working papers and correspondence (i) held by or requested from members of the
25 General Assembly or the Division of Legislative Services or (ii) held or requested by the Office of
26 the Governor or Lieutenant Governor, Attorney General or the mayor or other chief executive officer
27 of any political subdivision of the Commonwealth or the president or other chief executive officer of
28 any state-supported institution of higher education. This exclusion shall not apply to memoranda,
29 studies or other papers held or requested by the mayor or other chief executive officer of any political
30 subdivision which are specifically concerned with the evaluation of performance of the duties and
31 functions of any locally elected official and were prepared after June 30, 1992, nor shall this
32 exclusion apply to agenda packets prepared and distributed to public bodies for use at a meeting.

33 Except as provided in § 30-28-18, memoranda, working papers and correspondence of a member of
34 the General Assembly held by the Division of Legislative Services shall not be released by the
35 Division without the prior consent of the member.

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

38 6. Memoranda, working papers and records compiled specifically for use in litigation or as a part
39 of an active administrative investigation concerning a matter which is properly the subject of an
40 executive or closed meeting under § 2-1-344 and material furnished in confidence with respect
41 thereto. 7. Confidential letters and statements of recommendation placed in the records of educational
42 agencies or institutions respecting (i) admission to any educational agency or institution, (ii) an
43 application for employment, or (iii) receipt of an honor or honorary recognition.

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

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

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

1 performance on such employment tests.

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

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

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

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

18 13. Reports, documentary evidence and other information as specified in §§2.1-373.2 and
19 63-1-55.4.

20 14. Proprietary information gathered by or for the Virginia Port Authority as provided in
21 §62.1-132.4 or §62.1-134.1.

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

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

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

35 18. Financial statements not publicly available filed with applications for industrial development
36 financings.

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

40 20. Confidential proprietary records, voluntarily provided by private business pursuant to a promise
41 of confidentiality from the Department of Business Assistance, the Virginia Economic Development
42 Partnership or local or regional industrial or economic development authorities or organizations, used
43 by the Department, the Partnership, or such entities for business, trade and tourism development; and
44 memoranda, working papers or other records related to businesses that are considering locating or
45 expanding in Virginia, prepared by the Partnership, where competition or bargaining is involved and
46 where, if such records are made public, the financial interest of the governmental unit would be
47 adversely affected.

48 21. Information which was filed as confidential under the Toxic Substances Information Act
49 (§32.1-239 et seq.), as such Act existed prior to July 1, 1992.

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

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

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

- 1 25. Investigator notes, and other correspondence and information, furnished in confidence with
2 respect to an active investigation of individual employment discrimination complaints made to the
3 Department of Personnel and Training; however, nothing in this section shall prohibit the disclosure
4 of information taken from inactive reports in a form which does not reveal the identity of charging
5 parties, persons supplying the information or other individuals involved in the investigation.
- 6 26. Fisheries data which would permit identification of any person or vessel, except when required
7 by court order as specified in § 28.2-204.
- 8 27. Records of active investigations being conducted by the Department of Medical Assistance
9 Services pursuant to Chapter 10 (§ 32.1-323 et seq.) of Title 32.1.
- 10 28. Documents and writings furnished by a member of the General Assembly to a meeting of a
11 standing committee, special committee or subcommittee of his house established solely for the
12 purpose of reviewing members' annual disclosure statements and supporting materials filed under
13 § 2.1-639.40 or of formulating advisory opinions to members on standards of conduct, or both.
- 14 29. Customer account information of a public utility affiliated with a political subdivision of the
15 Commonwealth, including the customer's name and service address, but excluding the amount of
16 utility service provided and the amount of money paid for such utility service.
- 17 30. Investigative notes and other correspondence and information furnished in confidence with
18 respect to an investigation or conciliation process involving an alleged unlawful discriminatory
19 practice under the Virginia Human Rights Act (§ 2.1-714 et seq.); however, nothing in this section
20 shall prohibit the distribution of information taken from inactive reports in a form which does not
21 reveal the identity of the parties involved or other persons supplying information.
- 22 31. Investigative notes; proprietary information not published, copyrighted or patented; information
23 obtained from employee personnel records; personally identifiable information regarding residents,
24 clients or other recipients of services; and other correspondence and information furnished in
25 confidence to the Department of Social Services in connection with an active investigation of an
26 applicant or licensee pursuant to Chapters 9 (§ 63.1-172 et seq.) and 10 (§ 63.1-195 et seq.) of Title
27 63.1; however, nothing in this section shall prohibit disclosure of information from the records of
28 completed investigations in a form that does not reveal the identity of complainants, persons
29 supplying information, or other individuals involved in the investigation.
- 30 32. Reports, manuals, specifications, documents, minutes or recordings of staff meetings or other
31 information or materials of the Virginia Board of Corrections, the Virginia Department of Corrections
32 or any institution thereof to the extent, as determined by the Director of the Department of
33 Corrections or his designee or of the Virginia Board of Juvenile Justice, the Virginia Department of
34 Juvenile Justice or any facility thereof to the extent as determined by the Director of the Department
35 of Juvenile Justice, or his designee, that disclosure or public dissemination of such materials would
36 jeopardize the security of any correctional or juvenile facility or institution, as follows:
- 37 (i) Security manuals, including emergency plans that are a part thereof;
- 38 (ii) Engineering and architectural drawings of correctional and juvenile facilities, and operational
39 specifications of security systems utilized by the Departments, provided the general descriptions of
40 such security systems, cost and quality shall be made available to the public;
- 41 (iii) Training manuals designed for correctional and juvenile facilities to the extent that they
42 address procedures for institutional security, emergency plans and security equipment;
- 43 (iv) Internal security audits of correctional and juvenile facilities, but only to the extent that they
44 specifically disclose matters described in (i), (ii), or (iii) above or other specific operational details the
45 disclosure of which would jeopardize the security of a correctional or juvenile facility or institution;
- 46 (v) Minutes or recordings of divisional, regional and institutional staff meetings or portions thereof
47 to the extent that such minutes deal with security issues listed in (i), (ii), (iii), and (iv) of this
48 subdivision;
- 49 (vi) Investigative case files by investigators authorized pursuant to § 53.1-16; however, nothing in
50 this section shall prohibit the disclosure of information taken from inactive reports in a form which
51 does not reveal the identity of complainants or charging parties, persons supplying information,
52 confidential sources, or other individuals involved in the investigation, or other specific operational
53 details the disclosure of which would jeopardize the security of a correctional or juvenile facility or
54 institution; nothing herein shall permit the disclosure of materials otherwise exempt as set forth in

1 subdivision 1 of subsection B of this section;

2 (vii) Logs or other documents containing information on movement of inmates, juvenile clients or
3 employees; and

4 (viii) Documents disclosing contacts between inmates, juvenile clients and law-enforcement
5 personnel.

6 Notwithstanding the provisions of this subdivision, reports and information regarding the general
7 operations of the Departments, including notice that an escape has occurred, shall be open to
8 inspection and copying as provided in this section.

9 33. Personal information, as defined in § 2-1-379, (i) filed with the Virginia Housing Development
10 Authority concerning individuals who have applied for or received loans or other housing assistance
11 or who have applied for occupancy of or have occupied housing financed, owned or otherwise
12 assisted by the Virginia Housing Development Authority, (ii) concerning persons participating in or
13 persons on the waiting list for federally funded rent-assistance programs, or (iii) filed with any local
14 redevelopment and housing authority created pursuant to § 36-4 concerning persons participating in or
15 persons on the waiting list for housing assistance programs funded by local governments or by any
16 such authority. However, access to one's own information shall not be denied.

17 34. Documents regarding the siting of hazardous waste facilities, except as provided in
18 § 10-1-1441, if disclosure of them would have a detrimental effect upon the negotiating position of a
19 governing body or on the establishment of the terms, conditions and provisions of the siting
20 agreement.

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

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

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

38 38. Official records of studies and investigations by the State Lottery Department of (i) lottery
39 agents, (ii) lottery vendors, (iii) lottery crimes under §§ 58-1-4014 through 58-1-4018, (iv) defects in
40 the law or regulations which cause abuses in the administration and operation of the lottery and any
41 evasions of such provisions, or (v) use of the lottery as a subterfuge for organized crime and illegal
42 gambling where such official records have not been publicly released, published or copyrighted. All
43 studies and investigations referred to under subdivisions (iii), (iv) and (v) shall be subject to public
44 disclosure under this chapter upon completion of the study or investigation.

45 39. Those portions of engineering and construction drawings and plans submitted for the sole
46 purpose of complying with the building code in obtaining a building permit which would identify
47 specific trade secrets or other information the disclosure of which would be harmful to the
48 competitive position of the owner or lessee; however, such information shall be exempt only until the
49 building is completed. Information relating to the safety or environmental soundness of any building
50 all not be exempt from disclosure.

51 40. [Repealed.]

52 41. Records concerning reserves established in specific claims administered by the Department of
53 General Services through its Division of Risk Management as provided in Article 5-1 (§ 2-1-526-1 et
54 seq.) of Chapter 32 of this title, or by any county, city, or town.

1 42. Information and records collected for the designation and verification of trauma centers and
2 other specialty care centers within the Statewide Emergency Medical Services System and Services
3 pursuant to Article 2-1 (§ 32.1-111.1 et seq.) of Title 32.1.

4 43. Reports and court documents required to be kept confidential pursuant to § 37.1-67.3.

5 44. [Repealed.]

6 45. Investigative notes; correspondence and information furnished in confidence with respect to an
7 investigation; and official records otherwise exempted by this chapter or any Virginia statute, provided
8 to or produced by or for the Auditor of Public Accounts and the Joint Legislative Audit and Review
9 Commission; or investigative notes, correspondence, documentation and information furnished and
10 provided to or produced by or for the Department of the State Internal Auditor with respect to an
11 investigation initiated through the State Employee Fraud, Waste and Abuse Hotline. Nothing in this
12 chapter shall prohibit disclosure of information from the records of completed investigations in a form
13 that does not reveal the identity of complainants, persons supplying information or other individuals
14 involved in the investigation; however, disclosure, unless such disclosure is prohibited by this section,
15 of information from the records of completed investigations shall include, but is not limited to, the
16 agency involved; the identity of the person who is the subject of the complaint; the nature of the
17 complaint; and the actions taken to resolve the complaint. In the event an investigation does not lead
18 to corrective action, the identity of the person who is the subject of the complaint may be released
19 only with the consent of the subject person.

20 46. Data formerly required to be submitted to the Commissioner of Health relating to the
21 establishment of new or expansion of existing clinical health services, acquisition of major medical
22 equipment, or certain projects requiring capital expenditures pursuant to former § 32.1-102.3:4.

23 47. Documentation or other information which describes the design, function, operation or access
24 control features of any security system, whether manual or automated, which is used to control access
25 to or use of any automated data processing or telecommunications system.

26 48. Confidential financial statements, balance sheets, trade secrets, and revenue and cost
27 projections provided to the Department of Rail and Public Transportation, provided such information
28 is exempt under the federal Freedom of Information Act or the federal Interstate Commerce Act or
29 other laws administered by the Interstate Commerce Commission or the Federal Rail Administration
30 with respect to data provided in confidence to the Interstate Commerce Commission and the Federal
31 Railroad Administration.

32 49. In the case of corporations organized by the Virginia Retirement System, (i) proprietary
33 information provided by, and financial information concerning, coventurers, partners, lessors, lessees,
34 or investors, and (ii) records concerning the condition, acquisition, disposition, use, leasing,
35 development, coventuring, or management of real estate the disclosure of which would have a
36 substantial adverse impact on the value of such real estate or result in a competitive disadvantage to
37 the corporation or subsidiary.

38 50. Confidential proprietary records related to inventory and sales, voluntarily provided by private
39 energy suppliers to the Department of Mines, Minerals and Energy, used by that Department for
40 energy contingency planning purposes or for developing consolidated statistical information on energy
41 supplies.

42 51. Confidential proprietary information furnished to the Board of Medical Assistance Services or
43 the Medicaid Prior Authorization Advisory Committee pursuant to Article 4 (§ 32.1-331.12 et seq.) of
44 Chapter 10 of Title 32.1.

45 52. [Repealed.]

46 53. Proprietary, commercial or financial information, balance sheets, trade secrets, and revenue and
47 cost projections provided by a private transportation business to the Virginia Department of
48 Transportation and the Department of Rail and Public Transportation for the purpose of conducting
49 transportation studies needed to obtain grants or other financial assistance under the Intermodal
50 Surface Transportation Efficiency Act of 1991 (P.L. 102-240) for transportation projects, provided
51 such information is exempt under the federal Freedom of Information Act or the federal Interstate
52 Commerce Act or other laws administered by the Interstate Commerce Commission or the Federal
53 Rail Administration with respect to data provided in confidence to the Interstate Commerce
54 Commission and the Federal Railroad Administration. However, the exemption provided by this

1 subdivision shall not apply to any wholly owned subsidiary of a public body.

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

5 55. Reports, documents, memoranda or other information or materials which describe any aspect of
6 security used by the Virginia Museum of Fine Arts to the extent that disclosure or public
7 dissemination of such materials would jeopardize the security of the Museum or any warehouse
8 controlled by the Museum, as follows:

9 a. Operational, procedural or tactical planning documents, including any training manuals to the
10 extent they discuss security measures;

11 b. Surveillance techniques;

12 c. Installation, operation, or utilization of any alarm technology;

13 d. Engineering and architectural drawings of the Museum or any warehouse;

14 e. Transportation of the Museum's collections, including routes and schedules; or

15 f. Operation of the Museum or any warehouse used by the Museum involving the:

16 (1) Number of employees, including security guards, present at any time; or

17 (2) Busiest hours, with the maximum number of visitors in the Museum.

18 56. Reports, documents, memoranda or other information or materials which describe any aspect of
19 security used by the Virginia Department of Alcoholic Beverage Control to the extent that disclosure
20 or public dissemination of such materials would jeopardize the security of any government store as
21 defined in Title 4-1, or warehouse controlled by the Department of Alcoholic Beverage Control, as
22 follows:

23 (i) Operational, procedural or tactical planning documents, including any training manuals to the
24 extent they discuss security measures;

25 (ii) Surveillance techniques;

26 (iii) The installation, operation, or utilization of any alarm technology;

27 (iv) Engineering and architectural drawings of such government stores or warehouses;

28 (v) The transportation of merchandise, including routes and schedules; and

29 (vi) The operation of any government store or the central warehouse used by the Department of
30 Alcoholic Beverage Control involving the:

31 a. Number of employees present during each shift;

32 b. Busiest hours, with the maximum number of customers in such government store; and

33 c. Banking system used, including time and place of deposits.

34 57. Information required to be provided pursuant to § 54.1-2506.1.

35 58. Confidential information designated as provided in subsection D of § 11-52 as trade secrets or
36 proprietary information by any person who has submitted to a public body an application for
37 prequalification to bid on public construction projects in accordance with subsection B of § 11-46.

38 59. All information and records acquired during a review of any child death by the State Child
39 Fatality Review Team established pursuant to § 32.1-283.1.

40 60. Investigative notes, correspondence, documentation and information provided to or produced by
41 or for the committee or the auditor with respect to an investigation or audit conducted pursuant to
42 § 15.1-765.2. Nothing in this section shall prohibit disclosure of information from the records of
43 completed investigations or audits in a form that does not reveal the identity of complainants or
44 persons supplying information.

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

48 62. Confidential proprietary records which are voluntarily provided by a private entity pursuant to
49 a proposal filed with a public entity under the Public-Private Transportation Act of 1995 (§ 56-556 et
50 q.); pursuant to a promise of confidentiality from the responsible public entity, used by the
51 responsible public entity for purposes related to the development of a qualifying transportation
52 facility; and memoranda, working papers or other records related to proposals filed under the
53 Public-Private Transportation Act of 1995, where, if such records were made public, the financial
54 interest of the public or private entity involved with such proposal or the process of competition or

1 bargaining would be adversely affected. In order for confidential proprietary information to be
2 excluded from the provisions of this chapter, the private entity shall (i) invoke such exclusion upon
3 submission of the data or other materials for which protection from disclosure is sought, (ii) identify
4 the data or other materials for which protection is sought, and (iii) state the reasons why protection is
5 necessary. For the purposes of this subdivision, the terms public entity and private entity shall be
6 defined as they are defined in the Public-Private Transportation Act of 1995.

7 63. Records of law-enforcement agencies, to the extent that such records contain specific tactical
8 plans, the disclosure of which would jeopardize the safety or security of law-enforcement personnel or
9 the general public; engineering plans; architectural drawings; or operational specifications of
10 governmental law-enforcement facilities, including but not limited to courthouses, jails, and detention
11 facilities, to the extent that disclosure could jeopardize the safety or security of law-enforcement
12 offices; however, general descriptions shall be provided to the public upon request.

13 64. All records of the University of Virginia or the University of Virginia Medical Center which
14 contain proprietary, business-related information pertaining to the operations of the University of
15 Virginia Medical Center, including its business development or marketing strategies and its activities
16 with existing or future joint venturers, partners, or other parties with whom the University of Virginia
17 Medical Center has formed, or forms, any arrangement for the delivery of health care, if disclosure of
18 such information would be harmful to the competitive position of the Medical Center.

19 65. Patient level data collected by the Board of Health and not yet processed, verified, and
20 released, pursuant to § 32.1-276.9, to the Board by the nonprofit organization with which the
21 Commissioner of Health has contracted pursuant to § 32.1-276.4.

22 66. Records of the Medical College of Virginia Hospitals Authority pertaining to any of the
23 following: (i) an individual's qualifications for or continued membership on its medical or teaching
24 staffs; proprietary information gathered by or in the possession of the Authority from third parties
25 pursuant to a promise of confidentiality; contract cost estimates prepared for confidential use in
26 awarding contracts for construction or the purchase of goods or services; data, records or information
27 of a proprietary nature produced or collected by or for the Authority or members of its medical or
28 teaching staffs; financial statements not publicly available that may be filed with the Authority from
29 third parties; the identity, accounts or account status of any customer of the Authority; consulting or
30 other reports paid for by the Authority to assist the Authority in connection with its strategic planning
31 and goals; and the determination of marketing and operational strategies where disclosure of such
32 strategies would be harmful to the competitive position of the Authority; and (ii) data, records or
33 information of a proprietary nature produced or collected by or for employees of the Authority, other
34 than the Authority's financial or administrative records, in the conduct of or as a result of study or
35 research on medical, scientific, technical or scholarly issues, whether sponsored by the Authority alone
36 or in conjunction with a governmental body or a private concern, when such data, records or
37 information have not been publicly released, published, copyrighted or patented.

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

44 68. Confidential proprietary records which are provided by a franchisee under § 15.1-23.1 to its
45 franchising authority pursuant to a promise of confidentiality from the franchising authority which
46 relates to the franchisee's potential provision of new services, adoption of new technologies or
47 implementation of improvements, where such new services, technologies or improvements have not
48 been implemented by the franchisee on a nonexperimental scale in the franchise area, and where, if
49 such records were made public, the competitive advantage or financial interests of the franchisee
50 would be adversely affected. In order for confidential proprietary information to be excluded from the
51 provisions of this chapter, the franchisee shall (i) invoke such exclusion upon submission of the data
52 or other materials for which protection from disclosure is sought, (ii) identify the data or other
53 materials for which protection is sought, and (iii) state the reason why protection is necessary.

54 69. Records of the Intervention Program Committee within the Department of Health Professions

1 to the extent such records may identify any practitioner who may be, or who is actually, impaired to
 2 the extent disclosure is prohibited by ~~§ 54.1-2517.~~

3 70. Records submitted as a grant application, or accompanying a grant application, to the
 4 Commonwealth Neurotrauma Initiative Advisory Board pursuant to Article 12 (~~§ 32.1-73.1 et seq.~~) of
 5 Chapter 2 of Title 32.1, to the extent such records contain: (i) medical or mental records, or other
 6 data identifying individual patients, or (ii) proprietary business or research related information
 7 produced or collected by the applicant in the conduct of or as a result of study or research on
 8 medical, rehabilitative, scientific, technical or scholarly issues, when such information has not been
 9 publicly released, published, copyrighted or patented, if the disclosure of such information would be
 10 harmful to the competitive position of the applicant.

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

16 72. Documents and other information of a proprietary nature furnished by a supplier of charitable
 17 gaming supplies to the Charitable Gaming Commission pursuant to subsection E of ~~§ 18.2-340.34.~~

18 73. Personal information, as defined in ~~§ 2.1-379~~, provided to the Board of the Virginia Higher
 19 Education Tuition Trust Fund or its employees by or on behalf of individuals who have requested
 20 information about, applied for, or entered into prepaid tuition contracts pursuant to Chapter 4.9
 21 (~~§ 23-38.75 et seq.~~) of Title 23. Nothing in this subdivision shall be construed to prohibit disclosure
 22 or publication of information in a statistical or other form which does not identify individuals or
 23 provide personal information. Individuals shall be provided access to their own personal information.

24 C. Neither any provision of this chapter nor any provision of Chapter 26 (~~§ 2.1-377 et seq.~~) of this
 25 chapter shall be construed as denying public access to contracts between a public official and a public
 26 body, other than contracts settling public employee employment disputes held confidential as
 27 personnel records under subdivision 3 of subsection B of this section, or to records of the position,
 28 job classification, official salary or rate of pay of, and to records of the allowances or reimbursements
 29 for expenses paid to, any public officer, official or employee at any level of state, local or regional
 30 government in the Commonwealth or to the compensation or benefits paid by any corporation
 31 organized by the Virginia Retirement System or its officers or employees. The provisions of this
 32 subsection, however, shall not apply to records of the official salaries or rates of pay of public
 33 employees whose annual rate of pay is \$10,000 or less.

34 D. No provision of this chapter shall be construed to afford any rights to any person incarcerated
 35 in a state, local or federal correctional facility, whether or not such facility is (i) located in the
 36 Commonwealth or (ii) operated pursuant to the Corrections Private Management Act (~~§ 53.1-261 et~~
 37 ~~seq.~~). However, this subsection shall not be construed to prevent an incarcerated person from
 38 exercising his constitutionally protected rights, including but not limited to his rights to call for
 39 evidence in his favor in a criminal prosecution.

40 *§ 2.1-342.01. Exclusions to application of chapter.*

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

43 1. Confidential records of all investigations of applications for licenses and permits, and all
 44 licensees and permittees made by or submitted to the Alcoholic Beverage Control Board, the State
 45 Lottery Department, the Virginia Racing Commission, or the Charitable Gaming Commission.

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

48 3. Scholastic records containing information concerning identifiable individuals, except that such
 49 access shall not be denied to the person who is the subject thereof, or the parent or legal guardian of

50 a student. The parent or legal guardian of a student may prohibit, by written request, the release of
 51 any individual information regarding that student until the student reaches the age of eighteen years.

52 For scholastic records of students under the age of eighteen years, the right of access may be
 53 asserted only by his legal guardian or parent, including a noncustodial parent, unless such parent's

54 parental rights have been terminated or a court of competent jurisdiction has restricted or denied

- 1 such access. For scholastic records of students who are emancipated or attending a state-supported
2 institution of higher education, the right of access may be asserted by the student.
- 3 Any person who is the subject of any scholastic record and who is eighteen years of age or older
4 may waive, in writing, the protections afforded by this subdivision. If the protections are so waived,
5 the public body shall open such records for inspection and copying.
- 6 4. Personnel records containing information concerning identifiable individuals, except that access
7 shall not be denied to the person who is the subject thereof. Any person who is the subject of any
8 personnel record and who is eighteen years of age or older may waive, in writing, the protections
9 afforded by this subdivision. If the protections are so waived, the public body shall open such records
10 for inspection and copying.
- 11 5. Medical and mental records, except that such records may be personally reviewed by the
12 subject person or a physician of the subject person's choice. However, the subject person's mental
13 records may not be personally reviewed by such person when the subject person's treating physician
14 has made a part of such person's records a written statement that in his opinion a review of such
15 records by the subject person would be injurious to the subject person's physical or mental health or
16 well-being.
- 17 Where the person who is the subject of medical records is confined in a state or local correctional
18 facility, the administrator or chief medical officer of such facility may assert such confined person's
19 right of access to the medical records if the administrator or chief medical officer has reasonable
20 cause to believe that such confined person has an infectious disease or other medical condition from
21 which other persons so confined need to be protected. Medical records shall only be reviewed and
22 shall not be copied by such administrator or chief medical officer. The information in the medical
23 records of a person so confined shall continue to be confidential and shall not be disclosed by the
24 administrator or chief medical officer of the facility to any person except the subject or except a
25 provided by law.
- 26 For the purposes of this chapter, statistical summaries of incidents and statistical data concerning
27 patient abuse as may be compiled by the Commissioner of the Department of Mental Health, Mental
28 Retardation and Substance Abuse Services shall be open to inspection and copying as provided in
29 § 2.1-342. No such summaries or data shall include any patient-identifying information. Where the
30 person who is the subject of medical and mental records is under the age of eighteen, his right of
31 access may be asserted only by his guardian or his parent, including a noncustodial parent, unless
32 such parent's parental rights have been terminated or a court of competent jurisdiction has restricted
33 or denied such access. In instances where the person who is the subject thereof is an emancipated
34 minor or a student in a public institution of higher education, the right of access may be asserted by
35 the subject person.
- 36 6. Working papers and correspondence of the Governor, Lieutenant Governor, and the Attorney
37 General; the members of the General Assembly or the Division of Legislative Services; the mayor or
38 chief executive officer of any political subdivision of the Commonwealth; or the president or other
39 chief executive officer of any public institution of higher education. As used in this subdivision,
40 "working papers" means those records prepared by or for an above-named public official for his
41 personal deliberative use. However, no record which is otherwise open to inspection under this
42 chapter shall be deemed exempt by virtue of the fact that it has been attached to or incorporated
43 within any working paper or correspondence.
- 44 7. Written advice of the county, city and town attorneys to their local government clients and any
45 other records protected by the attorney-client privilege.
- 46 8. Legal memoranda and other work product compiled specifically for use in litigation or for use
47 in an active administrative investigation concerning a matter which is properly the subject of a closed
48 meeting under § 2.1-344.
- 49 9. Confidential letters and statements of recommendation placed in the records of educational
50 agencies or institutions respecting (i) admission to any educational agency or institution, (ii) an
51 application for employment, or (iii) receipt of an honor or honorary recognition.
- 52 10. Library records which can be used to identify both (i) any library patron who has borrowed
53 material from a library and (ii) the material such patron borrowed.
- 54 11. Any test or examination used, administered or prepared by any public body for purposes of

1 evaluation of (i) any student or any student's performance, (ii) any employee or employment seeker's
 2 qualifications or aptitude for employment, retention, or promotion, or (iii) qualifications for any
 3 license or certificate issued by a public body.

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

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

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

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

24 14. Records recorded in or compiled exclusively for use in closed meetings lawfully held pursuant
 25 to § 2.1-344. However, no record which is otherwise open to inspection under this chapter may be
 26 deemed exempt by virtue of the fact that it has been reviewed or discussed in a closed meeting.

27 15. Reports, documentary evidence and other information as specified in §§ 2.1-373.2 and
 28 63.1-55.4.

29 16. Proprietary information gathered by or for the Virginia Port Authority as provided in
 30 § 62.1-132.4 or § 62.1-134.1.

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

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

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

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

47 21. Confidential proprietary records, voluntarily provided by private business pursuant to a
 48 promise of confidentiality from the Department of Business Assistance, the Virginia Economic
 49 Development Partnership or local or regional industrial or economic development authorities or
 50 organizations, used by the Department, the Partnership, or such entities for business, trade and
 51 jurisprudence development; and memoranda, working papers or other records related to businesses that are
 52 considering locating or expanding in Virginia, prepared by the Partnership, where competition or
 53 bargaining is involved and where, if such records are made public, the financial interest of the
 54 governmental unit would be adversely affected.

- 1 22. Information which was filed as confidential under the Toxic Substances Information Act
2 (§ 32.1-239 et seq.), as such Act existed prior to July 1, 1992.
- 3 23. Confidential records, including victim identity, provided to or obtained by staff in a rape crisis
4 center or a program for battered spouses.
- 5 24. Computer software developed by or for a state agency, state-supported institution of higher
6 education or political subdivision of the Commonwealth.
- 7 25. Investigator notes, and other correspondence and information, furnished in confidence with
8 respect to an active investigation of individual employment discrimination complaints made to the
9 Department of Personnel and Training. However, nothing in this section shall prohibit the disclosure
10 of information taken from inactive reports in a form which does not reveal the identity of charging
11 parties, persons supplying the information or other individuals involved in the investigation.
- 12 26. Fisheries data which would permit identification of any person or vessel, except when required
13 by court order as specified in § 28.2-204.
- 14 27. Records of active investigations being conducted by the Department of Medical Assistance
15 Services pursuant to Chapter 10 (§ 32.1-323 et seq.) of Title 32.1.
- 16 28. Records and writings furnished by a member of the General Assembly to a meeting of a
17 standing committee, special committee or subcommittee of his house established solely for the purpose
18 of reviewing members' annual disclosure statements and supporting materials filed under § 2.1-639.40
19 or of formulating advisory opinions to members on standards of conduct, or both.
- 20 29. Customer account information of a public utility affiliated with a political subdivision of the
21 Commonwealth, including the customer's name and service address, but excluding the amount of
22 utility service provided and the amount of money paid for such utility service.
- 23 30. Investigative notes and other correspondence and information furnished in confidence with
24 respect to an investigation or conciliation process involving an alleged unlawful discriminatory
25 practice under the Virginia Human Rights Act (§ 2.1-714 et seq.). However, nothing in this section
26 shall prohibit the distribution of information taken from inactive reports in a form which does not
27 reveal the identity of the parties involved or other persons supplying information.
- 28 31. Investigative notes; proprietary information not published, copyrighted or patented;
29 information obtained from employee personnel records; personally identifiable information regarding
30 residents, clients or other recipients of services; and other correspondence and information furnished
31 in confidence to the Department of Social Services in connection with an active investigation of an
32 applicant or licensee pursuant to Chapters 9 (§ 63.1-172 et seq.) and 10 (§ 63.1-195 et seq.) of Title
33 63.1. However, nothing in this section shall prohibit disclosure of information from the records of
34 completed investigations in a form that does not reveal the identity of complainants, persons
35 supplying information, or other individuals involved in the investigation.
- 36 32. Personal information, as defined in § 2.1-379, (i) filed with the Virginia Housing Development
37 Authority concerning individuals who have applied for or received loans or other housing assistance
38 or who have applied for occupancy of or have occupied housing financed, owned or otherwise
39 assisted by the Virginia Housing Development Authority, (ii) concerning persons participating in or
40 persons on the waiting list for federally funded rent-assistance programs, or (iii) filed with any local
41 redevelopment and housing authority created pursuant to § 36-4 concerning persons participating in
42 or persons on the waiting list for housing assistance programs funded by local governments or by any
43 such authority. However, access to one's own information shall not be denied.
- 44 33. Records regarding the siting of hazardous waste facilities, except as provided in § 10.1-1441,
45 if disclosure of them would have a detrimental effect upon the negotiating position of a governing
46 body or on the establishment of the terms, conditions and provisions of the siting agreement.
- 47 34. Appraisals and cost estimates of real property subject to a proposed purchase, sale or lease,
48 prior to the completion of such purchase, sale or lease.
- 49 35. Records containing information on the site specific location of rare, threatened, endangered or
50 otherwise imperiled plant and animal species, natural communities, caves, and significant historic and
51 archaeological sites if, in the opinion of the public body which has the responsibility for such
52 information, disclosure of the information would jeopardize the continued existence or the integrity of
53 the resource. This exemption shall not apply to requests from the owner of the land upon which the
54 resource is located.

1 36. Records, memoranda, working papers, graphics, video or audio tapes, production models, data
 2 and information of a proprietary nature produced by or for or collected by or for the State Lottery
 3 Department relating to matters of a specific lottery game design, development, production, operation,
 4 ticket price, prize structure, manner of selecting the winning ticket, manner of payment of prizes to
 5 holders of winning tickets, frequency of drawings or selections of winning tickets, odds of winning,
 6 advertising, or marketing, where such official records have not been publicly released, published,
 7 copyrighted or patented. Whether released, published or copyrighted, all game-related information
 8 shall be subject to public disclosure under this chapter upon the first day of sales for the specific
 9 lottery game to which it pertains.

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

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

20 39. Information and records collected for the designation and verification of trauma centers and
 21 other specialty care centers within the Statewide Emergency Medical Services System and Services
 22 pursuant to Article 2.1 (§ 32.1-111.1 et seq.) of Title 32.1.

23 40. Reports and court documents required to be kept confidential pursuant to § 37.1-67.3.

24 41. Investigative notes, correspondence and information furnished in confidence, and records
 25 otherwise exempted by this chapter or any Virginia statute, provided to or produced by or for the (i)
 26 Auditor of Public Accounts; (ii) Joint Legislative Audit and Review Commission; (iii) Department of
 27 the State Internal Auditor with respect to an investigation initiated through the State Employee Fraud,
 28 Waste and Abuse Hotline; or (iv) the committee or the auditor with respect to an investigation or
 29 audit conducted pursuant to § 15.2-825. Records of completed investigations shall be disclosed in a
 30 form that does not reveal the identity of complainants or persons supplying information to
 31 investigators. Unless disclosure is prohibited by this section, the records disclosed shall include, but
 32 not be limited to, the agency involved, the identity of the person who is the subject of the complaint,
 33 the nature of the complaint, and the actions taken to resolve the complaint. If an investigation does
 34 not lead to corrective action, the identity of the person who is the subject of the complaint may be
 35 released only with the consent of the subject person.

36 42. Data formerly required to be submitted to the Commissioner of Health relating to the
 37 establishment of new or the expansion of existing clinical health services, acquisition of major
 38 medical equipment, or certain projects requiring capital expenditures pursuant to former
 39 § 32.1-102.3:4.

40 43. Documentation or other information which describes the design, function, operation or access
 41 control features of any security system, whether manual or automated, which is used to control access
 42 to or use of any automated data processing or telecommunications system.

43 44. Confidential financial statements, balance sheets, trade secrets, and revenue and cost
 44 projections provided to the Department of Rail and Public Transportation, provided such information
 45 is exempt under the federal Freedom of Information Act or the federal Interstate Commerce Act or
 46 other laws administered by the Surface Transportation Board or the Federal Railroad Administration
 47 with respect to data provided in confidence to the Interstate Commerce Commission and the Federal
 48 Railroad Administration.

49 45. In the case of corporations organized by the Virginia Retirement System, (i) proprietary
 50 information provided by, and financial information concerning, coventurers, partners, lessors, lessees,
 51 or investors, and (ii) records concerning the condition, acquisition, disposition, use, leasing,
 52 development, coventuring, or management of real estate the disclosure of which would have a
 53 substantial adverse impact on the value of such real estate or result in a competitive disadvantage to
 54 the corporation or subsidiary.

1 46. Confidential proprietary records related to inventory and sales, voluntarily provided by private
2 energy suppliers to the Department of Mines, Minerals and Energy, used by that Department for
3 energy contingency planning purposes or for developing consolidated statistical information on energy
4 supplies.

5 47. Confidential proprietary information furnished to the Board of Medical Assistance Services or
6 the Medicaid Prior Authorization Advisory Committee pursuant to Article 4 (§ 32.1-331.12 et seq.) of
7 Chapter 10 of Title 32.1.

8 48. Proprietary, commercial or financial information, balance sheets, trade secrets, and revenue
9 and cost projections provided by a private transportation business to the Virginia Department of
10 Transportation and the Department of Rail and Public Transportation for the purpose of conducting
11 transportation studies needed to obtain grants or other financial assistance under the Transportation
12 Equity Act for the 21st Century (P.L. 105-178) for transportation projects, provided such information
13 is exempt under the federal Freedom of Information Act or the federal Interstate Commerce Act or
14 other laws administered by the Surface Transportation Board or the Federal Railroad Administration
15 with respect to data provided in confidence to the Surface Transportation Board and the Federal
16 Railroad Administration. However, the exemption provided by this subdivision shall not apply to any
17 wholly owned subsidiary of a public body.

18 49. Information required to be provided pursuant to § 54.1-2506.1.

19 50. Confidential information designated as provided in subsection D of § 11-52 as trade secrets or
20 proprietary information by any person who has submitted to a public body an application for
21 prequalification to bid on public construction projects in accordance with subsection B of § 11-46.

22 51. All information and records acquired during a review of any child death by the State Child
23 Fatality Review Team established pursuant to § 32.1-283.1.

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

27 53. Confidential proprietary records which are voluntarily provided by a private entity pursuant to
28 a proposal filed with a public entity under the Public-Private Transportation Act of 1995 (§ 56-556 et
29 seq.), pursuant to a promise of confidentiality from the responsible public entity, used by the
30 responsible public entity for purposes related to the development of a qualifying transportation
31 facility; and memoranda, working papers or other records related to proposals filed under the
32 Public-Private Transportation Act of 1995, where, if such records were made public, the financial
33 interest of the public or private entity involved with such proposal or the process of competition or
34 bargaining would be adversely affected. In order for confidential proprietary information to be
35 excluded from the provisions of this chapter, the private entity shall (i) invoke such exclusion upon
36 submission of the data or other materials for which protection from disclosure is sought, (ii) identify
37 the data or other materials for which protection is sought, and (iii) state the reasons why protection
38 is necessary. For the purposes of this subdivision, the terms "public entity" and "private entity" shall
39 be defined as they are defined in the Public-Private Transportation Act of 1995.

40 54. Records of law-enforcement agencies, to the extent that such records contain specific tactical
41 plans, the disclosure of which would jeopardize the safety or security of law-enforcement personnel or
42 the general public; or records of emergency service agencies to the extent that such records contain
43 specific tactical plans relating to anti-terrorist activity.

44 55. All records of the University of Virginia or the University of Virginia Medical Center which
45 contain proprietary, business-related information pertaining to the operations of the University of
46 Virginia Medical Center, including its business development or marketing strategies and its activities
47 with existing or future joint venturers, partners, or other parties with whom the University of Virginia
48 Medical Center has formed, or forms, any arrangement for the delivery of health care, if disclosure of
49 such information would be harmful to the competitive position of the Medical Center.

50 56. Patient level data collected by the Board of Health and not yet processed, verified, and
51 released, pursuant to § 32.1-276.9, to the Board by the nonprofit organization with which the
52 Commissioner of Health has contracted pursuant to § 32.1-276.4.

53 57. Records of the Medical College of Virginia Hospitals Authority pertaining to any of the
54 following: an individual's qualifications for or continued membership on its medical or teaching

1 *staffs; proprietary information gathered by or in the possession of the Authority from third parties*
 2 *pursuant to a promise of confidentiality; contract cost estimates prepared for confidential use in*
 3 *awarding contracts for construction or the purchase of goods or services; data, records or*
 4 *information of a proprietary nature produced or collected by or for the Authority or members of its*
 5 *medical or teaching staffs; financial statements not publicly available that may be filed with the*
 6 *Authority from third parties; the identity, accounts or account status of any customer of the Authority;*
 7 *consulting or other reports paid for by the Authority to assist the Authority in connection with its*
 8 *strategic planning and goals; and the determination of marketing and operational strategies where*
 9 *disclosure of such strategies would be harmful to the competitive position of the Authority; and data,*
 10 *records or information of a proprietary nature produced or collected by or for employees of the*
 11 *Authority, other than the Authority's financial or administrative records, in the conduct of or as a*
 12 *result of study or research on medical, scientific, technical or scholarly issues, whether sponsored by*
 13 *the Authority alone or in conjunction with a governmental body or a private concern, when such*
 14 *data, records or information have not been publicly released, published, copyrighted or patented.*

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

21 59. *Confidential proprietary records which are provided by a franchisee under § 15.2-2108 to its*
 22 *franchising authority pursuant to a promise of confidentiality from the franchising authority which*
 23 *relates to the franchisee's potential provision of new services, adoption of new technologies or*
 24 *implementation of improvements, where such new services, technologies or improvements have not*
 25 *been implemented by the franchisee on a nonexperimental scale in the franchise area, and where, if*
 26 *such records were made public, the competitive advantage or financial interests of the franchisee*
 27 *would be adversely affected. In order for confidential proprietary information to be excluded from the*
 28 *provisions of this chapter, the franchisee shall (i) invoke such exclusion upon submission of the data*
 29 *or other materials for which protection from disclosure is sought, (ii) identify the data or other*
 30 *materials for which protection is sought, and (iii) state the reason why protection is necessary.*

31 60. *Records of the Intervention Program Committee within the Department of Health Professions,*
 32 *to the extent such records may identify any practitioner who may be, or who is actually, impaired to*
 33 *the extent disclosure is prohibited by § 54.1-2517.*

34 61. *Records submitted as a grant application, or accompanying a grant application, to the*
 35 *Commonwealth Neurotrauma Initiative Advisory Board pursuant to Article 12 (§ 32.1-73.1 et seq.) of*
 36 *Chapter 2 of Title 32.1, to the extent such records contain (i) medical or mental records, or other*
 37 *data identifying individual patients or (ii) proprietary business or research-related information*
 38 *produced or collected by the applicant in the conduct of or as a result of study or research on*
 39 *medical, rehabilitative, scientific, technical or scholarly issues, when such information has not been*
 40 *publicly released, published, copyrighted or patented, if the disclosure of such information would be*
 41 *harmful to the competitive position of the applicant.*

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

47 63. *Documents and other information of a proprietary nature furnished by a supplier of charitable*
 48 *gaming supplies to the Charitable Gaming Commission pursuant to subsection E of § 18.2-340.34.*

49 64. *Personal information, as defined in § 2.1-379, provided to the Board of the Virginia Higher*
 50 *Education Tuition Trust Fund or its employees by or on behalf of individuals who have requested*
 51 *information about, applied for, or entered into prepaid tuition contracts pursuant to Chapter 4.9*
 52 *(§ 23-38.75 et seq.) of Title 23. Nothing in this subdivision shall be construed to prohibit disclosure*
 53 *or publication of information in a statistical or other form which does not identify individuals or*
 54 *provide personal information. Individuals shall be provided access to their own personal information.*

1 65. *Engineering and architectural drawings, operational, procedural, tactical planning or training*
2 *manuals, or staff meeting minutes or other records, the disclosure of which would reveal surveillance*
3 *techniques, personnel deployments, alarm systems or technologies, or operational and transportation*
4 *plans or protocols, to the extent such disclosure would jeopardize the security or employee safety of*
5 *(i) the Virginia Museum of Fine Arts or any of its warehouses; (ii) any government store or*
6 *warehouse controlled by the Department of Alcoholic Beverage Control; (iii) any courthouse, jail,*
7 *detention or law-enforcement facility; or (iv) any correctional or juvenile facility or institution under*
8 *the supervision of the Department of Corrections or the Department of Juvenile Justice.*

9 B. *Neither any provision of this chapter nor any provision of Chapter 26 (§ 2.1-377 et seq.) of this*
10 *title shall be construed as denying public access to (i) contracts between a public official and a*
11 *public body, other than contracts settling public employee employment disputes held confidential as*
12 *personnel records under subdivision 4 of subsection A; (ii) records of the position, job classification,*
13 *official salary or rate of pay of, and records of the allowances or reimbursements for expenses paid*
14 *to, any officer, official or employee of a public body; or (iii) the compensation or benefits paid by*
15 *any corporation organized by the Virginia Retirement System or its officers or employees. The*
16 *provisions of this subsection, however, shall not require public access to records of the official*
17 *salaries or rates of pay of public employees whose annual rate of pay is \$10,000 or less.*

18 C. *No provision of this chapter shall be construed to afford any rights to any person incarcerated*
19 *in a state, local or federal correctional facility, whether or not such facility is (i) located in the*
20 *Commonwealth or (ii) operated pursuant to the Corrections Private Management Act (§ 53.1-261 et*
21 *seq.). However, this subsection shall not be construed to prevent an incarcerated person from*
22 *exercising his constitutionally protected rights, including, but not limited to, his rights to call for*
23 *evidence in his favor in a criminal prosecution.*

24 § 2.1-342.2. *Disclosure of criminal records; limitations.*

25 A. *As used in this section, "criminal incident information" means a general description of the*
26 *criminal activity reported, the date and general location the alleged crime was committed, the identity*
27 *of the investigating officer, and a general description of any injuries suffered or property damaged or*
28 *stolen.*

29 B. *Law-enforcement officials shall make available upon request criminal incident information*
30 *relating to felony offenses. However, where the release of criminal incident information is likely to*
31 *jeopardize an ongoing investigation or prosecution, or the safety of an individual; cause a suspect to*
32 *flee or evade detection; or result in the destruction of evidence, such information may be withheld*
33 *until the above-referenced damage is no longer likely to occur from release of the information.*
34 *Nothing in this subsection shall be construed to prohibit the release of those portions of such*
35 *information that are not likely to cause the above-referenced damage.*

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

39 D. *The identity of any victim, witness or undercover officer, or investigative techniques or*
40 *procedures need not but may be disclosed unless disclosure is prohibited or restricted under*
41 *§ 19.2-11.2.*

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

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

46 1. *Complaints, memoranda, correspondence and evidence relating to a criminal investigation or*
47 *prosecution, other than criminal incident information as defined in subsection A;*

48 2. *Adult arrestee photographs when necessary to avoid jeopardizing an investigation in felony*
49 *cases until such time as the release of the photograph will no longer jeopardize the investigation;*

50 3. *Reports submitted in confidence to (i) state and local law-enforcement agencies, (ii)*
51 *investigators authorized pursuant to § 53.1-16, and (iii) campus police departments of public*
52 *institutions of higher education established pursuant to Chapter 17 (§ 23-232 et seq.) of Title 23;*

53 4. *Portions of records of local government crime commissions that would identify individuals*
54 *providing information about crimes or criminal activities under a promise of anonymity;*

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

4 6. All records of persons imprisoned in penal institutions in the Commonwealth provided such
 5 records relate to the imprisonment.

6 G. Records kept by law-enforcement agencies as required by § 15.2-1722 shall be subject to the
 7 provisions of this section except:

8 1. Those portions of noncriminal incident or other investigative reports or materials containing
 9 identifying information of a personal, medical or financial nature provided to a law-enforcement
 10 agency where the release of such information would jeopardize the safety or privacy of any person;

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

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

15 H. In the event of conflict between this section and other provisions of law, this section shall
 16 control.

17 § 2.1-343. Meetings to be public; notice of meetings; recordings; minutes.

18 Except as otherwise specifically provided by law and except as provided in §§ ~~2.1-344~~ and
 19 ~~2.1-345~~, all A. All meetings of public bodies shall be public meetings, including meetings and work
 20 sessions during which no votes are cast or any decisions made. Notice including the time, date and
 21 place of each meeting shall be furnished to any citizen of the Commonwealth who requests such
 22 information. Notices for meetings of public bodies of the Commonwealth on which there is at least
 23 one member appointed by the Governor shall state whether or not public comment will be received at
 24 a meeting, and, if so, the approximate points during the meeting public comment will be received.

25 Requests to be notified on a continual basis shall be made at least once a year in writing and include
 26 name, address, zip code and organization of the requester. Notice, reasonable under the circumstance,
 27 of special or emergency meetings shall be given contemporaneously with the notice provided
 28 members of the public body conducting the meeting.

29 Unless otherwise exempt, at least one copy of all agenda packets and materials furnished to
 30 members of a public body for a meeting shall be made available for inspection by the public at the
 31 same time such documents are furnished to the members of the public body open, except as provided
 32 in § 2.1-344.

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

37 C. Every public body shall give notice of the date, time, and location of its meetings by placing
 38 the notice in a prominent public location at which notices are regularly posted; in the office of the
 39 clerk of the public body, or in the case of a public body which has no clerk, in the office of the chief
 40 administrator. Publication of meeting notices by electronic means shall be encouraged. The notice
 41 shall be posted at least three working days prior to the meeting. Notices for meetings of state public
 42 bodies on which there is at least one member appointed by the Governor shall state whether or not
 43 public comment will be received at the meeting and, if so, the approximate point during the meeting
 44 when public comment will be received.

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

47 E. Any person may annually file a written request for notification with a public body. The request
 48 shall include the requester's name, address, zip code, daytime telephone number, and organization, if
 49 any. The public body receiving such request shall provide notice of all meetings directly to each such
 50 person.

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

54 G. Nothing in this chapter shall be construed to prohibit the gathering or attendance of two or

1 more members of a public body (i) at any place or function where no part of the purpose of such
2 gathering or attendance is the discussion or transaction of any public business, and such gathering or
3 attendance was not called or prearranged with any purpose of discussing or transacting any business
4 of the public body or (ii) at a public forum, candidate appearance, or debate, the purpose of which is
5 to inform the electorate and not to transact public business or to hold discussions relating to the
6 transaction of public business, even though the performance of the members individually or
7 collectively in the conduct of public business may be a topic of discussion or debate at such public
8 meeting. The notice provisions of this chapter shall not apply to informal meetings or gatherings of
9 the members of the General Assembly.

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

14 ~~Voting by secret or written ballot in an open meeting shall be a violation of this chapter.~~

15 I. Minutes shall be recorded at all ~~public~~ open meetings. However, minutes shall not be required to
16 be taken at deliberations of (i) standing and other committees of the General Assembly, (ii) legislative
17 interim study commissions and committees, including the Virginia Code Commission, (iii) study
18 committees or commissions appointed by the Governor, or (iv) study commissions or study
19 committees, or any other committees or subcommittees appointed by the governing bodies or school
20 boards of counties, cities and towns, except where the membership of any such commission,
21 committee or subcommittee includes a majority of the governing body of the county, city or town or
22 school board. Minutes, including draft minutes, and all other records of open meetings, including
23 audio or audio/visual records shall be deemed public records and subject to the provisions of this
24 chapter. Audio or audio/visual records of open meetings shall be public records which shall be
25 produced in accordance with § 2.1-342.

26 § 2.1-343.1. Electronic communication meetings.

27 A. It shall be a violation of this chapter for any political subdivision or any governing body,
28 authority, board, bureau, commission, district or agency of local government or any committee thereof
29 to conduct a meeting wherein the public business is discussed or transacted through telephonic, video,
30 electronic or other communication means where the members are not physically assembled. Nothing
31 in this section shall be construed to prohibit the use of interactive audio or video means to expand
32 public participation.

33 B. For purposes of subsections B through F of this section, "public body" means any public body
34 of the Commonwealth, as provided in the definitions of "meeting" and "public body" in § 2.1-341, but
35 excluding excludes any political subdivision or any governing body, authority, board, bureau,
36 commission, district or agency of local government.

37 Such State public bodies may conduct any meeting, except executive or closed meetings held
38 pursuant to § 2.1-344, wherein the public business is discussed or transacted through telephonic or
39 video means. Where a quorum of a public body of the Commonwealth is physically assembled at one
40 location for the purpose of conducting a meeting authorized under this subsection, additional
41 members of such public body may participate in the meeting through telephonic means provided such
42 participation is available to the public.

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

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

1 adjournment.

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

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

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

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

28 § 2.1-343.2. Transaction of public business other than by votes at meetings prohibited.

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

34 Notwithstanding the foregoing, nothing contained herein shall be construed to prohibit separately
35 contacting the membership, or any part thereof, of any public body for the purpose of ascertaining a
36 member's position with respect to the transaction of public business.

37 § 2.1-344. Closed meetings authorized for certain limited purposes.

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

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

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

1 of a closed meeting, if such student, parents or guardians so request in writing and such request is
2 submitted to the presiding officer of the appropriate board.

3 3. Discussion or consideration of the ~~condition~~, acquisition ~~or use~~ of real property for a public
4 purpose, or of the disposition of publicly held *real* property, ~~or of plans for the future of a state~~
5 ~~institution of higher education which could where discussion in an open meeting would adversely~~
6 ~~affect the value of property owned or desirable for ownership by such institution bargaining position~~
7 ~~or negotiating strategy of the public body.~~

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

9 ~~5.~~ Discussion concerning a prospective business or industry or *the* expansion of an existing
10 business or industry where no previous announcement has been made of the business' or industry's
11 interest in locating or expanding its facilities in the community.

12 ~~6.~~ 5. The investing of public funds where competition or bargaining is involved, where, if made
13 public initially, the financial interest of the governmental unit would be adversely affected.

14 ~~7.~~ 6. Consultation with legal counsel and briefings by staff members; ~~or consultants or attorneys,~~
15 ~~pertaining to actual or probable litigation, or other where such consultation or briefing in open~~
16 ~~meeting would adversely affect the negotiating or litigating posture of the public body; and~~
17 ~~consultation with legal counsel employed or retained by a public body regarding specific legal~~
18 ~~matters requiring the provision of legal advice by such counsel. For the purposes of this subdivision,~~
19 ~~"probable litigation" means litigation which has been specifically threatened or on which the public~~
20 ~~body or its legal counsel has a reasonable basis to believe will be commenced by or against a known~~
21 ~~party. Nothing in this subdivision shall be construed to permit the closure of a meeting merely~~
22 ~~because an attorney representing the public body is in attendance or is consulted on a matter.~~

23 ~~8.~~ 7. In the case of boards of visitors of *state public* institutions of higher education, discussion or
24 consideration of matters relating to gifts, bequests and fund-raising activities, and grants and contracts
25 for services or work to be performed by such institution. However, the terms and conditions of any
26 such gifts, bequests, grants and contracts made by a foreign government, a foreign legal entity or a
27 foreign person and accepted by a *state public* institution of higher education shall be subject to public
28 disclosure upon written request to the appropriate board of visitors. For the purpose of this
29 subdivision, (i) "foreign government" means any government other than the United States government
30 or the government of a state or a political subdivision thereof; (ii) "foreign legal entity" means any
31 legal entity created under the laws of the United States or of any state thereof if a majority of the
32 ownership of the stock of such legal entity is owned by foreign governments or foreign persons or if
33 a majority of the membership of any such entity is composed of foreign persons or foreign legal
34 entities, or any legal entity created under the laws of a foreign government; and (iii) "foreign person"
35 means any individual who is not a citizen or national of the United States or a trust territory or
36 protectorate thereof.

37 9. 8. In the case of the boards of trustees of the Virginia Museum of Fine Arts and The Science
38 Museum of Virginia, discussion or consideration of matters relating to specific gifts, bequests, and
39 grants.

40 ~~10.~~ 9. Discussion or consideration of honorary degrees or special awards.

41 ~~11.~~ 10. Discussion or consideration of tests ~~or~~, examinations or other ~~documents records~~ excluded
42 from this chapter pursuant to § ~~2-1-342 B 9 2.1-342.01 A 11.~~

43 ~~12.~~ 11. Discussion, consideration or review by the appropriate House or Senate committees of
44 possible disciplinary action against a member arising out of the possible inadequacy of the disclosure
45 statement filed by the member, provided the member may request in writing that the committee
46 meeting not be conducted in ~~executive session~~ *a closed meeting*.

47 ~~13.~~ 12. Discussion of strategy with respect to the negotiation of a siting agreement or to consider
48 the terms, conditions, and provisions of a siting agreement if the governing body in open meeting
49 finds that an open meeting will have a ~~detrimental effect~~ *an adverse affect* upon the negotiating
50 position of the governing body or the establishment of the terms, conditions and provisions of the
51 siting agreement, or both. All discussions with the applicant or its representatives may be conducted
52 in a closed meeting ~~or executive session~~.

53 14. 13. Discussion by the Governor and any economic advisory board reviewing forecasts of
54 economic activity and estimating general and nongeneral fund revenues.

1 ~~15.~~ 14. Discussion or consideration of medical and mental records excluded from this chapter
 2 pursuant to § ~~2.1-342 B~~ ~~3~~ 2.1-342.01 A 5, and those portions of disciplinary proceedings by any
 3 regulatory board within the Department of Professional and Occupational Regulation or Department of
 4 Health Professions conducted pursuant to § 9-6.14:11 or § 9-6.14:12 during which the board
 5 deliberates to reach a decision.

6 ~~16.~~ 15. Discussion, consideration or review of State Lottery Department matters related to
 7 proprietary lottery game information and studies or investigations exempted from disclosure under
 8 subdivisions ~~37~~ 36 and ~~38~~ 37 of subsection ~~BA~~ of § ~~2.1-342~~ 2.1-342.01.

9 ~~17.~~ 16. Those portions of meetings by local government crime commissions where the identity of,
 10 or information tending to identify, individuals providing information about crimes or criminal
 11 activities under a promise of anonymity is discussed or disclosed.

12 ~~18.~~ 17. Discussion, consideration, review and deliberations by local community corrections
 13 resources boards regarding the placement in community diversion programs of individuals previously
 14 sentenced to state correctional facilities.

15 ~~19.~~ [Repealed.]

16 ~~20.~~ 18. Those portions of meetings in which the Board of Corrections discusses or discloses the
 17 identity of, or information tending to identify, any prisoner who (i) provides information about crimes
 18 or criminal activities, (ii) renders assistance in preventing the escape of another prisoner or in the
 19 apprehension of an escaped prisoner, or (iii) voluntarily or at the instance of a prison official renders
 20 other extraordinary services, the disclosure of which is likely to jeopardize the prisoner's life or safety.

21 ~~21.~~ 19. Discussion of plans to protect public safety as it relates to terrorist activity.

22 ~~22.~~ In the case of corporations organized by the Virginia Retirement System, discussion or
 23 consideration of (i) proprietary information provided by, and financial information concerning,
 24 venturers, partners, lessors, lessees, or investors, and (ii) the condition, acquisition, disposition, use,
 25 using, development, coventuring, or management of real estate the disclosure of which would have a
 26 substantial adverse impact on the value of such real estate or result in a competitive disadvantage to
 27 the corporation or subsidiary.

28 ~~23.~~ 20. Those portions of meetings in which individual child death cases are discussed by the State
 29 Child Fatality Review Team established pursuant to § 32.1-283.1.

30 ~~24.~~ 21. Those portions of meetings of the University of Virginia Board of Visitors and those
 31 portions of meetings of any persons to whom management responsibilities for the University of
 32 Virginia Medical Center have been delegated, in which there is discussed proprietary, business-related
 33 information pertaining to the operations of the University of Virginia Medical Center, including its
 34 business development or marketing strategies and its activities with existing or future joint venturers,
 35 partners, or other parties with whom the University of Virginia Medical Center has formed, or forms,
 36 any arrangement for the delivery of health care, if disclosure of such information would be harmful to
 37 adversely affect the competitive position of the Medical Center.

38 ~~25.~~ 22. In the case of the Medical College of Virginia Hospitals Authority, discussion or
 39 consideration of any of the following: the ~~condition~~, acquisition, use or disposition of real or personal
 40 property where disclosure would adversely affect the bargaining position or negotiating strategy of
 41 the Authority; operational plans that could affect the value of such property, real or personal, owned
 42 or desirable for ownership by the Authority; matters relating to gifts, bequests and fund-raising
 43 activities; grants and contracts for services or work to be performed by the Authority; marketing or
 44 operational strategies where disclosure of such strategies would be harmful to adversely affect the
 45 competitive position of the Authority; members of its medical and teaching staffs and qualifications
 46 for appointments thereto; and qualifications or evaluations of other employees.

47 ~~26.~~ 23. Those portions of the meetings of the Intervention Program Committee within the
 48 Department of Health Professions to the extent such discussions identify any practitioner who may be,
 49 or who actually is, impaired pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of Title 54.1.

50 ~~27.~~ 24. Those ~~meetings~~ Meetings or portions of meetings of the Board of the Virginia Higher
 51 Education Tuition Trust Fund wherein personal information, as defined in § 2.1-379, which has been
 52 provided to the Board or its employees by or on behalf of individuals who have requested information
 53 about, applied for, or entered into prepaid tuition contracts pursuant to Chapter 4.9 (§ 23-38.75 et
 54 seq.) of Title 23 is discussed.

1 B. No resolution, ordinance, rule, contract, regulation or motion adopted, passed or agreed to in an
2 ~~executive or~~ a closed meeting shall become effective unless the public body, following the meeting,
3 reconvenes in open meeting and takes a vote of the membership on such resolution, ordinance, rule,
4 contract, regulation or motion which shall have its substance reasonably identified in the open
5 meeting. This section shall not be construed to (i) require the disclosure of any contract between the
6 Intervention Program Committee within the Department of Health Professions and an impaired
7 practitioner entered into pursuant to Chapter 25.1 of Title 54.1 or (ii) require the board of directors of
8 any authority created pursuant to the Industrial Development and Revenue Bond Act (§ 15.1-1373 et
9 seq.); or any public body empowered to issue industrial revenue bonds by general or special law, to
10 identify a business or industry to which subdivision A 5 of this section applies. However, such
11 business or industry must be identified as a matter of public record at least thirty days prior to the
12 actual date of the board's authorization of the sale or issuance of such bonds.

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

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

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

28 § 2.1-344.1. Closed meetings procedures; certification of proceedings.

29 A. No closed meeting shall become an executive or closed meeting ~~be held~~ unless the public body
30 proposing to convene such meeting ~~shall have~~ has taken an affirmative recorded vote in open session
31 to that effect, by motion stating specifically the purpose or purposes which are to be the subject of the
32 meeting, and reasonably identifying the substance of the matters to be discussed. A statement shall be
33 included in the minutes of the open meeting which shall make an open meeting approving a motion
34 which (i) identifies the subject matter, (ii) states the purpose of the meeting and (iii) makes specific
35 reference to the applicable exemption or exemptions from open meeting requirements provided in
36 § 2.1-343 or subsection A of § 2.1-344 or in § 2.1-345, and the. The matters contained in such motion
37 shall be set forth in these detail in the minutes of the open meeting. A general reference to the
38 provisions of this chapter or, the authorized exemptions from open meeting requirements, or the
39 subject matter of the closed meeting shall not be sufficient to satisfy the requirements for an executive
40 or holding a closed meeting.

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

46 C. The public body holding an executive or a closed meeting shall restrict its consideration of
47 matters discussion during the closed portions meeting only to those purposes matters specifically
48 exempted from the provisions of this chapter and identified in the motion required by subsection A.

49 D. At the conclusion of any executive or closed meeting convened hereunder, the public body
50 holding such meeting shall immediately reconvene in an open session immediately thereafter meeting
51 and shall take a roll call or other recorded vote to be included in the minutes of that body, certifying
52 that to the best of the each member's knowledge (i) only public business matters lawfully exempted
53 from open meeting requirements under this chapter, and (ii) only such public business matters as were
54 identified in the motion by which the executive or closed meeting was convened were heard,

1 discussed or considered in the meeting by the public body. Any member of the public body who
 2 believes that there was a departure from the requirements of subdivisions (i) and (ii) ~~above~~, shall so
 3 state prior to the vote, indicating the substance of the departure that, in his judgment, has taken place.
 4 The statement shall be recorded in the minutes of the public body.

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

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

14 G. Except as specifically authorized by law, in no event may any public body take action on
 15 matters discussed in any ~~executive or~~ closed meeting, except at a ~~public~~ *an open* meeting for which
 16 notice was given as required by § 2.1-343.

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

19 § 2.1-346. Proceedings for enforcement of chapter.

20 A. Any person, including the attorney for the Commonwealth acting in his official or individual
 21 capacity, denied the rights and privileges conferred by this chapter may proceed to enforce such rights
 22 and privileges by filing a petition for mandamus or injunction, supported by an affidavit showing
 23 good cause, addressed to the general district court or the court of record of the county or city from
 24 which the public body has been elected or appointed to serve and in which such rights and privileges
 25 were so denied. Failure by any person to request and receive notice of the time and place of meetings
 26 as provided in § 2.1-343 shall not preclude any person from enforcing his or her rights and privileges
 27 conferred by this chapter.

28 B. Any petition alleging denial of rights and privileges conferred by this chapter by a board,
 29 bureau, commission, authority, district or agency of the state government or by a standing or other
 30 committee of the General Assembly, shall be addressed to the ~~General District Court~~ *general district*
 31 *court* or the ~~Circuit Court~~ *circuit court* of the residence of the aggrieved party or of the City of
 32 Richmond. *In any action brought before a general district court, a corporate petitioner may appear*
 33 *through its officer, director or managing agent without the assistance of counsel, notwithstanding any*
 34 *provision of law or Rule of the Supreme Court of Virginia to the contrary.*

35 A C. *The petition for mandamus or injunction under this chapter shall be heard within seven days*
 36 *of the date when the same is made. However, any petition made outside of the regular terms of the*
 37 *circuit court of a county which is included in a judicial circuit with another county or counties, the*
 38 *hearing on the petition shall be given precedence on the docket of such court over all cases which are*
 39 *not otherwise given precedence by law.*

40 D. The petition shall allege with reasonable specificity the circumstances of the denial of the rights
 41 and privileges conferred by this chapter. A single instance of denial of the rights and privileges
 42 conferred by this chapter shall be sufficient to invoke the remedies granted herein. If the court finds
 43 the denial to be in violation of the provisions of this chapter, the petitioner shall be entitled to recover
 44 reasonable costs and attorney's fees from the public body if the petitioner substantially prevails on the
 45 merits of the case, unless special circumstances would make an award unjust. In making this
 46 determination, a court may consider, among other things, the reliance of a public body on an opinion
 47 of the Attorney General or a decision of a court that substantially supports the public body's position.
 48 ~~The court may also impose appropriate sanctions in favor of the public body as provided in~~
 49 ~~§ 8.01-271.1.~~

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

53 § 2.1-346.1. Violations and penalties.

54 In a proceeding commenced against members of public bodies under § 2.1-346 for a violation of

1 §§ 2.1-342, 2.1-343, 2.1-343.1, 2.1-343.2, 2.1-344 or § 2.1-344.1, the court, if it finds that a violation
2 was willfully and knowingly made, shall impose upon such member in his individual capacity,
3 whether a writ of mandamus or injunctive relief is awarded or not, a civil penalty of not less than \$25
4 \$100 nor more than \$1,000, which amount shall be paid into the State Literary Fund. For a second or
5 subsequent violation, such civil penalty shall be not less than \$250 \$500 nor more than \$1,000
6 \$2,500.

7 § 15.2-1722. Certain records to be kept by sheriffs and chiefs of police.

8 A. It shall be the duty of the sheriff or chief of police of every locality to insure, in addition to
9 other records required by law, the maintenance of adequate personnel, arrest, investigative, reportable
10 incidents, and noncriminal incidents records necessary for the efficient operation of a law-enforcement
11 agency. Failure of a sheriff or a chief of police to maintain such records or failure to relinquish such
12 records to his successor in office shall constitute a misdemeanor. Former sheriffs or chiefs of police
13 shall be allowed access to such files for preparation of a defense in any suit or action arising from the
14 performance of their official duties as sheriff or chief of police. The enforcement of this section shall
15 be the duty of the attorney for the Commonwealth of the county or city wherein the violation occurs.
16 ~~Except for information in the custody of law-enforcement officials relative to the identity of any~~
17 ~~individual other than a juvenile who is arrested and charged, and the status of the charge of arrest, the~~
18 ~~records required to be maintained by this section shall be exempt from the provisions of Chapter 21~~
19 ~~(§ 2.1-340 et seq.) of Title 2.1.~~

20 B. For purposes of this section, the following definitions shall apply:

21 "Arrest records" means a compilation of information, centrally maintained in law-enforcement
22 custody, of any arrest or temporary detention of an individual, including the identity of the person
23 arrested or detained, the nature of the arrest or detention, and the charge, if any.

24 "Investigative records" means the reports of any systematic inquiries or examinations into crimina'
25 or suspected criminal acts which have been committed, are being committed, or are about to be
26 committed.

27 "Noncriminal incidents records" means compilations of noncriminal occurrences of general interest
28 to law-enforcement agencies, such as missing persons, lost and found property, suicides and accidental
29 deaths.

30 "Personnel records" means those records maintained on each and every individual employed by a
31 law-enforcement agency which reflect personal data concerning the employee's age, length of service,
32 amount of training, education, compensation level, and other pertinent personal information.

33 "Reportable incidents records" means a compilation of complaints received by a law-enforcement
34 agency and action taken by the agency in response thereto.

35 § 19.2-368.3. Powers and duties of Commission.

36 The Commission shall have the following powers and duties in the administration of the provisions
37 of this chapter:

38 1. To adopt, promulgate, amend and rescind suitable rules and regulations to carry out the
39 provisions and purposes of this chapter.

40 2. Notwithstanding the provisions of ~~subdivision B 1 of § 2.1-342~~ § 2.1-342.2, to acquire from the
41 attorneys for the Commonwealth, State Police, local police departments, sheriffs' departments, and the
42 Chief Medical Examiner such investigative results, information and data as will enable the
43 Commission to determine if, in fact, a crime was committed or attempted, and the extent, if any, to
44 which the victim or claimant was responsible for his own injury. These data shall include prior adult
45 arrest records and juvenile court disposition records of the offender. For such purposes and in
46 accordance with § 16.1-305, the Commission may also acquire from the juvenile and domestic
47 relations district courts a copy of the order of disposition relating to the crime. The use of any
48 information received by the Commission pursuant to this subdivision shall be limited to carrying out
49 the purposes set forth in this section, and this information shall be confidential and shall not be
50 disseminated further. The agency from which the information is requested may submit origina.
51 reports, portions thereof, summaries, or such other configurations of information as will comply with
52 the requirements of this section.

53 3. To hear and determine all claims for awards filed with the Commission pursuant to this chapter,
54 and to reinvestigate or reopen cases as the Commission deems necessary.

1 4. To require and direct medical examination of victims.

2 5. To hold hearings, administer oaths or affirmations, examine any person under oath or
3 affirmation and to issue summonses requiring the attendance and giving of testimony of witnesses and
4 require the production of any books, papers, documentary or other evidence. The powers provided in
5 this subsection may be delegated by the Commission to any member or employee thereof.

6 6. To take or cause to be taken affidavits or depositions within or without the Commonwealth.

7 7. To render each year to the Governor and to the General Assembly a written report of its
8 activities.

9 8. To accept from the government of the United States grants of federal moneys for disbursement
10 under the provisions of this chapter.

11 § 23-50.16:32. Confidential and public information.

12 A. The Authority shall be subject to the provisions of the Freedom of Information Act (§ 2.1-340
13 et seq.), which shall include the ~~exceptions~~ *exclusions* set forth in subdivision ~~66 of subsection B of~~
14 ~~§ 2.1-342.57 of subsection A of § 2.1-342.01~~ and subdivision ~~2522~~ of subsection A of § 2.1-344.

15 B. For purposes of the Freedom of Information Act (§ 2.1-340 et seq.), meetings of the Board
16 shall not be considered meetings of the Board of Visitors of the University. Meetings of the Board
17 may be conducted through telephonic or video means as provided in § 2.1-343.1 C through F or
18 similar provisions of any successor law.

19 § 32.1-283.1. State Child Fatality Review Team established; membership; access to and
20 maintenance of records; confidentiality; etc.

21 A. There is hereby created the State Child Fatality Review Team, hereinafter referred to as the
22 "Team," which shall develop and implement procedures to ensure that child deaths occurring in
23 Virginia are analyzed in a systematic way. The Team shall review (i) violent and unnatural child
24 deaths, (ii) sudden child deaths occurring within the first eighteen months of life, and (iii) those
25 fatalities for which the cause or manner of death was not determined with reasonable medical
26 certainty. No child death review shall be initiated by the Team until conclusion of any
27 law-enforcement investigation or criminal prosecution. The Team shall (i) develop and revise as
28 necessary operating procedures for the review of child deaths, including identification of cases to be
29 reviewed and procedures for coordination among the agencies and professionals involved, (ii) improve
30 the identification, data collection, and record keeping of the causes of child death, (iii) recommend
31 components for prevention and education programs, (iv) recommend training to improve the
32 investigation of child deaths, and (v) provide technical assistance, upon request, to any local child
33 fatality teams that may be established. The operating procedures for the review of child deaths shall
34 be exempt from the Administrative Process Act (§ 9-6.14:1 et seq.) pursuant to subdivision 17 of
35 subsection B of § 9-6.14:4.1.

36 B. The sixteen-member Team shall be chaired by the Chief Medical Examiner and shall be
37 composed of the following persons or their designees: the Commissioner of the Department of Mental
38 Health, Mental Retardation and Substance Abuse Services; the Director of Child Protective Services
39 within the Department of Social Services; the Superintendent of Public Instruction; the State Registrar
40 of Vital Records; and the Director of the Department of Criminal Justice Services. In addition, one
41 representative from each of the following entities shall be appointed by the Governor to serve for a
42 term of three years: local law-enforcement agencies, local fire departments, local departments of social
43 services, the Medical Society of Virginia, the Virginia College of Emergency Physicians, the Virginia
44 Pediatric Society, Virginia Sudden Infant Death Syndrome Alliance, local emergency medical services
45 personnel, Commonwealth's attorneys, and community services boards.

46 C. Upon the request of the Chief Medical Examiner in his capacity as chair of the Team, made
47 after the conclusion of any law-enforcement investigation or prosecution, information and records
48 regarding a child whose death is being reviewed by the Team may be inspected and copied by the
49 Chief Medical Examiner or his designee, including, but not limited to, any report of the circumstances

50 the event maintained by any state or local law-enforcement agency or medical examiner, and
51 information or records maintained on such child by any school, social services agency or court.
52 Information, records or reports maintained by any Commonwealth's Attorney shall be made available
53 for inspection and copying by the Chief Medical Examiner pursuant to procedures which shall be
54 developed by the Chief Medical Examiner and the Commonwealth's Attorneys' Services Council

1 established by § 2.1-64.28:1. In addition, the Chief Medical Examiner may inspect and copy from any
2 Virginia health care provider, on behalf of the Team, (i) without obtaining consent, the health and
3 mental health records of the child and those perinatal medical records of the child's mother that
4 related to such child, and (ii) upon obtaining consent from each adult regarding his personal records,
5 or from a parent regarding the records of a minor child, the health and mental health records of the
6 child's family. All such information and records shall be confidential and shall be excluded from the
7 Virginia Freedom of Information Act (§ 2.1-340 et seq.) pursuant to subdivision ~~59~~ of subsection B of
8 ~~§ 2.1-342~~ 51 of subsection A of § 2.1-342.01. Upon the conclusion of the child death review, all
9 information and records concerning the child and the child's family shall be shredded or otherwise
10 destroyed by the Chief Medical Examiner in order to ensure confidentiality. Such information or
11 records shall not be subject to subpoena or discovery or be admissible in any criminal or civil
12 proceeding. If available from other sources, however, such information and records shall not be
13 immune from subpoena, discovery or introduction into evidence when obtained through such other
14 sources solely because the information and records were presented to the Team during a child death
15 review. Further, the findings of the Team may be disclosed or published in statistical or other form
16 which shall not identify individuals. The portions of meetings in which individual child death cases
17 are discussed by the Team shall be closed pursuant to subdivision 2320 of subsection A of § 2.1-344.
18 In addition to the requirements of § 2.1-344.1, all team members, persons attending closed team
19 meetings, and persons presenting information and records on specific child deaths to the Team during
20 closed meetings shall execute a sworn statement to honor the confidentiality of the information,
21 records, discussions, and opinions disclosed during any closed meeting to review a specific child
22 death. Violations of this subsection shall be punishable as a Class 3 misdemeanor.

23 D. Upon notification of a child death, any state or local government agency maintaining records on
24 such child or such child's family which are periodically purged shall retain such records for the longer
25 of twelve months or until such time as the State Child Fatality Review Team has completed its child
26 death review of the specific case.

27 E. The Team shall compile annual data which shall be made available to the Governor and the
28 General Assembly as requested. These statistical data compilations shall not contain any personally
29 identifying information and shall be public records.

30 § 52-8.3. Disclosure of criminal investigative records and reports; penalty.

31 Any person employed by a law-enforcement agency or other governmental agency within the
32 Commonwealth who has or has had access in an official capacity to an official written record or
33 report submitted in confidence to the Department of State Police relating to an ongoing criminal
34 investigation, and who uses or knowingly permits another to use such record or report for any
35 purpose not consistent with the ~~exemptions~~ exclusions permitted in ~~§ 2.1-342~~ §§ 2.1-342.01 and
36 2.1-342.2, or other provision of state law, shall be guilty of a Class 2 misdemeanor.

37 The provisions of this section shall not be construed to impede or prohibit full access to
38 information concerning the existence of any criminal investigation or to other verbal disclosures
39 permitted by state police operating procedures.

40 § 54.1-2517. Powers and duties of the Intervention Program Committee; certain meetings, decisions
41 to be exempted from the Freedom of Information Act; confidentiality of records; immunity from
42 liability.

43 A. The Intervention Program Committee shall have the following powers and duties:

- 44 1. To determine, in accordance with the regulations, eligibility to enter into the Program;
- 45 2. To determine, in accordance with the regulations, those Program participants who are eligible
46 for stayed disciplinary action;
- 47 3. To enter into written contracts with practitioners which may include, among other terms and
48 conditions, withdrawal from practice or limitations on the scope of the practice for a period of time;
- 49 4. To report to the Director and the health regulatory boards as necessary on the status of
50 applicants for and participants in the Program; and
- 51 5. To report to the Director, at least annually, on the performance of the Program.

52 B. Records of the Intervention Program Committee, to the extent such records identify individual
53 practitioners in the intervention program, shall be privileged and confidential, and shall not be
54 disclosed consistent with the Virginia Freedom of Information Act (§ 2.1-340 et seq.). Such records

1 shall be used by the Committee only in the exercise of the proper functions of the Committee as set
 2 forth in this chapter and shall not be public records nor shall such records be subject to court order,
 3 except as provided in subdivision C 4 below, or be subject to discovery or introduction as evidence in
 4 any civil, criminal, or administrative proceedings except those conducted by a health regulatory board.

5 C. Notwithstanding the provisions of subsection B above and of subdivision B 67 of ~~§ 2.1-342 60~~
 6 of subsection A of § 2.1-342.01, the Committee may disclose such records relative to an impaired
 7 practitioner only:

8 1. When disclosure of the information is essential to the intervention, treatment or rehabilitation
 9 needs of the impaired practitioner;

10 2. When release of the information has been authorized in writing by the impaired practitioner;

11 3. To a health regulatory board within the Department of Health Professions; or

12 4. When an order by a court of competent jurisdiction has been granted, upon a showing of good
 13 cause therefor, including the need to avert a substantial risk of death or serious bodily harm. In
 14 assessing good cause, the court shall weigh the public interest and the need for disclosure against the
 15 injury to the patient, to the physician-patient relationship, and to the treatment services. Upon the
 16 granting of such order, the court, in determining the extent to which any disclosure of all or any part
 17 of any record is necessary, shall impose appropriate protections against unauthorized disclosures.

18 D. Pursuant to subdivision A 26 23 of § 2.1-344, the proceedings of the Committee which in any
 19 way pertain or refer to a specific practitioner who may be, or who is actually, impaired and who may
 20 be or is, by reason of such impairment, subject to disciplinary action by the relevant board shall be
 21 excluded from the requirements of the Freedom of Information Act (§ 2.1-340 et seq.) and may be
 22 closed. Such proceedings shall be privileged and confidential.

23 E. The members of the Committee shall be immune from liability resulting from the exercise of
 24 the powers and duties of the Committee as provided in § 8.01-581.13.

25 2. That §§ 2.1-342.1 and 2.1-345 of the Code of Virginia are repealed.

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

**1998 Meetings of the Joint Subcommittee
Studying the Virginia Freedom of Information Act
(First Year of Study)**

Initial Meeting--10 a.m. Friday, June 12, 1998

House Room C, General Assembly Building, Richmond

Review of initial staff briefing report: Maria J.K. Everett, *senior attorney, Division of Legislative Services*; Presentation of FOIA Redraft by Ed Jones, *President, Virginia Press Association*.

Second Meeting --2 p.m. Wednesday, July 15, 1998

House Room C, General Assembly Building, Richmond

FOIA statutes of selected other states: Amigo R. Wade, *senior attorney, Division of Legislative Services*; Access to Electronic Records: William Ruberry, *Director of Training and Technology, Richmond Times Dispatch*; Review of redraft of FOIA: Maria J.K. Everett, *senior attorney, Division of Legislative Services*.

Third Meeting --10 a..m. Wednesday, August 26, 1998

House Room D, General Assembly Building, Richmond

FOIA--A Local Government Perspective: The Honorable Jack D. Edwards, *Chairman, James City County Board of Supervisors*; Comments from the Local Government Attorneys Association: Wilburn C. Dibling, Jr., *City Attorney, City of Roanoke, Chairman, LGA FOIA Committee*; Criminal Records and FOIA: Captain R. Lewis Vass, *Commander, Criminal Justice Information Services Division, Virginia Department of State Police*; Open Records; Comparison of current FOIA and proposed redraft: Maria J.K. Everett, *senior attorney, Division of Legislative Services*.

Fourth Meeting --10 a..m. Thursday, September 17, 1998

House Room D, General Assembly Building, Richmond

Topic: Open Meetings. Presentations by: Steve Calos, *Executive Director, Common Cause of Virginia*; Craig T. Merrit, *Esquire, Virginia Press Association*; Wilburn C. Dibling, Jr., *City Attorney, City of Roanoke, Chairman, Local Government Attorneys, FOIA Committee*; Open Meetings; Comparison of current FOIA and proposed redraft: Maria J.K. Everett, *senior attorney, Division of Legislative Services*.

Fifth Meeting --10 a..m. Wednesday, October 14, 1998

House Room C, General Assembly Building, Richmond

University Presentations: Mr. Jack Ackerly, *Rector, UVA Board of Visitors*; Mr. Gene James, *President, Virginia Tech Foundation*; Mr. Mark E. Smith, *Director, Governmental and Community Relations, VCU*.

Sixth Meeting --1:30 p.m. Wednesday, November 11, 1998

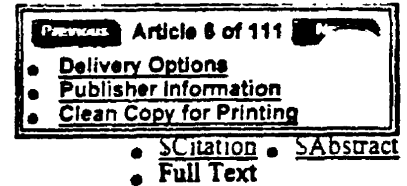
House Room D, General Assembly Building, Richmond
Work session.

Seventh Meeting –10 a..m. Monday, December 21, 1998
House Room D, General Assembly Building, Richmond
Work session.

Eighth Meeting –2 p.m. Monday, January 11, 1999
House Room D, General Assembly Building, Richmond
Topic: Current proprietary records/trade secret exemptions under FOIA.
Presentations by: Virginia Port Authority, Robert Merhige—Exemption #14;
Virginia Department of Transportation, Jim Atwell—Exemption # 53 and # 62;
Department of Rail and Public Transportation, Leo Bevon—Exemption #48 and
#53; Department of Mines, Mineral and Energy, O.G. Dishner—Exemption #50;
Department of Medical Assistance Services, Joanne R. Smith—Exemption #51;
Virginia Resource Authority, Charles Massie—Exemption #67; Virginia Charitable
Gaming Commission, Jay Doshi—Exemption #72.

VIRGINIA'S FLAWED FOI LAW WHEN RESCUE IS LATE

[FINAL Edition]
Virginian - Pilot
 Norfolk, Va.
 Jan 30, 1998



Start Page: B10

Abstract:

Because of an incorrect address in the 911 system, a Surry County dispatcher took nearly eight minutes to correctly relay directions so rescue personnel could reach a choking child. They were too late. Jeremiah Johnson, 19 months old, died.

This 1995 case was the basis of a freedom-of-information lawsuit brought by WAVY-TV and three newspapers, the Peninsula-based Daily Press, the Smithfield Times and the Sussex-Surry Dispatch. The sheriff had provided the media with a transcript but would not release the tape itself.

Full Text:

Copyright Virginian Pilot Jan 30, 1998

Because of an incorrect address in the 911 system, a Surry County dispatcher took nearly eight minutes to correctly relay directions so rescue personnel could reach a choking child. They were too late. Jeremiah Johnson, 19 months old, died.

This 1995 case was the basis of a freedom-of-information lawsuit brought by WAVY-TV and three newspapers, the Peninsula-based Daily Press, the Smithfield Times and the Sussex-Surry Dispatch. The sheriff had provided the media with a transcript but would not release the tape itself.

In a ruling earlier this month, Virginia's Supreme Court held that under the state FOI act the sheriff was not compelled to make the 911 tape available. Although the tape is "an official record," the court said, "it is exempt from disclosure" because it is a "noncriminal incidents record necessary for the efficient operation of a law-enforcement agency."

Recurring controversy has surrounded conduct of the 911 emergency calling system. Cases gone awry have, for example, been frequent subjects on television.

Here in Virginia, the bungled handling of calls has had unfortunate results. A Richmond dispatcher once refused requests for an ambulance, later saying he would have sent the ambulance if the calls had come from a better neighborhood. Less than a year ago the State Police waited 20 minutes before sending rescue workers to the site of a fatal car crash in Surry County because the 911 call came in on a cellular phone.

Situations like these constitute a strong argument for allowing the public access to the 911 tapes. That the court decided as it did points up anew the defects in Virginia's FOI law. "It would be difficult," said Del. William K. Barlow, whose district includes Surry County, "to write a law to address (the Johnson case). But that doesn't mean it should not be looked at. The entire FOI act needs to be looked at because there are many exemptions in it that are justified and many others that are not."

Clearly, the 1995 case in Surry falls into the latter category. The result was tragic. A young child died. And in the interest of preventing a recurrence, the public has a right to every piece of information that could bear on why and how the address problem occurred.

If the Supreme Court's interpretation of the law in this case was not flawed - and there was grudging concession that it probably wasn't - then the law is flawed. The General Assembly ought to amend it.

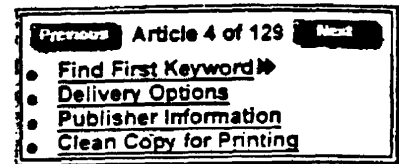
FREEDOM OF INFORMATION ACT TO GET A FRESH AIRING LOOK CLOSELY AT ITS 100 EXCEPTIONS

[METRO Edition]

Roanoke Times & World News

Roanoke

Mar 27, 1998



- SCitation
- SAbstract
- Full Text

Authors: FROSTY LANDON

Start Page: A9

Abstract:

He acknowledges a need for some closed-door discussions by local governments, state agencies and other public officials. He also knows there are legitimate reasons to stamp "top secret," at least temporarily, on some documents - certainly those involving truly active criminal investigations, personal health and employment records, or matters involving a legitimate attorney-client confidence.

The Virginia Library Association, the Virginia Press Association and the Virginia chapter of the Society of Professional Journalists join with the state's new Coalition for Open Government and Virginia's broadcasters in urging increased public support for freedom-of-information laws.

For whenever we chip away at the state's sensible, generation-long policy requiring almost all public business to be done in public, new abuses inevitably occur. The law tells government entities to interpret all open-government exceptions narrowly; all right-to-know protections are to be construed broadly.

Full Text:

Roanoke Times World Corporation Mar 27, 1998

DEL. CHIP Woodrum, D-Roanoke, has a radical idea.

Force everybody to rejustify the state's 100-plus rules for closed-door meetings and secret records or repeal them.

Woodrum is no open-government absolutist.

He acknowledges a need for some closed-door discussions by local governments, state agencies and other public officials. He also knows there are legitimate reasons to stamp "top secret," at least temporarily, on some documents - certainly those involving truly active criminal investigations, personal health and employment records, or matters involving a legitimate attorney-client confidence.

Where to draw the line on what should be kept confidential, and for how long, isn't always clear. But in this 30th anniversary year of Virginia's Freedom of Information Act, Woodrum is proposing a bipartisan, in-depth look at each of the 100 exceptions tacked onto FOIA over the years.

The Virginia Library Association, the Virginia Press Association and the Virginia chapter of the Society of Professional Journalists join with the state's new Coalition for Open Government and Virginia's broadcasters in urging increased public support for freedom-of-information laws.

Discretionary sanctions for official secrecy often surface in the General Assembly at the 11th hour, at the request of some obscure public agency. At first, they may seem inconsequential. But if written broadly or ambiguously, they can lead to big trouble.

whenever we chip away at the state's sensible, generation-long policy requiring almost all public business to be done in public, new abuses inevitably occur. The law tells government entities to interpret all open-government exceptions narrowly; all right-to-know protections are to be construed broadly.

Too often, the exact opposite happens.

FOIA exemptions are seized on, then stretched to absurd limits, by those in appointed or elected office who like to keep things hidden. (Certainly this is not true of everyone in the public sector; many public servants support government in the sunshine, in practice and not just in theory).

In the hands of the wrong-doers, a loophole-ridden law intended to fight government secrecy becomes an excuse for more secrecy.

It's been a decade since our legislature last took a good look at FOIA, or any of the various public-disclosure exceptions scattered throughout the state Code. Given the recurring problems experienced with existing law and the emergence of the new electronic technologies that can dramatically change the way government collects and distributes information or sets important policy, a serious study is clearly needed.

In early times, James Madison, author of the U.S. Constitution's First Amendment, eloquently reminded us of the evils of official censorship. Long before state laws had to be written to guarantee the public's right to information, Madison prophetically spelled out a need for citizens to be kept informed about the actions and deliberations of everybody in government.

In a modern era of computerized records, e-mails, "chat rooms" and Internet communication, a system of self-government requires, more than ever, that all citizens be afforded iron-clad guarantees against restricted information access.

Federal and state right-to-know laws sometimes are portrayed as issues of interest only to government, librarians and media.

Nothing could be further from the truth.

At times it may seem we suffer from an information glut, not a gap. But the political process operates effectively only with timely disclosure of important information and easy access to records. All too often, especially in the Information Age, that's where we see a gap.

Just in the past year, these problems occurred:

- * A small-town Virginia taxpayer was told he could not learn how many local crimes had occurred - or under what circumstances, or when.
- * A former government official was denied copies of a town council's official minutes - ostensibly because he'd refused to pay a disputed bill from the town attorney.
- * A county sold land to a prison operator, with almost nobody learning about it until after the fact.
- * A library system was ordered by policymakers to restrict its patrons' Internet access - using imperfect content-blocking software that raises significant constitutional questions.
- * In the same Northern Virginia region, a prosecutor selected a citizens' panel, still unidentified, to try to interpret community standards for video rentals.
- * A county governing body posted a vague notice that perhaps it might convene an official public meeting while attending a Baltimore convention. It held the meeting, denied it was a meeting, then revealed an agenda showing almost all of the key issues facing the county had been talked about.
- * A Tidewater jail study was publicly disclosed, then got talked about behind closed doors.
- * An ousted school superintendent was denied access to her own personnel file.

* A sheriff was allowed to keep 911 tapes secret.

\ university president sat on results of a Medicaid inquiry.

* A board of supervisors almost held an executive session to talk about fixing up its own courthouse.

To cure these and other problems, Virginia needs to require better public notice of upcoming meetings, quicker access to meeting records and much more specificity by governing bodies in identifying the substance of closed-door discussions.

We need tighter rules for closed-door talks involving real-estate discussions, trade secrets and law-enforcement investigations. Fees for routine copying of public documents should be negligible, or abolished. Inefficient paperwork should be curbed and computers should be used to expand access, not thwart it.

Database indexing of public records should be phased in for every local government, and public meetings should occur only in places with good acoustics and plenty of agenda materials.

Citizens "must arm themselves with the power which knowledge gives," Madison said. On the eve of the 21st century, that admonition is no less relevant.

The Woodrum study, authorized by the General Assembly, needs to reaffirm the

Madisonian view as it re-examines FOIA. It also needs to remind everybody in government that public servants simply perform better in public.

When government operates in the shadows, is it little wonder only one in five Americans trusts

government?

As Madison put it, "Popular government without popular information or the means of acquiring it is but a prologue to a farce or a tragedy. Or perhaps both."

FROSTY LANDON is executive director of the Virginia Coalition for Open Government.

Reproduced with permission of the copyright owner. Further reproduction or distribution is prohibited without permission.

MENTAL HEALTH

Tell the public the truth

Concern about lawsuits is no excuse for hiding hospital conditions.

The refusal of state officials to release a consultant's report on Western State Hospital in Staunton, and their tardiness in documenting the use of patient restraints there, fuel perceptions that something is rotten in the state of mental health care.

Shielded by vague public-access laws, officials point to the mere chance of legal action as a rationale for keeping secret the \$15,000 report by Dr. Jeffrey L. Geller.

Never mind that no lawsuit has been filed or even threatened in writing by the U.S. Justice Department, the apparent source of the department's concern.

Never mind also, that the Geller study was paid for with tax dollars and that the public has a right to know how the Staunton facility is operated. It's hard to make a case for spending on mental health (as opposed to, say, car-tax cuts) if the public is denied evidence of a problem.

Meanwhile, there is no adequate excuse for the fact that the Department for Rights of Virginians with Disabilities has been waiting since December for figures documenting the use of seclusion and restraints at Western State.

Officials at the state mental health department say those numbers are being prepared and will be released any day. But the fact that it has taken so long to get what should be readily accessible data is proof, yet again, of the weaknesses plaguing Virginia's human rights system for the mentally ill.

First, the mental health department has been doing a spotty job of keeping meaningful data on the matter — even though this is an area that is regularly questioned and ripe for abuse.

And, second, while the DRVD has been trying with limited resources to retool itself into a watchdog agency with bite, the episode illustrates for the umpteenth time the problem with government policing itself.

Only after Associated Press reporter Bill Baskerville in April obtained copies of DRVD's then 3-month-old request for access and Western State's denial — "based on correspondence from the attorney general's office, this is protected information that we may not release" — have mental health department officials agreed to supply the Western State data.

The crowbar that pried the door open was an aggressive reporter. This is inconsistent with Gov. Jim Gilmore's promise during the fall campaign that DRVD would have more independence and power in his administration. It's hard to affect change if you're denied the most basic building block — information.

Several courses of action are required:

■ Minus tangible evidence that the U.S. Justice Department is initiating legal action at Western State Hospital, the state should release the Geller reports on that institution and several others. The state has a dismal history of underfunding care at such institutions, including Eastern State in Williamsburg and Central State south of Petersburg. There is a vital public interest in knowing how the rest of the system is operating. Public access is literally a matter of life and death, a fact underscored by the case of Gloria Hunley, who died while under restraint two years ago at Central State.

The two-year budget approved by the General Assembly includes about \$37 million in new money for mental health. That's about two-thirds less than requested by a legislative study commission. If Geller has documented a need for more staff or better treatment, then it is essential to policy debates over car-tax cuts or other budget matters that the public know.

■ The Freedom of Information Act needs to be amended to clarify that the mere possibility of legal action is insufficient grounds for withholding information. Several states have better laws, including North Carolina, which requires an agency to reference a specific lawsuit before denying information, and Indiana, which requires that litigation at least be threatened in writing.

■ Governor Gilmore needs to make good on his campaign promise to unshackle the DRVD. The preferable step is to move this agency outside state government. Gilmore has resisted. He needs to back up his rhetoric with concrete, aggressive action to empower the DRVD. Insisting that the agency be informed within 24 hours of any death in a mental institution would be a minimal way to start.

Meanwhile, the DRVD needs to start complaining, long and loud, when it is denied access to information it should have. The agency's mandate is protection of the mentally ill and other powerless groups, not the coddling of government officials.

Virginia's mental health system belongs to Virginia taxpayers. It is not the job of government to minimize or hide problems that have been identified; it is the job of government to fix them.

To do so demands forging a public will to act. That resolve will never be mustered so long as public officials put a higher priority on preparing in secret for non-existent court cases than on sharing the truth about conditions in Virginia's mental health centers.

The Virginian-Pilot

WEDNESDAY MAY 6, 1998

GROUPS CALL FOR REDRAFT OF FOI LAW ENHANCED PUBLIC ACCESS TO PUBLIC DATA IS SOUGHT

Richmond Times-Dispatch, Saturday June 13, 1998

Michael Hardy Times-Dispatch Staff Writer

Edition: City, Section: Area/State, Page: B-1

(lko)

News media and public-interest groups yesterday called for an overhaul of the state's open-government law in order to avoid further erosion of residents' trust and confidence in public officials.

A special seven-member legislative commission is expected to recommend changes to the Virginia Freedom of Information Act, which many residents and journalists argue has lost its teeth because of many loopholes. The General Assembly would consider the recommendations at its winter session next year when all lawmakers face re-election.

"Our proposal is not intended nor would it cause the wheels of government to grind to a halt, but to enhance public access to public information," Ed Jones, president of the Virginia Press Association, told the committee.

"The act is only effective when there is a commitment to open government," said Jones, managing editor of the Fredericksburg Free Lance-Star.

By Pace, publisher of the Hanover Herald-Progress, pleaded with the commission to "make life easier for citizens" confronted with a complicated law when seeking governmental documents or access to meetings of elected bodies.

He said he spends more time helping residents navigate the law in a sea of reluctant bureaucrats than in handling his newspaper staffers' troubles with the law. Too often the law is unnecessarily complex, he argued, and is a barrier instead of being "a door or facilitator" for Virginians seeking information from the governments they support with their taxes.

Forrest Landon, a former Roanoke newspaper executive who is executive director of the Virginia Coalition for Open Government, told the panel that "excessive secrecy breeds contempt" and increases public apathy in government.

He mentioned governments' charging excessive fees to obtain documents and suggested that governments should shoulder the burden of proof in refusing to turn over records.

The law "should be easy to use," Landon declared. "It's a citizen's law."

Since the General Assembly passed the much-studied law three decades ago, state lawmakers have carved numerous exceptions that block Virginians from obtaining documents or attending meetings of governmental bodies and agencies.

When enacted in 1968, the law specified only five categories of exempted materials. Today those categories have grown to 73. Originally, there were seven purposes under which a governmental body could close a meeting to the public and press. Now the group can hold a private gathering for 27 reasons.

Over the years the [exemptions] have grown like Topsy," said Del. Clifton A. Woodrum, D-Roanoke, the chairman of the study commission. It includes five state lawmakers, a newspaper publisher and a lawyer with broad experience and expertise in the law's operations in local and state governments.

Despite the complaints, local governments believe the law is operating well and officials rarely violate it.

Clay Wirt, legislative counsel to the influential Virginia Municipal League, said there is no need for a major overhaul of the law.

"By and large, public officials want to uphold open government," said Wirt, who acknowledged there were "a small handful" of errant local officials. A perfect law, he emphasized, would not prevent them from wanting "to do it their way."

"We want to root them out as much as you do," Wirt said, noting that residents or journalists who believe they have been denied access can fight the violations in court.

"Like any law, there are times when there are violations, but they are few and far between," he said.

Chairman Woodrum, whose son is a journalist-turned-college professor, promised a thorough review of the law, including a public hearing.

He persuaded his panel to use the Virginia Press Association's proposed overhaul of the law as its starting point. "It's a good idea to take the VPA's redraft and redraft it," he said.

As outlined, the association's proposed revamping calls for clear and tighter definitions in the law and prohibiting wholesale secrecy over executives' working papers. It also seeks a consistent and justified policy over real-estate transactions, trade secrets, access to criminal records and better and faster ways to get information from computers.

The commission also is expected to consider nonjudicial mediation in cases of disputes over access to documents and meetings. It may also consider increasing penalties under the act and examining the rationale for many of the current exemptions. Additionally, it may study enhancing public access to information presented by the technological revolution.

Another panel member cautioned against starting the review from scratch, with the law in the dock.

"We should not start with the presumption there's something wrong" with the law, said Roger C. Wiley, a Richmond lawyer who has written a manual on the law.

After all, the law's exemptions, however numerous, won approval of the General Assembly, which has rejected many other changes, he said.

Del. Barnie K. Day, D-Patrick, agreed that officials would make mistakes under any law, but "they ought to err on the side of openness."

B.J. Ostergren of Hanover County, who operates an engineering business, recounted to the commission her headaches in trying to obtain documents and notice about meetings of the county's Board of Supervisors.

She argued that the county charged excessive fees to perceived resident troublemakers for them to obtain information. She paid \$56.79 to get information on the salaries of four officials and whether they used county-owned vehicles.

But Hanover County Attorney Sterling E. Rives III dismissed her allegations as groundless. She has filed three freedom-of-information lawsuits against the county and they were tossed out by the courts, he said.

"We take the law very seriously," said Rives. He said the county has training sessions in the law for its attorneys and supervisors.

the legislative panel's next meeting is July 15 at 10 a.m. in House Room C of the General Assembly building.

NONE

Copyright © 1998, Richmond Newspapers Inc.

Richmond Times-Dispatch.

© 2000 Richmond Newspapers Inc. All rights reserved.

Dialog® File Number 709 Accession Number 9664024

LEGISLATORS RAISE CONCERNS ABOUT REWRITING OPEN-GOVERNMENT LAW

Virginian-Pilot (Norfolk, VA), Thursday, July 16, 1998

ASSOCIATED PRESS

Edition: FINAL, Section: LOCAL, Page: B7

RICHMOND - Members of a legislative subcommittee examining the state Freedom of Information Act raised enough questions Wednesday to signal that rewriting the open-government law will be an arduous task.

Page by page, the panel went through the Virginia Press Association's proposed revision of the 30-year-old law. The rewrite seeks to clarify the law and to protect and expand citizen access to public meetings and records.

The subcommittee's recommendations will be considered by the 1999 General Assembly. Although the VPA draft is the starting point, it became clear during the work session that the final product will look much different.

"It'll be like a stew," said Del. Clifton A. "Chip" Woodrum, D-Roanoke and chairman of the panel. "Everybody will put something in."

Subcommittee members had concerns about several provisions in the rewrite. For example, Del. Bernie Day, D-Patrick, was troubled by a definition of "public bodies" that includes foundations that support any governmental function. Such bodies would be subject to the law's requirements for open meetings and public disclosure of records.

"Is the band boosters group in Patrick County a public body?" he asked, reasoning that such an organization supports local school board functions.

Woodrum said that definition "may need significant tweaking."

Sen. William Bolling, R-Hanover, was concerned about a proposal to make public some basic information about public school students - addresses, birthdates and major fields of study, for example.

Woodrum agreed that further explanation is needed to justify the release of such records.

The panel also heard a staff report on several other states' FOI laws. In some states, the attorney general's office arbitrates disputes over closed meetings and secret records. In Virginia, an aggrieved citizen's only recourse is to sue.

Some states also have criminal penalties. Violation of Virginia's FOI law is a civil offense.

Copyright © 1998, Landmark Communications, Inc.

(Norfolk) The Ledger-Star/The Virginian-Pilot.

© 2000 Landmark Communications, Inc. All rights reserved.

Dialog® File Number 741 Accession Number 9697065

**SOME SAY CHANGES TO INFORMATION ACT WOULD HINDER CRIME FIGHTING,
GOVERNING VIRGINIA PRESS ASSOCIATION PROPOSES CHANGES TO OPEN
GOVERNMENT LAWS**

CHRISTINA NUCKOLS THE ROANOKE TIMES

Roanoke Times, Edition: METRO, Page: B4, Friday, August 28, 1998, Section: VIRGINIA

RICHMOND - The meeting saw local government officials' first concerted response to the proposal.

Local government officials predicted Wednesday that changes in the state's open government laws could hinder criminal investigations and make it hard for city councils and county supervisors to get adequate legal counsel.

State legislators considering changes to Virginia's Freedom of Information Act reacted to some of the criticisms with sympathy, but were skeptical of others. They advised local officials to work with press organizations and come up with reforms rather than defend the existing law, which they said is outdated and flawed.

Wednesday's meeting was the forum for the first concerted response by local governments to changes in the law proposed by the Virginia Press Association, a group of state newspapers. Roanoke City Attorney Wilburn Dibling and Commonwealth's Attorney Don Caldwell were among the meeting's speakers.

Caldwell defended the existing law, saying changes "would dramatically impact the ability to prosecute, specifically, drug crimes."

R. Lewis Vass, commander of the Virginia State Police's Criminal Justice Information Services Division, said some of the press proposals would require police to release information on ongoing undercover investigations.

Dibling, representing the Local Government Attorneys of Virginia, raised another issue. He said the VPA proposal to open up legal opinions written by city and county attorneys would prevent them from giving candid evaluations of various public policies, particularly in cases where a local government is considering legal action against another party.

Forrest Landon, executive director of the Virginia Coalition for Open Government, said the changes being proposed in the law are not intended to jeopardize ongoing criminal investigations. He said he believes local government officials are misreading the changes being proposed by VPA. Landon also said some police departments have used FOIA as an excuse not to release any information about criminal activities in their communities.

Landon also said abuses exist with the attorney-client confidentiality protections allowed under existing law. He cited a case in Bedford County where an acting School Board attorney allowed the group to discuss a random drug testing proposal in closed session.

"I think it was entirely predictable and quite unfortunate that the local government folks saw a whole lot of reasons to maintain the status quo," Landon said after the meeting.

Local government officials weren't happy to be in a position of reacting to the press association's proposals. Dibling said after the meeting that he would have preferred that legislative staffers come up with a "neutral document" as a jumping-off point.

Del. Bernie Day, D-Patrick County, assured Dibling that the legislators don't intend to "swallow hook, line and sinker" any single proposal. But Del. Clifton "Chip" Woodrum, D-Roanoke and the chairman of

the committee,said local government organizations have failed to come up with their own options, adding that it is not too late for them to do so.

Woodrum pleaded with press and government officials to "do some groundbreaking negotiation and discussion" before the committee's next meeting Sept. 17.

Landon said he believes both sides could agree on eliminating some of the law's ambiguous language, which he said causes many of the legal conflicts.

Woodrum and Landon agreed that some issues are so controversial or complicated that they will require another year's worth of work. They include the creation of a state-run center where private citizens who have had trouble with an information request can go for assistance. Right now, their only option is to take a government to court.

For more on Virginia politics and government, go online at www.roanoke.com, click on the newspaper icon, and look under "politics." America Online users, go to keyword Roanoke.

Christina Nuckols can be reached at (804) 697-1585 or christinan@roanoke.com

Copyright © 1998, Roanoke Times

Roanoke Times

© 2000 Roanoke Times. All rights reserved.

Dialog® File Number 577 Accession Number 9740006

FROM THE NEWSROOM KEEP PUBLIC BUSINESS IN PUBLIC VIEW

RICH MARTIN MANAGING EDITOR

Roanoke Times, Edition: METRO, Page: B1, Sunday, August 30, 1998, Section: VIRGINIA

"A word to the wise," Bedford Circuit Judge James Updike told members of the Bedford County School Board Thursday. "Err on the side of informing the people. You work for them."

Updike's comments came at the end of a two-hour hearing that was prompted by a Freedom of Information Act lawsuit The Roanoke Times and the Lynchburg News & Advance brought against the board. The newspapers believed the board violated the law when it held a closed session to discuss a "drug plan" that had originally been intended for public discussion.

Despite the warning, Updike ruled against the newspapers. His finding in the lawsuit is yet more evidence of flaws in the act.

The newspapers' lawyers argued that the unidentified "drug plan" was not a proper topic for a closed session. They also argued that the board had not followed the law in reasonably identifying what it planned to discuss in private. They also argued that the board had, in effect, made a decision about the plan even though public bodies are prohibited from taking action in private sessions.

At issue was a proposal to randomly drug-test school employees and students who take part in "acurricular activities."

What was in the "drug plan"?

Before the proposal could be publicly aired at its Aug. 13 meeting, attorney Frank Wright advised the board to go into closed session so he could give legal advice. The board voted unanimously to do so.

Wright then told the board that such a policy would be unconstitutional and that a lawsuit challenging it would be inevitable. After 20 minutes, Wright came out and told waiting reporters that he had advised the board to reject the proposal because it was not in the best interest of the board.

Sure sounds like the board made a decision in that private session, doesn't it? But there was no public discussion of the policy when the board came back into public session. As a result, citizens never got to hear any public talk about the "drug plan," whatever it was.

At Thursday's hearing, the board's attorney argued that the board had followed FOIA requirements that allow public bodies to consult with lawyers and get legal advice in private. But a School Board member testified that even he was unclear about the real reason the board voted to go into closed session.

Close the loopholes in the law

"It's a close question," Updike said several times as he explained his ruling.

The fact that the board didn't more clearly identify the topic of the executive session was a strong argument against the School Board, Updike said. If a board member didn't know the purpose of the executive session, he asked, "how was the public to know?"

In the end, Updike ruled that the board had complied with the law. But his warning to the board resonated in the courtroom. Use executive sessions sparingly, and only when they're appropriate, he said. Conduct the public's business in public view, he said, or you may find yourself back in my courtroom.

We still believe the SchoolBoard acted inappropriately. From a public access point of view, though, Updike's comments may be a moral victory - however slight. The Bedford County School Board may not be so cavalier the next time someone wants a closed session.

To the legislative commission that is studying changes in the state's Freedom of Information Act, this episode should serve as an example of how current loopholes allow public bodies to talk privately about things that ought to be discussed in public. Until that changes, citizens of Virginia will never be sure that they really know what governing bodies are doing behind closed doors.

Rich Martin can be reached at 981-3210 or richm@roanoke.com

Copyright © 1998, Roanoke Times

Roanoke Times

© 2000 Roanoke Times. All rights reserved.

Dialog® File Number 577 Accession Number 9742025

PANEL WADES THROUGH INFORMATION ACT ISSUES

Richmond Times-Dispatch , Friday September 18, 1998

Tyler Whitley Times-Dispatch Staff Writer

Edition: City , Section: Area/State , Page: B-5

Should minutes of closed meetings be recorded?

What information should be made public when a local government seeks to buy or sell land?
How much advice should a county or city attorney be allowed to give his clients - local government officials - behind closed doors?

A subcommittee studying the Virginia Freedom of Information Act waded through these issues yesterday without resolution, as press groups and local government representatives differed on how much the people are entitled to know about their government.

Press groups maintain that local governments use loopholes in the law or evasions of the law to keep the public business secret. Local government officials contend that the open government laws sought by press groups would hamstring their decision-making. They say there are few abuses of the current law, which was revised in 1989.

However, a representative of the Sierra Club of Virginia said she has been denied notices of public meetings and public agendas by both the city of Richmond and Henrico County despite what the law says. Officials from both localities said they are trying to comply with the law.

If Randy Slovic, the Sierra Club spokeswoman, was not provided the information she sought, it was inadvertent, they said.

Slovic, suggesting that the local governments too frequently hide their actions in closed sessions, said between Jan. 1 and June 15, the City Council and Henrico Board of Supervisors went into executive session almost every time they met. Henrico had 10 executive sessions, while Richmond had eight, she said. By contrast, Chesterfield held just three in the same time frame.

Richmond, particularly, likes to go into secret session to discuss real estate matters, she said.

"A discussion of the sidewalks, the streets, just about anything could fall under this provision," Slovic said.

Sen. R. Edward Houck, D-Spotsylvania, said most of the abuses are unintentional. They are committed by local officials unfamiliar with the law, he said. Houck proposed that the law be changed to require periodic training of local officials in the workings of the act.

Del. Clifton A. "Chip" Woodrum, D-Roanoke, chairman of the subcommittee, urged the competing groups to meet informally Oct. 9 to try to narrow the disagreements.

He hopes to have legislation reforming the FOI Act introduced in the 1999 session, although he reiterated yesterday that the shortness of the session and the nature of the differences probably will preclude major changes next year.

"We don't want to take a 10-foot jump at a 12-foot ditch," Woodrum said.

Both sides agreed yesterday that three hours of give and take at the meeting had narrowed some of the

differences.

"There is a lot of understanding that wasn't there at the start of the process," Forrest M. Landon of Roanoke, chairman of the Virginia Coalition for Open Government, said.

When Woodrum asked if anyone on the subcommittee was prepared to push for legislation in 1999 setting up an ombudsman's office in state government to handle FOI complaints, no one stepped forward.

Woodrum said that likely will not be considered until the 2000 session.

Common Cause of Virginia joined the Virginia Coalition for Open Government in endorsing such an office.

Woodrum said he would like to see a new office created. Houck said rather than create a new bureaucracy, the General Assembly should assign the task to the attorney general's office.

Copyright © 1998, Richmond Newspapers Inc.

Richmond Times-Dispatch.

© 2000 Richmond Newspapers Inc. All rights reserved.

Dialog® File Number 709 Accession Number 9761025

OPEN GOVERNMENT TOO MANY SECRETS

Virginian-Pilot (Norfolk, VA) , Thursday, September 24, 1998

Edition: FINAL , Section: LOCAL , Page: B10

Friday: Open Records.

In Norfolk, the City Council takes itself to Smithfield for a two-day retreat, held mainly behind closed doors.

In Lynchburg, the council refuses to release names of School Board applicants, saying personnel information is exempt under the Freedom of Information Act.

In Surry County, a resident has to sue to get a detailed copy of the local budget.

In Caroline County, the school superintendent hands out damage estimates for roof leaks to School Board members, but initially refuses to make the information public.

In Front Royal, the Warren County Board of Supervisors meets in executive session to discuss an appropriation, then votes in public session to spend money, but refuses to say what the appropriation is for. One member later tells.

In Saltville, the town council mentions in an offhand way that the little town is getting a new police car. There's never been any public discussion or vote.

From one end of Virginia to the other, councils, commissions, school boards and public committees routinely cast a shadow over government. Sometimes loopholes in the state's Freedom of Information law are to blame. Sometimes local governments don't follow the law.

Depending on the location, as dozens of complaints filed in recent years with the Virginia Press Association make clear, citizens may not be able to find out why prominent officials are fired, why policies have been overturned, how a public institution is running or where public money is being spent.

Such secrecy anywhere in Virginia is a threat to open, honest government everywhere in Virginia. For democracy to function, sunshine must prevail.

Now, for the first time in a decade, a state legislative commission is reviewing the way in which the open-government law works - or doesn't. Such a review is long overdue.

Commission members are hearing that, since the Freedom of Information Act was passed 30 years ago, the number of authorized reasons for closing a public meeting has grown from seven to 26, and the number of reasons for refusing to release public records has jumped from five to 71. That doesn't count numerous other sections of the Code that deny public access for one cause or another.

They're learning there's been an explosion in the number of foundations that operate, wholly or in part, with public funds. Yet most such foundations never have to report to the public on how that money is spent.

They're discovering that while many officials and governing bodies work hard to honor both the spirit and the letter of the Virginia law, others don't. They're finding that many more cannot agree on precisely what the letter and the spirit are.

Some government officials say citizens should presume that their representatives are honest and

well-intentioned, and that there are times when the effective, efficient operation of government requires that business be conducted behind closed doors.

But Virginia law already recognizes that, in a democracy, the public has both a right and a need to know how its government is working - even when the details are messy or embarrassing.

What's missing in the current law is a clear directive to public bodies that, in those rare instances when secrecy is warranted, officials must assume the burden of justifying it. Freedom of Information Act revisions should start by spelling out that principle.

From Norfolk to Lynchburg to Saltville, officials need to understand that the public's business is everyone's business. Underscoring that fact isn't a slap at many good and decent public servants. It's an endorsement of government of, by and for the people. Official secrecy hurts

Copyright © 1998, Landmark Communications, Inc.

(Norfolk) The Ledger-Star/The Virginian-Pilot.

© 2000 Landmark Communications, Inc. All rights reserved.

Dialog® File Number 741 Accession Number 9767016

ONLY MAJOR CHANGES WILL REPAIR FLAWED ACT

Virginian-Pilot (Norfolk, VA) , Sunday, September 27, 1998

BARNIE DAY

Edition: FINAL , Section: COMMENTARY , Page: J5

Del. Barnie Day represents Patrick County in the state legislature.

TYPE: Opinion

Of course Virginia's Freedom of Information Act needs revision - badly needs it - for everyone's benefit.

(The real pity is that we need such an act at all, that we need a law making our democratic process - our own government - open to us. That seems, somehow, redundant.)

The Greek philosopher Diogenes wandered about in broad daylight with a lantern, looking in vain for an honest man. As legislators, we do the same thing. Sorta. We trudge up and down the halls of Richmond, looking for the exquisite balance of a perfect law. Will we find it? No. Is it worth the look? Absolutely.

If for no other reason, we need to rewrite FOIA for the sake of thousands of hard-working, honest, doing-the-best-they-can public servants - all those good people my friend Roger Wiley represents.

I know. I've been there. I sometimes wished, when I was a county administrator and, later, a member of the Patrick County Board of Supervisors, that service on county boards, on school boards, on town councils was like jury duty. Everybody has to pull six months. "By God," I used to think, "that'd learn 'em."

Good laws navigate not just deep water, but the shoals and shallows. They clear the abrasion points, those areas of our society where the interests of one group rub up against the interests of another. Like good ships, they take us where we want to go and back again, in every kind of weather.

Virginia's FOIA doesn't do that. It increasingly has trouble, all too frequently runs aground on the question of citizen access and openness, too often grates against even the very best intentions and efforts of Virginia's public servants. The months-long stall by the Gilmore administration before release of Dr. Jeffrey Geller's critical report on our mental health institutions is but one recent example.

The real problem with FOIA is that many public officials use it as a boundary setter, a concrete bunker to hide behind simply because they're allowed to, forgetting - or, perhaps never realizing - that openness is permissive, FOIA notwithstanding. The smartest public officials I have known - and there are lots of them - don't reach for FOIA first. They reach first for their constituents, for complete and total openness, for dialogue and communication, even under the most difficult of circumstances. You see, it's a different mind-set.

Sure, there's shrillness on both sides. There always is. The great, booming Oz of government will sometimes have you believe that it is omniscient, that it knows what is best for you and me. Not so. In much the same fashion, and certainly with similar zeal, a small chorus of critics will tell you that all politicians and public officials are base, corrupt, untrustworthy. Not so.

Look at it like this: If the governor and his attorney general can't agree on what's required by FOIA, how can Virginia's town councils be expected to?

Who's to blame? We are. Who can fix it? We can.

The Virginia Press Association's proposal is a beginning - a good one. Not an end. A good beginning.

Despite the dismay we occasionally feel about individual news reports, the alternative is infinitely worse. Those who practice the trade and craft of journalism, print and broadcast, are surrogates for you and me. They are our proxy lookers where this business of government is concerned. When we can't watch, they do it for us.

Most laws - even the good ones - need to be hauled out and given a critical, clear-eyed look once in awhile. From time to time we have to recaulk the seams and scrape the barnacles off.

That's where we are with FOIA. It suffers want of an overhaul And little wonder. Cumbersome enough when first adopted in 1968, it lists badly now from the effects of 30 years of ill-placed, tacked-on exemptions. We need to set it right again, to blast the hull, to shift the ballast some.

Copyright © 1998, Landmark Communications, Inc.

(Norfolk) The Ledger-Star/The Virginian-Pilot.

© 2000 Landmark Communications, Inc. All rights reserved.

Dialog® File Number 741 Accession Number 9770013

HOW PUBLIC IS PUBLIC? WHOM, WHERE AND WHAT YOU ASK OFTEN DETERMINES MORE THAN LAW

Richmond Times-Dispatch, Sunday November 1, 1998

Pamela Stallsmith Times-Dispatch Staff Writer Pamela Stallsmith may be reached at (804) 649-6746 or at pstallsmith@timesdispatch.com. Project editor John Denniston contributed to this report. He may be reached at (804) 649-6804 or jdenniston@timesdispatch.com.

Edition: City, Section: Area/State, Page: A-1

FREEDOM OF INFORMATION: The public's right to know and the fight to know
CORRECTION: ***CORRECTION PUBLISHED NOVEMBER 7, 1998 FOLLOWS*** Results for several offices were incorrect in a survey of Virginia Freedom of Information Act compliance in all state localities. The results were published Sunday. * In King William County, the requested coach's salary information was provided. * In Bath County, the administrator's travel expense report was available. York County officials called for more information about the school violence report request, and the Martinsville city manager asked for more specifics about an FOI request for his latest travel expense report. Reporters did not follow through in these cases. * In Isle of Wight County, the administrator tried to contact the reporter about the reporter's request for a travel expense report but was unable to reach her.

This summer, newspapers across the state joined together to discover how an average person fares when asking for public information. Sending people to all 135 cities and counties with a list of specific requests, we found that your overall chances of getting the documents are slightly greater than 50 percent.

Requests for documents were met with suspicion, unease and confusion. Many of those asked didn't know the difference between what the public is entitled to and what it is not. Many appeared to be unprepared to handle the requests. Many times, a request led to a maze of bureaucracy.

If a murder, rape or other serious crime occurs in your neighborhood, good luck trying to get information about it from Virginia's police and sheriffs. Most don't consider their crime logs or incident reports to be the public's business.

If you want to know the salary of your public high school football coach, who is paid with your tax dollars, your chances are only slightly better.

If you're interested in the cleanliness of your favorite restaurant, odds are the local health department will give you a copy of its inspection report, though it probably will take a few days and might cost a few bucks.

This summer, newspapers across Virginia dispatched people to all 135 cities and counties to see whether - and how well - local officials comply with Virginia's Freedom of Information Act. The newspaper employees, who sought records from school boards, administrator's offices, health departments and police and sheriff's departments, were able to obtain them only 58 percent of the time.

Sheriffs and police departments were least likely to provide the requested information, a crime log or crime report. Of the 84 percent that refused requests, most said the reports contain sensitive material and are not covered by the FOIA.

The law exempts some crime information but defines as public the identities of adults arrested; the date, general location and description of a crime; the identity of the investigating officer; and a description of any injuries or damaged or stolen property.

However, confusion can occur, because the law does allow law enforcement agencies to withhold at least some information about ongoing criminal investigations. Without the crime record results, the rate of compliance in the survey rises to 69.3 percent.

Overall, the Freedom of Information Act outlines what records and information the public is entitled to obtain. Local officials say they try to comply with it.

"You have some rank-and-file folks who may not be familiar with FOIA and their responsibilities under it," James D. Campbell, executive director of the Virginia Association of Counties, said when told of the survey results. "That gives me concern. A citizen coming in off the street . . . is going to expect the front line to know what to do. That's the way a normal person would do it. But if you make the request at a higher level, you're going to get the information."

Many officials, as well as secretaries, receptionists and other office workers, appeared unfamiliar with how to handle queries. Others showed an almost gleeful disregard of the law. Many of the requesters had to return to offices several times or found themselves being routed through a maze of bureaucracy, often finally being told the information was not available.

These issues and others are being considered by a legislative subcommittee studying the 30-year-old law. The seven-member panel, led by Del. Clifton A. "Chip" Woodrum, D-Roanoke, is expected to recommend changes that would make the law clearer. The proposals may come during the session of the General Assembly that will start Jan. 13.

The newspaper employees, all of whom are residents of Virginia, sought the following documents (the percentage of how often the request produced the document is noted):

- * A daily crime log or incident report at the sheriff's or police department (16 percent).
- * The total compensation of a high school football coach (47 percent).
- * A state-mandated report of violence and crime at local schools (72 percent).
- * The most recent travel voucher for the county administrator or city manager (73 percent).
- * The health inspector's report for a local restaurant (88 percent).

Under the FOI law, information in the documents should be available to any state resident who asks, and no reason is needed to obtain it. The newspaper employees did not identify themselves as reporters when they asked for the records, because the survey was designed to see how a community resident, not a member of the news media, would fare.

Colonial Heights and Dinwiddie County refused to comply with all requests or failed to meet the legal deadline of responding within five working days. In contrast, Fairfax, Fauquier, Frederick and King and Queen counties fulfilled all inquiries.

"All I can tell you is we follow the law as close as we know how, and typically five days works," Dinwiddie County Administrator Marty Long said of the results.

"You want to try to be as open as possible," said Frederick County Administrator John R. Riley Jr. "We think it helps us to get the message out to the folks that we serve, so we in every way try to meet the intent and the spirit of the law."

An information quid pro quo seems to exist in some localities: In exchange for documents rightfully theirs, members of the public must abide by the demands of some officials for information about who they are, where they're from and, in one case, their race. Many of the requests were greeted with suspicion, unease and confusion.

The coach in James City County called a reporter later at home to ask why she wanted the information. In Russell County, a school employee said, "That's public information, but I don't know if we can give it out to individuals." Some officials told inquirers to find what they sought in local newspapers.

An Amelia County school employee said the crime and violence report was sent to the governor, who "embargoes" them until they can be verified.

An officer in the Northumberland County Sheriff's Department said a citizen could not see the crime log because it's a public document. Another added, "How would you like it if somebody came to your house and asked to see your personal records?"

In Mecklenburg County, an employee of the Sheriff's Department expressed surprise at the request, because no member of the public ever had asked to see the records.

Toward the end of the survey, the Virginia Municipal League and the Virginia School Boards Association sent out alerts warning their members of a sudden surge in FOIA requests and urging them to comply with the law. The school boards association called it a "campaign under way to trip local officials," while the municipal league told members to "be aware of a campaign to gather examples of failures to comply with the act."

Some agencies are prepared for document requests. At the health department in Prince William County, FOI costs are posted on the bulletin board across the counter.

Shouts and slammed doors greeted some document seekers.

A sheriff's sergeant in New Kent County started yelling when asked to check the crime log for Aug. 3. She said the request was not public record, "Not in New Kent County, not today." He would not let the person file an FOIA request in his office, so she wrote one in her car and then handed it in. She never received the document.

When asked if state law required release of the crime log, another dispatcher said, "Yes, but this is Bath County."

Some officials and public employees appeared to be helpful. In Prince William, officials said the crime report wasn't available but that the police department was working on a way to compile daily crime logs. In the meanwhile, a sergeant suggested the inquirer listen to a police scanner to find out about crime in the county.

Although about half the school divisions eventually released the football coach's salaries, many said they felt uneasy doing so.

Many divisions provided ranges, not the specific salary as requested.

In Albemarle County, a member of the superintendent's office said a specific employee's salary was confidential and could be released only with the employee's permission.

Some officials were defensive.

In Greensville County, School Superintendent Philip Worrell wanted to know why the person wanted the information. When asked how to get the documents, he said the person needed a lawyer or to read the code, but it wasn't his job to tell her.

She also asked what made her think she was entitled to this information. She replied she thought it was public, and then he said she needed a written request.

Brunswick County School Superintendent Dale W. Baird said coaching was a separate contract from the

teaching salary and was exempt from the request, since it was under \$10,000. Therefore, he said, he legally could not give it, though he did provide the coach's teaching salary. The FOI law says that for public employees who earn more than \$10,000 a year, salary, allowances and reimbursement of expenses are to be considered inclusive and are public information.

An employee in Campbell County initially said the superintendent doesn't even release that information to the Board of Supervisors during the budget process. Later, an assistant superintendent said to file an FOIA request and the person received the pay scale, but not the exact figure, within five days.

Many officials found the request for travel vouchers strange. Some city managers and county administrators explained they didn't travel much and didn't have reports.

The request angered a secretary in Isle of Wight County. She wanted to know why the person wanted the information. When told she was a concerned citizen, the secretary replied, "I am not going to give it to you."

Asked whether it was a public document, she said, "It might be, but I am not going to give it to you." She began shouting. The county administrator called the requester at home twice, but they never succeeded in speaking to each other. The requester never received the report.

In King George, County Administrator Gayle Clayton wondered about the request and repeatedly asked why someone would want it. Asked if the reason would matter, she replied, "No, it's public information, but I don't know why you'd want that." The document was provided.

Different fees appear to exist for different uses. In the city of Roanoke, a secretary in the Health Department said the restaurant inspection records would cost \$25 if used for legal purposes.

The Louisa County Health Department had the records, but sent the citizen to the district's main office in Charlottesville, 30 miles west, to talk to the person with the authority to release them.

Madison County referred the resident to neighboring Orange County. A nurse at the Madison Health Department said the office doesn't give out that information and wanted to know if something had happened to the person at the restaurant.

When a Russell County health inspector asked an inquirer why she wanted the report, she said she was a concerned citizen. He asked, "What are you concerned about?"

Did you know?

* Under no circumstances does the law require a public body to meet in secret. For certain specific purposes, the law permits secret meetings if a majority of members consider it necessary.

* If a citizen is denied access to a public document or meeting, the law says it's the government's responsibility to tell the citizen why. It's not up to the citizen to explain why he's entitled to access.

* The Virginia Freedom of Information Act specifically requires that all of its provisions giving access to public documents and meetings be liberally construed and that all exceptions be narrowly construed in order that nothing which should be public may be hidden from any person.

* If any citizen requests a copy of a public document, the government has five working days either to produce the document or to say why it is being withheld. If it is not possible to produce the records or to determine if they are available, the government agency can request one extension of seven working days. Thereafter, the government agency must go to court to receive an extension unless the citizen agrees to it.

* A citizen should never be required to give a reason for requesting a public document or for attending a meeting of a public body.

Any public body that meets in closed session under the exemptions to the Freedom of Information Act must meet in public before the closed session to reasonably identify the substance of the matters to be discussed and afterward to certify that only those matters set forth previously were discussed.

- * No public official is required by law to keep secret any action that takes place in a closed session of a publicbody.
- * Government agencies are not required to create a requested record if it does not already exist.
- * The Freedom of Information Act prohibits any public body from voting by secret or written ballot.
- * Citizens are permitted to photograph, film, record or otherwise reproduce any public meeting, though a public body may adopt reasonable rules governing placement and use of recording equipment.

Hoops and dodges

Some typical answers recordkeepers gave when asked for public documents:

1. I can't give it to you without approval from (the county attorney, the city clerk, the sheriff, a judge, etc.).
2. Why do you want it? We only give out that information if there's a good reason.
3. That information can't be released unless the person it's about gives his permission.
- * Unless you're (a lawyer, a journalist, an insurance agent), I can't give it to you.
4. The information is in a computer, and we can't access it.
6. The information has been (shredded, filed, sent to Richmond). We don't have it anymore.
7. We have so many records, we couldn't possibly find the one you're looking for.
8. No one has ever asked for that before.
9. Fill out a form. We'll get back to you in a few days.
10. I just don't feel comfortable giving out that kind of information.

CHART, PHOTO, MAP

PHOTO, MAP, CHART

Copyright © 1998, Richmond Newspapers Inc.

Richmond Times-Dispatch.

© 2000 Richmond Newspapers Inc. All rights reserved.

Dialog® File Number 709 Accession Number 9805110

**PUBLIC'S BUSINESS OFTEN OCCURS IN PRIVATE ACROSS THE STATE,
GOVERNMENT BODIES ROUTINELY RETREAT BEHIND CLOSED DOORS FOR
EXECUTIVE SESSIONS**

Virginian-Pilot (Norfolk, VA), Tuesday, November 3, 1998

JENNIFER PETER, THE VIRGINIAN-PILOT

Edition: FINAL, Section: FRONT, Page: A1

SERIES: Uncovering State Secrets

Six months ago, after the adjournment of its regular meeting, the Stafford County School Board met in a back room, privately and without notice, to discuss a possible site for a new school.

The public heard about this discussion, which is of great importance in the quickly growing county, only because a reporter stumbled upon it after following three School Board members down a hallway. In Chesapeake this August, the board of a museum that is operated with public money voted to eject a reporter and conduct the meeting without scrutiny.

"All those in favor of asking this news person to leave, and not having another headline in the paper, raise their hands," the board chairman said.

Virginia's open-meeting law says a meeting of three or more members of a public body must be held openly and with prior public notice. Governments can close the door only after openly voting to do so and only to discuss specific topics designated by the law. Keeping headlines out of the newspaper is not one of them.

Councils, boards and public authorities across the state routinely retreat behind closed doors to discuss public business.

Legal under certain circumstances but never required, executive sessions are intended to preserve a locality's bargaining position on issues that could cost the taxpayers money or to protect someone's privacy.

While many of the closed sessions comply with the state's Freedom of Information law, others seem to be cloaked in the technicalities of legality.

There are 27 exemptions to the open-meeting law, which also dictates that private meetings should be held only when absolutely necessary to serve the public good or protect a private reputation.

"Many things are being discussed in executive session simply to avoid the controversy of discussing it in open session," said state Sen. William Bolling, R-Hanover, a member of a subcommittee reviewing the Freedom of Information Act. "The exemptions are much broader than they should be."

In Charlottesville, for example, a local newspaper, C-Ville Weekly, attacked the Redevelopment and Housing Authority for secretly discussing the forgiveness of a \$10 million loan to a local hotel. To have this discussion, the authority referred to the exemption that allows for secret discussion of "the condition, acquisition or use of real property." This exemption was intended to protect the city's bargaining position, and save the taxpayers' money, when buying or selling property. In this case, taxpayers' money was at stake. The authority was not discussing the property, but the city's bank account.

The nonspecific words "use" and "condition" have been interpreted to render legal nearly any kind of

secret discussion of property.

In Fredericksburg, according to The Free Lance-Star newspaper, the City Council cited the economic development exemption of the law as a reason for secretly discussing the rezoning of hundreds of acres along the Rappahannock River for development as a tourist attraction.

The council used the exemption that allows for "discussion of a prospective business . . . where no previous announcement has been made." In this case, the developer's identity, Silver Cos., is well-known, but there has been no official "announcement." Because of this, a development that will affect the entire city has been discussed only behind closed doors.

In Bedford County in August, the School Board tested out a portion of the law that allows for private discussion of legal issues.

The School Board was scheduled to discuss publicly a proposal to randomly test for drugs employees and students involved in extracurricular activities, according to the Lynchburg News & Advance newspaper.

Before the discussion could occur, the board, upon the advice of counsel, went into executive session but did not specifically state what it would be discussing.

While the board made no formal decision, it did not discuss the policy thereafter, due to the attorney's advice that doing so could be considered unconstitutional. Virginia's open-meeting law states that votes can never be taken in executive session.

The Roanoke Times and The News & Advance lost a court challenge of the action, but the judge reprimanded the board for being too secretive.

While the exemption was designed to allow public bodies to discuss legal strategy, Circuit Judge James W. Updike Jr. said, it should not be construed to protect any discussion that the body wants to have with legal counsel.

"They could conduct all such business in closed session," Updike said.

While the legislative subcommittee is studying ways to address improper use of closed meetings, at least one city council, which has frequently closed its sessions in the past, is trying to change its own rules.

The Chesapeake City Council spent almost 40 percent of its formal meetings in closed session between September 1997 and February. Discussions included the staffing level at the city jail, despite the fact that the personnel exemption is supposed to apply only to specific individuals rather than general budgetary issues. Currently, however, the council's rules committee is reviewing its internal procedures.

As part of this backlash, the council in September certified an executive session by a 5-4 vote after several members argued that the personnel exemption did not cover the matter to be discussed: the conduct of the council members themselves.

While it's unlikely the legislature could make rules that could prevent abuse, Updike shared some advice.

"A word to the wise," he said in rendering his decision on the Bedford County case. "Err on the side of informing the people. You work for them. You serve them."

Copyright © 1998, Landmark Communications, Inc.

Norfolk) The Ledger-Star/The Virginian-Pilot.
© 2000 Landmark Communications, Inc. All rights reserved.
Dialog® File Number 741 Accession Number 9807067

PANEL WANTS TO CLOSE LOOPHOLES ON FOI RULES COMPROMISES ARE BEING WORKED OUT BETWEEN MEDIA AND GOVERNMENT OFFICIALS

Virginian-Pilot (Norfolk, VA) , Thursday, November 12, 1998

HOLLY A. HEYSER, STAFF WRITER

Edition: FINAL , Section: LOCAL , Page: B2

RICHMOND - Private foundations appear to be safe from compulsory public scrutiny for now, but government bodies may lose a big loophole for discussing public business behind closed doors.

Those were two of the decisions made Wednesday by a legislative panel considering changes to the state's Freedom of Information Act.

One by one, the panel is hammering out compromises between proposals by open-government advocates - primarily the news media - and government officials. Once the group produces a bill, it will likely go through the same give-and-take grinder in the General Assembly.

Critics of some proposals by the Virginia Press Association say they fear that too much openness can invade citizen privacy and wreak havoc with the public.

Memory Porter, an assistant to the Loudoun County Board of Supervisors, said that was the case when her board was trying to figure out where to put a landfill.

The board recently commissioned a study to determine the best locations for the landfill with respect to environmental concerns, and the study came up with about a dozen sites.

County officials and board members knew that some sites would never be suitable for a landfill, but if the public found out those sites were listed in the study, there would be unnecessary panic.

To avoid that, they wanted to meet in secret to cross those sites off the list. And to do that, they used a loophole in the Freedom of Information Act: a section that allows public bodies to discuss "the acquisition or use" of real property for a public purpose.

But the legislative committee voted Wednesday to delete the "use" exception and only allow public bodies to go behind doors to discuss the acquisition of property. And they could discuss acquisition privately only when public discussion would harm their bargaining position.

That was a huge gain, said Forrest M. "Frosty" Landon, executive director of the Virginia Coalition for Open Government. "In some localities, that (exception) has been stretched to cover every subject imaginable."

The subject, Landon said, turned out to be the authority's plan to forgive \$8 million in loans for building an Omni Hotel.

The committee also voted to put off for one year the idea of subjecting private foundations to provisions of the Freedom of Information Act - a proposal attacked last month by several universities that benefit from private foundation money.

Chairman and Roanoke Democrat Del. Clifton A. "Chip" Woodrum said the bill is probably going to come under attack in the General Assembly, and its chances of surviving are better without such a controversial proposal.

"That will give people time to make a case" for or against the idea, said Woodrum, who admits he

doesn't favor it.

Craig T. Merritt, an attorney for the Virginia Press Association, said it's an important issue because private foundations are doing more and more of what used to be considered the government's work.

But, he said, "it is such a complex issue that it doesn't come as a complete surprise the committee would table it."

In other action, the committee:

Supported a proposal to raise the fines for violating the Freedom of Information Act. The proposal would raise the minimum penalty for a first violation from \$25 to \$100, and for a second violation from \$250 to \$500. It also would raise the maximum fine from \$1,000 to \$5,000 for a second violation.

Rejected a proposal to require public bodies to keep minutes of discussions in closed sessions.

Copyright © 1998, Landmark Communications, Inc.

(Norfolk) The Ledger-Star/The Virginian-Pilot.

© 2000 Landmark Communications, Inc. All rights reserved.

Dialog® File Number 741 Accession Number 9816100

LEGISLATORS MAY ADD NEW LIMITS ON CLOSED-DOOR MEETINGS CHANGES WOULD KEEP MORE PUBLIC BUSINESS OUT IN THE OPEN

CHRISTINA NUCKOLS THE ROANOKE TIMES

Roanoke Times, Edition: METRO, Page: B3, Tuesday, December 22, 1998, Section: VIRGINIA

RICHMOND - Roanoke City Attorney Wilburn Dibling said most governments comply with the law's letter and spirit.

Both of the major loopholes in Virginia's law on closing public meetings could be tightened during next year's General Assembly session.

A legislative committee studying reforms to the Freedom of Information Act recommended Monday that the law be changed to limit situations in which city councils and county boards of supervisors can meet behind closed doors to get legal advice.

Under existing law, public bodies may meet in closed session to consult with their attorney about "actual or probable litigation, or other specific legal matters requiring the provision of legal advice."

The version endorsed by the committee this week specifies that the meeting can be closed only if publicity would harm the government's position in legal negotiations or litigation. The new wording was proposed earlier this year by Roanoke attorney Stan Barnhill.

- Barnhill represented The Roanoke Times this year in a lawsuit after the Bedford County School Board closed its meeting to get legal advice about a "drug plan" even though the board had no such plan and had not even received a formal proposal for a plan. The Roanoke Times, joined by the Lynchburg News & Advance, lost the lawsuit because the law was deemed broad enough to include the reason cited for closing the meeting.

The version endorsed Monday also clarifies the definition of "probable litigation" to include only situations where there has been a specific threat of a lawsuit or where government officials have a "reasonable basis" to expect litigation.

Finally, it prohibits local governmental bodies from using the presence of their attorney as a blank check to meet in private to discuss anything they please.

Last month, the legislative committee addressed what media groups regard as the other major FOIA loophole when it recommended that local governments be prohibited from meeting in closed session to discuss the use of property for public purpose.

Local officials could still meet in private to talk about buying land for a school, landfill or other public use.

Roanoke City Attorney Wilburn Dibling, who also is president of the Local Government Attorneys Association, said the changes in the law should have little effect because most governments comply with the letter and spirit of the law.

Christina Nuckols can be reached at (804) 697-1585 or christinan@roanoke.com

Copyright © 1998, Roanoke Times

Roanoke Times

© 2000 Roanoke Times. All rights reserved.

BILL FOR A BRIGHTER SUNSHINE LAW LOSES LITTLE LIGHT IN SENATE FREEDOM OF INFORMATION ACT ALSO SURVIVES TRIP THROUGH HOUSE LARGELY INTACT
CHRISTINA NUCKOLS THE ROANOKE TIMES

Roanoke Times, Edition: NEW RIVER, Page: B1, Thursday, January 28, 1999, Section: VIRGINIA

MEMO:

Shorter version ran in Metro edition

RICHMOND - Bill for a brighter sunshine law loses little light in Senate Freedom of Information Act also survives trip through House largely intact. A representative for Public Safety Secretary Gary Aronholt asked a House subcommittee to broaden the definition of confidential working papers. CHRISTINA NUCKOLS THE ROANOKE TIMES RICHMOND - A rewrite of Virginia's Freedom of Information Act made it through the state Senate on Wednesday virtually untouched.

Meanwhile, in the House of Delegates, the same proposal survived attempts by local governments and the Gilmore administration to undo some of the changes.

A representative for Public Safety Secretary Gary Aronholt asked a House subcommittee to broaden the definition of confidential working papers so Cabinet secretaries wouldn't be required to send to the governor any paperwork they wanted kept secret.

The proposed open-government law declares that only records prepared for the "personal, deliberative use" of a governor, lieutenant governor, attorney general, state legislator or other high-ranking government official can be kept confidential. The existing law is vague enough to cover documents never seen by those officials.

Gov. Jim Gilmore himself has taken no official position on the proposed changes.

"I think you have a fairly broad blanket to snuggle under there," Del. Clifton "Chip" Woodrum, D-Roanoke, the subcommittee chairman and head of the committee that revised the law, told administration officials in defending the new version.

Woodrum said the need for narrowing the definition of executive working papers became clear to him when he received a rubber stamp in the mail used for marking documents confidential. The stamp had been given to a midlevel state agency worker.

Del. Leo Wardrup, R-Virginia Beach, a member of the subcommittee, proposed another change that would have eliminated the word "deliberative" from the definition of working papers. There was some confusion over the effect of that proposal, and the subcommittee decided to take up the issue when the bill is considered by the full General Laws committee.

Woodrum reminded Wardrup and administration officials that no such changes have been made to the bill in the state Senate, where Hanover County Republican Bill Bolling is acting as the chief sponsor.

"He's aggressive as he can be," said Woodrum, who is the House sponsor. "He don't want any changes."

Local government officials raised objections to two other proposed changes in the bill.

One would eliminate the ability of city councils and county supervisors to meet in private to discuss the use of real estate unless they were talking specifically about buying land.

The other item was dubbed the "gotcha clause" by Woodrum because it says a government that denies a request for documents can't change the reason for that denial if its decision is later challenged in court.

Woodrum said he, too, has concerns about the provision, but other subcommittee members defended it.

"It was put in primarily on a very simple premise," said Del. Barnie Day, D-Patrick County. "If you're going to withhold a document, tell us why you're withholding it and stick to it."

Press representatives said they are relieved that the issue over governors' working papers is being debated in the General Assembly, rather than becoming an issue late in the process when Gilmore could try to amend the bill on his own.

"The good-faith agreement that grew out of all these compromises over the last 18 months were adhered to today," said Forrest "Frosty" Landon, executive director of the Virginia Coalition for Open Government.

Christina Nuckols can be reached at (804) 697-1585 or christinan@roanoke.com

Copyright © 1999, Roanoke Times

Roanoke Times

© 2000 Roanoke Times. All rights reserved.

Dialog® File Number 577 Accession Number 10028088

1999 SESSION

991525492

HOUSE JOINT RESOLUTION NO. 501

Offered January 13, 1999

Prefiled January 13, 1999

Continuing the Joint Subcommittee Studying the Virginia Freedom of Information Act.

Patrons—Woodrum, Day and May; Senators: Bolling and Houck

Referred to Committee on Rules

991525492

HJ501

1/15/99 11:59

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54

WHEREAS, the Virginia Freedom of Information Act (FOIA) was first enacted by the 1968 Session of the General Assembly to ensure "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"; and

WHEREAS, with the advent of technological changes, the methods of collection, processing, and keeping official records have changed dramatically, with the effect, on occasion, of limiting public access to government records and meetings; and

WHEREAS, the critical right of the people in the Commonwealth to have free access to the affairs of their government cannot be overstated; and

WHEREAS, the Act has been the subject of at least four studies since its enactment, with each study committee recommending important changes to ensure public access to the workings of government; and

WHEREAS, most recently, the 1998 General Assembly established a seven-member joint subcommittee to study the Virginia Freedom of Information Act pursuant to House Joint Resolution No. 187; and

WHEREAS, among the many issues studied by the joint subcommittee were the public records exemptions, including those for criminal investigations, scholastic records, proprietary information, and working papers of high level public officials; open meeting exemptions, including consultation with legal counsel and the discussion or consideration of the use of real property; and the sufficiency of the enforcement provisions and penalties; and

WHEREAS, while the joint subcommittee conducted eight meetings during the interim at which testimony was received from the Virginia Press and Broadcasters Associations, state and local government officials, representatives of local government organizations, and private citizens, evidencing wide-spread public interest in the implementation and enforcement of the Freedom of Information Act, further study is needed to accurately incorporate the perspectives and expertise of these interested parties on these significant legal and policy issues; now, therefore, be it

RESOLVED by the House, the Senate concurring, That the Joint Subcommittee Studying the Virginia Freedom of Information Act be continued. The members appointed pursuant to House Joint Resolution No. 187 shall continue to serve, except that any vacancies shall be filled as provided in House Joint Resolution No. 187. Staffing shall continue to be provided by the Division of Legislative Services.

In continuing its study, the joint subcommittee shall, among other things, review current exemptions for proprietary information and trade secrets, and examine the feasibility of the (i) inclusion in the definition of "public body" private foundations which exist solely to support colleges and universities and are under strict control of the board of visitors and (ii) creation of a state "sunshine office" to resolve FOIA complaints, conduct training and education seminars, issue opinions or final orders, and offer voluntary mediation of disputes.

All agencies of the Commonwealth shall provide assistance to the joint subcommittee, upon request.

The direct costs of this study shall not exceed \$ 7,600.

The joint subcommittee shall complete its work in time to submit its findings and recommendations to the Governor and the 2000 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.

Implementation of this resolution is subject to subsequent approval and certification by the Joint

- 1 Rules Committee. The Committee may withhold expenditures or delay the period for the conduct of
- 2 the study.

**JOINT SUBCOMMITTEE STUDYING
THE VIRGINIA FREEDOM OF INFORMATION ACT
Continued pursuant to
HOUSE JOINT RESOLUTION No. 501 (1999)**

**ISSUE IDENTIFICATION
IN DEVELOPING "SUNSHINE OFFICE"
IN VIRGINIA**

PART I—POWERS AND DUTIES

| POWERS AND DUTIES | Related Issues |
|---|--|
| <p>Training/Education for state and local public bodies</p> | <p>Voluntary vs. Mandatory If voluntary:</p> <ul style="list-style-type: none"> • statewide "roadshow" format • conducted by whom • approval process for "outside" trainers • certification (as incentive) <p>If mandatory:</p> <ul style="list-style-type: none"> • statewide "roadshow" format • conducted by whom • how much training (hrs/yr) • enforcement of training requirement • approval process for "outside" trainers |
| <p>Alternative Dispute Resolution (ADR)</p> | <p>Type of ADR:</p> <ul style="list-style-type: none"> • conciliation • mediation • arbitration <p>Exhaust administrative remedies first? Length of process (quick turn-around) Practical considerations:</p> <ul style="list-style-type: none"> • how accomplished on statewide basis? • conducted by whom? <ul style="list-style-type: none"> ◆ sunshine office staff ◆ existing ADR centers ◆ consultants • interface with issuance of advisory opinions (global vs. case specific application) |

| | |
|---|--|
| Issue Opinions | <p>Binding vs. Advisory</p> <p>If Binding:</p> <ul style="list-style-type: none"> • right of appeal • enforcement <p>If Advisory:</p> <ul style="list-style-type: none"> • oral and written? • turn around time • interface with opinions of OAG • admissibility in court/what weight given? |
| Publish and maintain FOIA manual | <p>Cost/Free to requesters</p> <p>Available on website</p> <p>Contents:</p> <ul style="list-style-type: none"> • opinions • relevant cases <p>How often updated</p> |
| Publish "citizen" and "government" guides | Same as above |
| Report to the Governor and General Assembly | <p>How often</p> <p>Contents:</p> <ul style="list-style-type: none"> • recommendations for statutory changes • statistical information (# of opinions, # of people calling, etc.) • types of problems encountered • identification of trends |
| Create and maintain FOIA website | What information available |
| Performing related studies | <p>Cost</p> <p>Who can direct a study</p> <p>Right to refuse</p> |

PART II—ORGANIZATIONAL STRUCTURE

| Organizational Structure | Related Issues |
|--|---|
| Single appointee (Indiana) | <p>Who appoints?</p> <p>Who hires staff</p> <p>Partisanship</p> <p>Term of office</p> |
| Decision-making body (Maryland) (VA examples—Housing Study Commission, JCOTS, Joint Health Care Commission, Real Estate and other regulatory boards) | Same |
| Advisory body with executive director (NY) | Same |
| Division in the Office of the Attorney General | Same |

| | |
|--|------|
| Task force (example—Administrative Law Advisory Committee) | Same |
|--|------|

PART III—SETTING

| Setting | Advantages | Disadvantages |
|--|---|--|
| Legislative Branch: <ul style="list-style-type: none"> • Division of Legislative Services • Code Commission | Neutrality Consistency Competency Currently oversees Administrative Law Advisory Committee | Potential separation of powers problem Potential dilution of emphasis on FOIA |
| Executive Branch: <ul style="list-style-type: none"> • Office of the Attorney General • Creation of new agency • Within existing agency | Consistency Competency --- Existing support, etc. | Potential conflict of interest Does not serve local governments Cost Which one? |
| Independent State Agency | Neutrality Ability to focus specifically on FOIA | Cost |
| Public Institution of Higher Education | Neutrality Set up for training/education role | Real world applicability Cloistered Parochial |
| Supreme Court | Currently doing ADR program | too limited in function |

Source: Division of Legislative Services.

E:\DLSDATA\FINGOVT\STUDIES\99studys\Hjr 501 - FOIA\developingsunshineoffice.doc

2000 SESSION

008169404

SENATE BILL NO. 340

Offered January 19, 2000

A BILL to amend the Code of Virginia by adding in Chapter 21 of Title 2.1 an article numbered 2, consisting of sections numbered 2.1-346.2 through 2.1-346.5, relating to the Freedom of Information Act; creation of the Virginia Freedom of Information Advisory Council.

Patrons—Bolling, Byrne, Hawkins, Houck, Martin, Newman, Potts, Schrock, Stolle and Trumbo; Delegates: Bloxom, Brink, Bryant, Cantor, Day, Diamonstein, Griffith, Hamilton, Hargrove, Ingram, May, McDonnell and Woodrum

Referred to Committee on Rules

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 21 of Title 2.1 an article numbered 2, consisting of sections numbered 2.1-346.2 through 2.1-346.5, as follows:

Article 2.

Virginia Freedom of Information Advisory Council.

§ 2.1-346.2. Virginia Freedom of Information Advisory Council; membership; terms; quorum; compensation.

A. The Virginia Freedom of Information Advisory Council (the "Council") is hereby created as an advisory council in the legislative branch to encourage and facilitate compliance with the Freedom of Information Act. The Council shall be composed of twelve members as follows: the Attorney General or his designee; the Librarian of Virginia or his designee; the Director of the Division of Legislative Services or his designee; four members appointed by the Speaker of the House of Delegates, one of whom shall be a member of the House of Delegates, and three citizen members, at least one of whom shall be or have been a representative of the news media; three members appointed by the Committee on Privileges and Elections, one of whom shall be a member of the Senate, one of whom shall be or have been an officer of local government, and one citizen member; and two citizen members appointed by the Governor, one of whom shall not be a state employee. The local government representative shall be selected from a list recommended by the Virginia Association of Counties and the Virginia Municipal League. The citizen members may be selected from a list recommended by the Virginia Press Association, the Virginia Association of Broadcasters, and the Virginia Coalition for Open Government, after due consideration of such list by the appointing authorities.

B. Initial appointments to the Council shall be for the following terms: of those nonlegislative members appointed by the Speaker of the House of Delegates, one shall serve a four-year term, one shall serve a three-year term and one shall serve a two-year term; of those nonlegislative members appointed by the Senate Committee on Privileges and Elections, one shall serve a four-year term and one shall serve a three-year term; and of those members appointed by the Governor, one shall serve a four-year term and one shall serve a three-year term. Thereafter, all such appointments shall be for terms of four years, except that appointments to fill vacancies shall be for the unexpired terms in the same manner as the original appointment. No member shall be eligible to serve for more than two successive four-year terms. However, after the expiration of a term of three years or less, or after the expiration of the remainder of a term to which appointed to fill a vacancy, two additional terms may be served by such member if appointed thereto. Legislative members and other state government officials shall serve terms coincident with their terms of office.

C. The members of the Council shall elect from among their membership a chairman and a vice-chairman for two-year terms. The chairman and vice-chairman may not succeed themselves to the same position. The Council shall hold meetings quarterly or upon the call of the chairman. A majority of the Council shall constitute a quorum.

D. Members of the Council shall receive no compensation for their services but shall be reimbursed for all reasonable and necessary expenses incurred in the discharge of their duties as provided in §§ 2.1-20.10 and 30-19.12, as appropriate.

§ 2.1-346.3. Powers and duties of the Council.

008169404

SB340

5/9/00 11:50

- 1 A. The Council, through its staff, shall:
- 2 1. Furnish to any person or agency of state or local government, in an expeditious manner,
- 3 advisory guidelines, opinions or other appropriate information regarding the Freedom of Information
- 4 Act (§ 2.1-340 et seq.);
- 5 2. Conduct training seminars and educational programs for the members and staff of public bodies
- 6 and other interested persons on the requirements of the Freedom of Information Act;
- 7 3. Publish manuals or other educational materials as it deems appropriate on the provisions of the
- 8 Freedom of Information Act;
- 9 4. Request from any agency of state or local government such assistance, services and information
- 10 as will enable the Council to effectively carry out its responsibilities; and
- 11 5. Report on its activities and findings regarding the Freedom of Information Act, including
- 12 recommendations for changes in the law, to the Governor and the General Assembly.
- 13 § 2.1-346.4. Staff.
- 14 Staff assistance to the Council shall be provided by the Division of Legislative Services.
- 15 § 2.1-346.5. Cooperation of agencies of state and local government.
- 16 Every department, division, board, bureau, commission, authority or political subdivision of the
- 17 Commonwealth shall cooperate with, and provide such assistance to, the Council as the Council may
- 18 request.

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

2000 SESSION

008168996

HOUSE BILL NO. 445

Offered January 17, 2000

A BILL to amend and reenact §§ 2.1-342.2 and 2.1-343 of the Code of Virginia, relating to the Freedom of Information Act; disclosure of criminal records; notice of meetings.

Patrons—Woodrum, Day and May; Senators: Bolling and Houck

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.1-342.2 and 2.1-343 of the Code of Virginia are amended and reenacted as follows:

§ 2.1-342.2. Disclosure of criminal records; limitations.

A. As used in this section:

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

"Law-enforcement official" includes the attorneys for the Commonwealth.

B. Law-enforcement officials shall make available upon request criminal incident information relating to felony offenses. However, where the release of criminal incident information is likely to jeopardize an ongoing investigation or prosecution, or the safety of an individual; cause a suspect to flee or evade detection; or result in the destruction of evidence, such information may be withheld until the above-referenced damage is no longer likely to occur from release of the information. Nothing in this subsection shall be construed to prohibit the release of those portions of such information that are not likely to cause the above-referenced damage.

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

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

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

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

1. Complaints, memoranda, correspondence and evidence relating to a criminal investigation or prosecution, other than criminal incident information as defined in subsection A;

2. Adult arrestee photographs when necessary to avoid jeopardizing an investigation in felony cases until such time as the release of the photograph will no longer jeopardize the investigation;

3. Reports submitted in confidence to (i) state and local law-enforcement agencies, (ii) investigators authorized pursuant to § 53.1-16 or § 66-3.1, and (iii) campus police departments of public institutions of higher education established pursuant to Chapter 17 (§ 23-232 et seq.) of Title 23;

4. Portions of records of local government crime commissions that would identify individuals providing information about crimes or criminal activities under a promise of anonymity;

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

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

G. Records kept by law-enforcement agencies as required by § 15.2-1722 shall be subject to the provisions of this section chapter except:

1. Those portions of noncriminal incident or other investigative reports or materials containing identifying information of a personal, medical or financial nature provided to a law-enforcement agency where the release of such information would jeopardize the safety or privacy of any person;

008168996

HB445

5/9/00 11:51

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

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

5 H. In the event of conflict between this section as it relates to requests made under this section
6 and other provisions of law, this section shall control.

7 § 2.1-343. Meetings to be public; notice of meetings; recordings; minutes.

8 A. All meetings of public bodies shall be open, except as provided in § 2.1-344.

9 B. No meeting shall be conducted through telephonic, video, electronic or other communication
10 means where the members are not physically assembled to discuss or transact public business, except
11 as provided in §§ 2.1-343.1, 2.1-343.1:1 or as may be specifically provided in Title 54.1 for the
12 summary suspension of professional licenses.

13 C. Every public body shall give notice of the date, time, and location of its meetings by placing
14 the notice in a prominent public location at which notices are regularly posted; *and* in the office of
15 the clerk of the public body, or in the case of a public body which has no clerk, in the office of the
16 chief administrator. Publication of meeting notices by electronic means shall be encouraged. The
17 notice shall be posted at least three working days prior to the meeting. Notices for meetings of state
18 public bodies on which there is at least one member appointed by the Governor shall state whether or
19 not public comment will be received at the meeting and, if so, the approximate point during the
20 meeting when public comment will be received.

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

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

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

30 G. Nothing in this chapter shall be construed to prohibit the gathering or attendance of two or
31 more members of a public body (i) at any place or function where no part of the purpose of such
32 gathering or attendance is the discussion or transaction of any public business, and such gathering or
33 attendance was not called or prearranged with any purpose of discussing or transacting any business
34 of the public body or (ii) at a public forum, candidate appearance, or debate, the purpose of which is
35 to inform the electorate and not to transact public business or to hold discussions relating to the
36 transaction of public business, even though the performance of the members individually or
37 collectively in the conduct of public business may be a topic of discussion or debate at such public
38 meeting. The notice provisions of this chapter shall not apply to informal meetings or gatherings of
39 the members of the General Assembly.

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

44 I. Minutes shall be recorded at all open meetings. However, minutes shall not be required to be
45 taken at deliberations of (i) standing and other committees of the General Assembly, (ii) legislative
46 interim study commissions and committees, including the Virginia Code Commission, (iii) study
47 committees or commissions appointed by the Governor, or (iv) study commissions or study
48 committees, or any other committees or subcommittees appointed by the governing bodies or school
49 boards of counties, cities and towns, except where the membership of any such commission,
50 committee or subcommittee includes a majority of the governing body of the county, city or town or
51 school board. Minutes, including draft minutes, and all other records of open meetings, including
52 audio or audio/visual records, shall be deemed public records and subject to the provisions of this
53 chapter. Audio or audio/visual records of open meetings shall be public records which shall be
54

House Bill No. 445

1 produced in accordance with § 2.1-342.

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

**1999 Meetings of the Joint Subcommittee
Studying the Virginia Freedom of Information Act
(Second Year of Study)**

Initial Meeting—10 a.m. Wednesday, June 2, 1999

House Room C, General Assembly Building, Richmond

Review of various state “Sunshine Office” models: Maria J.K. Everett, *senior attorney, Division of Legislative Services.*

Second Meeting—11 a.m. Thursday, July 8, 1999

House Room C, General Assembly Building, Richmond

Presentation: Robert J. Freeman, *Executive Director, New York State Committee on Open Government*; Identification of issues in developing “sunshine office” for Virginia; Maria J.K. Everett, *senior attorney, Division of Legislative Services.*

Third Meeting—2 p.m. Monday, August 16, 1999

House Room C, General Assembly Building, Richmond

Review of issues in developing “sunshine office” for Virginia; Maria J.K. Everett, *senior attorney, Division of Legislative Services*; public comment relating to the creation of a Virginia “sunshine office.”

Fourth Meeting—11 a.m. Friday, September 10, 1999

House Room C, General Assembly Building, Richmond

Review of “sunshine office” draft and amendments; Maria J.K. Everett, *senior attorney, Division of Legislative Services.* Submission of additional amendments to draft.

Fifth Meeting—10 a.m. Friday, November 12, 1999

House Room C, General Assembly Building, Richmond

Inclusion of Foundations as Public Bodies under FOIA: Presentations: University of Virginia--Joseph C. Carter, Esq., Chairman, Executive Committee, UVA Law School Foundation; Tom DeVita, UVA Law School Foundation; Virginia Commonwealth University--Bill Berry, Founding Trustee, VCU School of Engineering Foundation; Jay Weinberg, Board of Visitors, VCU and Member, VCU Real Estate Foundation; Virginia Polytechnic Institute and State University--Gene James, Virginia Tech Foundation; Virginia Military Institute--Bill Berry, Former President, Board of Visitors, VMI; Virginia Press Association--Craig T. Merritt, Esq.

Sixth Meeting—1:30 p.m. Tuesday, December 28, 1999

House Room C, General Assembly Building, Richmond

Work Session. Review of “sunshine office” consensus draft; Maria J.K. Everett, *senior attorney, Division of Legislative Services.*

Seventh Meeting—2 p.m. Tuesday, January 11, 2000
House Room D, General Assembly Building, Richmond
Work Session. Topic: Inclusion of Foundations as Public Bodies under FOIA

E:\DLSDATA\FINGOVT\STUDIES\99STUDYS\HJR501-F\Mtgsappendix.doc

A NEW COMMITMENT TO GOVERNMENT IN THE SUNSHINE

Roanoke Times, Edition: METRO, Page: A6, Monday, January 3, 2000, Section: EDITORIAL

WITH THE SUPPORT of a bipartisan legislative panel, the governor, the attorney general and even many representatives of local governments, it now seems certain that Virginia will soon have a "sunshine office."

Its purpose: to mediate disputes between citizens and government officials concerning access to public records and meetings, and to promote compliance with the state's Freedom of Information Act.

Most citizens, ideally, should never require the services of the new entity. But all citizens have reason to welcome its creation, because they pay the costs, in one way or another, when disagreements about public access to information throw a monkey wrench into the interworkings of government. Such disputes often can be resolved only through expensive lawsuits and court proceedings.

Virginians should welcome it, too, because it represents a renewed commitment to the concept of "government in the sunshine," as envisioned by the state's 31-year-old FOIA.

The need for such a fresh commitment by state and local government leaders has been obvious too frequently in the last three decades as public officials have used every imaginable loophole to exclude the public from discussions of public issues. Such arrogance borders on a showing of contempt among public officials for the democratic process and the citizens they serve. It also fosters citizens' contempt for government.

In contrast, when public officials respect and faithfully adhere to open-government principles, both sides gain from citizens' strengthened confidence in government.

The blueprint for the sunshine office, as unanimously endorsed by the legislative panel last week, calls for a 12-member advisory council, with a significant contingent of citizen members, which will attempt to reconcile FOIA disputes by issuing nonbinding opinions and also make recommendations for future updates of the law.

Such a process is likely to become increasingly necessary as new FOIA issues evolve, such as public access to online information and computer databases. The office will come under the auspices of the apolitical and highly respected Department of Legislative Services.

The blueprint may require a few refinements, but it appears to be an excellent design. Compliments are owed to all who had a hand in drafting it, especially Del. Chip Woodrum, D-Roanoke, and Sen. Bill Bolling, R-Hanover, the principal architects.

Copyright © 2000, Roanoke Times

Roanoke Times

© 2000 Roanoke Times. All rights reserved.

Dialog® File Number 577 Accession Number 10503037

**OPEN GOVERNMENT SHINE A SPOTLIGHT A PUBLIC ACCESS OFFICE COULD
MEDIATE DISPUTES**

Virginian-Pilot (Norfolk, VA) , Monday, January 3, 2000

Edition: FINAL , Section: LOCAL , Page: B10

TYPE: EDITORIAL

Virginia is moving closer to a state "sunshine office" that could interpret Virginia's Freedom of Information Act, in part by mediating disputes.

This is good news. The hope and growing expectation is that the office will begin operating July 1. A major hurdle was crossed last week when a legislative study group unanimously endorsed creation of a 12-member advisory council to oversee the office. The legislature will be asked this month to make the plan official.

The benefits of a sunshine office would be at least threefold.

It could speed the resolution of disputes that sometimes drag on for years between citizens and government over public access to information. It could save money by reducing the need for litigation in such cases. And through the combination of quicker and less costly answers, it could build public confidence in government.

Any of the three would be reason enough for establishing a body of experts to interpret the Freedom of Information law. The combination is compelling.

This is not to say that every detail of the plan has been worked out to full satisfaction. A dozen members for the advisory panel is about half a dozen too many. The goal, after all, is to save time, not to have an office that is bogged down by its own workings.

The number twelve was not recommended by anyone. That's just where the figure wound up after every party wanting a seat at the table had been assigned one. The final number should be smaller.

There are also disagreements about the extent to which opinions of the sunshine office should be admissible in court. A reasonable resolution would be to leave that decision to the discretion of individual courts. Attorney generals' opinions are treated in that manner now and the system seems to work.

Those and other details can be resolved before the governor signs a final version of the bill. The important thing is that Virginia join the dozen or so states that have acted assertively to reduce conflicts between citizens and government over access to meetings and documents.

Prolonging such divisions only increases mistrust of government, and that is in no one's interest.

Copyright © 2000, Landmark Communications, Inc.

(Norfolk) The Ledger-Star/The Virginian-Pilot.

© 2000 Landmark Communications, Inc. All rights reserved.

Dialog® File Number 741 Accession Number 10503005

FREEDOM OF INFORMATION OPEN A "SUNSHINE" OFFICE

Virginian-Pilot (Norfolk, VA), Thursday, September 16, 1999

Edition: FINAL, Section: LOCAL, Page: B10

TYPE: Editorial

Virginia citizens who believe they're improperly denied access to the inner workings of government have little recourse, short of expensive and time-consuming lawsuits.

Meanwhile, public officials who are uncertain whether a record or meeting should be public too often have to rely on their own reading of the law.

The proposed creation of a state "sunshine" office - the Commission on Open Government - could serve both groups. When disputes arise over the Virginia Freedom of Information Act, citizens and public officials could receive much-needed guidance through non-binding, advisory opinions.

Such advice wouldn't eliminate all freedom-of-information lawsuits or protracted arguments, but it could diminish them greatly. The development would be a boon for both government officials and the public at large.

A General Assembly study group is close to endorsing the idea. That's commendable, but lawmakers need to be sure that progress isn't sidetracked by a couple of dubious proposals being floated by some local government types.

The Open Government Commission should not, for instance, be limited to reviewing cases that have already been resolved. After-the-fact advisory opinions might have some relevance in future disputes. But the greater service would be for the commission to directly head off the sort of protracted, expensive confrontations that drain both citizens and government.

Nor should the clock on reporting deadlines be stopped while the commission does its work. If the law says that requests for information deserve a response within five days, then five days it should be. Putting everything on hold while the wheels of the Commission on Open Government grind would be a step backward, not forward.

Meanwhile, the legislative study group is grappling with two other issues: requiring additional disclosure from university-related foundations and from public-private partnerships for joint ventures.

There's no question that the latter needs attention. Employing the services of a private group to help perform a public task shouldn't shield a project from public scrutiny. As government moves more and more into joint ventures, the continuing imperative for openness needs to be stressed.

University foundations are more problematic. It's important that sources of private giving not dry up because of the glare of public attention. Committee members will need to weigh competing interests and strike a balance that favors public access to information without damaging the work of the foundations.

The 1999 General Assembly made significant strides in improving access to public information. These additional steps - particularly the creation of a sunshine office - will go far toward improving the public's oversight of what its servants are up to.

Copyright © 1999, Landmark Communications, Inc.

(Norfolk) The Ledger-Star/The Virginian-Pilot.

© 2000 Landmark Communications, Inc. All rights reserved.
Dialog® File Number 741 Accession Number 10259015

SUNSHINE OFFICE NEARER GILMORE BACKS EFFORT TO CREATE NEW AGENCY

Richmond Times-Dispatch, Saturday September 11, 1999

Michael Hardy Times-Dispatch Staff Writer

Edition: One Star, Section: Area/State, Page: B-1

The General Assembly is almost certain to consider the establishment of a state "sunshine office" to help mediate the sometimes acrimonious disputes between Virginians and their governments over access to records and meetings.

A special legislative panel has all but endorsed the new office, but its composition and specific duties still must be hammered out before the assembly convenes in mid-January.

Yesterday, the proposed Virginia Commission on Open Government, which would issue nonbinding advisory opinions, received the support of Gov. Jim Gilmore as long as he is able to appoint some of its members.

Walter Felton, the governor's deputy director of policy, told the seven-member panel, whose members include legislators and representatives from the press and local government, that "generally, the idea of an open government commission is acceptable to the administration."

Felton said the commission's proposed training sessions for public officials also is laudable because some officials are fearful of releasing documents because it might land them in hot water with their bosses.

"The problem with [the state's Freedom of Information Act] is that people don't understand it," he said.

The panel is considering a draft proposal that would create an 11-member commission, headed by an executive director, to mediate and informally resolve citizen-government disputes. < cm short of court action.> Its membership would be appointed by the speaker of the house and the Senate Privileges and Elections Committee. At least two would represent the news media and one would be an elected local official.

Most of the opinions, sought by citizens or local governments, would probably be handed down by the director, either orally or in writing.

However, there is some disagreement, among other things, about the size of the commission and whether the written opinions would be admissible in a lawsuit against a governmental agency that kept secret records or held secret meetings.

But Del. Clifton A. Woodrum, D-Roanoke, who heads the legislative study panel, and others have indicated that only the composition and duties of the commission remain to be spelled out in their proposal.

"I think we can achieve consensus on what shape [the commission] should take," Woodrum said yesterday.

Since last year the legislative panel has been studying the state's open government law, which many critics have argued is riddled with exemptions that allow local and state governments to conceal their operations from the public.

Several proposals by the commission to tighten provisions of the act were passed into law this year.

Despite the agreement about the need for a new open government commission, the legislative panel seems divided over a controversial proposal by the Virginia Press Association that would require colleges' private foundations to disclose more about fund raising and operations.

The panel began discussions of the association's preliminary recommendation that foundations, which raise billions of dollars for higher education programs, respond to requests about the identity of contributors over \$5,000 a year, if they hadn't demanded anonymity.

Other information that would have to be disclosed includes spending by the foundations for the institutions, the investment philosophy of the fund managers retained by the foundations, and any audit of a foundation's financial operations.

But Woodrum was more than a little skeptical. "Why put this in a statute? Is there any evidence that people's giving is improper or illegal? If a person gives privately, what business is it of the public," he said.>

Sen. William T. Bolling, R-Hanover, a member of the panel, and others believe the public deserves greater scrutiny of private funding of the tax-supported colleges and universities.

"We need to know where the money is being spent," Bolling told the panel. There are legitimate questions to be raised about business contributions and their influence, he said.

The study panel put off consideration of the issue until after Nov. 2 when voters will decide all 140 seats in the General Assembly. Control of the now evenly divided legislature hinges on the results of the elections.

Copyright © 1999, Richmond Newspapers Inc.

Richmond Times-Dispatch.

© 2000 Richmond Newspapers Inc. All rights reserved.

Dialog® File Number 709 Accession Number 10254027

**Tommy Denton LET THE SUN SHINE IN ON OPEN GOVERNMENT ILLUMINATING,
DISINFECTING, DEODORIZING**

TOMMY DENTON EDITORIAL PAGE EDITOR

Roanoke Times , Edition: METRO , Page: 3 , Sunday, August 22, 1999 , Section: EDITORIAL

IN THE matter of citizens' access to information about the workings of their government, more is better.

Not all those who are elected, appointed or otherwise employed in Virginia as stewards of public offices agree, and some go to considerable lengths to evade the "rigors" of laws requiring them to divulge to their sovereigns the documented accounts of their stewardship. They should be flogged.

Others, faithful to their obligations but confused at times in interpreting various clauses and subsections of the state Freedom of Information Act, err on the side of caution by withholding certain documents or files that should be released. They should receive assistance in, as Thomas Jefferson put it, informing their discretion.

In the spirit of complying with the spirit as well as the letter of the law, a joint subcommittee of the General Assembly is reviewing proposed legislation for the 2000 session that would create a state agency devoted strictly to interpreting the FOIA and educating the public and its officials in complying with its administration.

The proposal's advocates like to refer to it as a "sunshine office." That has a nice ring to it, and couldn't be more appropriate. Sunshine both illuminates and disinfects. Applied in sufficient doses, it also can deodorize, which is an agreeable result in cases of moldy, stinky residue allowed to accumulate in dark, untended creases and corners - of clothing, containers of leftovers abandoned in the back of the refrigerator or public offices. It's not healthy.

As proposed, the new Commission on Open Government would be constituted with 11 legislatively appointed members, at least two of whom would be representatives of the news media and one an elected local official. The commission would hire an executive director and support staff to furnish advisory guidelines and opinions on FOIA to government agencies and individuals.

As usual, broad draft legislative language offers refuge for pesky devils of detail. Where, for instance, in the architecture of state government would the new agency reside? What would be its specific duties and powers?

Speaking at a hearing before the joint committee last week on behalf of the Virginia Press Association, Richmond lawyer Craig Merritt offered sound, promising suggestions that would require some revisions to the proposal, the first of which may never get off the ground with the General Assembly: appointment of the new agency executive director by the executive director of the Division of Legislative Services, rather than by the members of a commission as stipulated in the draft legislation.

In other words, the Commission on Open Government instead would become an office within DLS, which has gained a reputation for its impartial expertise in ministering to the General Assembly. As envisioned by the VPA, the commissioners would be replaced by a citizen committee, its members appointed by the governor and key lawmakers, that would be more a consultative body without policy-making powers.

That could cause a hickey for some legislators who may insist on a commission with oversight authority over mere bureaucrats. But the idea has much to commend it and deserves favorable consideration.

First, the DLS possess considerable credibility for its comprehensive knowledge of the legislative craft,

and thus its expertise with FOIA and related legislation. That credibility would attach to the "sunshine office" operating under its ambit.

Second, such an arrangement would help to distance and insulate the office from the political gamesmanship that so often attends appointive commissions. Remember, FOIA remains a burr under the blankets of many officials who might be tempted to commit mischief by attempting to influence political appointees, persuading the less enlightened ones to turn the screws on a staff that took too seriously the notion of open government.

The VPA, Merritt said, would propose an office with the authority to mediate conflicting interpretations of FOIA, although it would lack the power of binding arbitration. Its primary duty would be to educate the public, public officials and the news media on the intricacies of FOIA, including the publication of updates on applicable provisions of the law and presentation of voluntary seminars and workshops around the state.

In addition, the office would be authorized to issue nonbinding advisory opinions that would receive the same weight in court proceedings as those from the attorney general. Such authority not only would hasten the spread of definitive public information on what should be open and what falls within exclusions for release, but it could also go far in reducing the expensive, time-consuming dispute resolutions required in a civil trial.

Citizens can always better assess the conduct of their public business in the clear light of day, and the new office as suggested by the VPA would focus that light. The joint committee should make the necessary adjustments in the draft legislation, and the General Assembly should let the sun shine in.

Tommy Denton can be reached at 981-3377 or tommyd@roanoke.com.

Copyright © 1999, Roanoke Times

Roanoke Times

© 2000 Roanoke Times. All rights reserved.

Dialog® File Number 577 Accession Number 10234004

VA., STUDYING SUNSHINE OFFICE, HEARS OF N.Y. EFFORT

Richmond Times-Dispatch, Friday July 9, 1999

Pamela Stallsmith Times-Dispatch Staff Writer

Edition: City, Section: Area/State, Page: B-5

Robert J. Freeman never knows who might be among the 9,000 callers who ring his office every year.

Freeman, executive director of the New York State Committee on Open Government, handles inquiries from reporters, the public and local officials about access to government information.

"I have no idea whether the person on the other line is a big shot or not," Freeman told a legislative subcommittee yesterday that's studying Virginia's Freedom of Information Act. "I try to give them the right answer under the law."

New York's so-called "Sunshine Office" is one of six around the country; it started in the aftermath of the Watergate scandal in 1974. Virginia's commission is leaning toward proposing a similar office, which would have to be approved by the General Assembly.

In Virginia, the question is where such an office would go and who would appoint it. In New York, Freeman reports to an 11-member committee, of which six are public appointees and five are named by the governor. New York's office reports to the secretary of state, which falls under the executive branch.

The commission will discuss the idea at its next meeting, which has yet to be scheduled.

Freeman, described by commission Chairman Clifton A. Woodrum, D-Roanoke, as "the national guru" of such offices, started his job 25 years ago as a staff attorney on "temporary loan" to the agency.

Freeman and two assistants handle between 8,000 and 9,000 inquiries a year, or close to an average of 25 a day. Every year, Freeman issues about 800 written advisory opinions. Since the office's inception, about 14,000 written opinions have been issued.

About one-third of the requests come from local government officials, about 20 percent from the media, another 15 percent from state agencies and the rest from the public.

"To the best of my knowledge, the Committee on Open Government is the only state agency in the United States that has responsibilities pertaining to a freedom of information, an open meetings and a privacy law," he said. The bulk of the calls, however, concern the freedom of information law.

The office costs the state of New York close to \$175,000 a year, Freeman said. But he said it actually saves taxpayers money by helping to avoid costly legal battles and saving on high lawyer fees. His advice is free, he said.

"I'm not suggesting that our advice is always followed," Freeman said. "The truth is that the committee has no power to compel a unit of government to comply with the law. Nevertheless, it is my hope that our advice is educational and persuasive and that it's followed."

Freeman's opinions are not binding. However, in judicial decisions where the opinions of the committee have been cited, he said, courts have agreed in 90 percent to 95 percent of the cases.

"We would have no credibility if decisions were written with politics in the backs of our minds," Freeman said in response to a question. "We've upset everybody at least once."

Copyright © 1999, Richmond Newspapers Inc.

Richmond Times-Dispatch.

© 2000 Richmond Newspapers Inc. All rights reserved.

Dialog® File Number 709 Accession Number 10190065

FREEDOM OF INFORMATION OPEN GOVERNMENT DOORS A STATE ARBITRATION OFFICE WOULD HELP DEMYSTIFY INFORMATION-ACCESS LAWS.

Virginian-Pilot (Norfolk, VA) , Wednesday, June 9, 1999

Edition: FINAL , Section: LOCAL , Page: B10

TYPE: Editorial

Soon, government-in-the-sunshine may have its own solarium.

A legislative group studying Virginia's Freedom of Information Act is likely to recommend creation of a state office that could arbitrate disputes involving the law.

That's an excellent idea, though details still have to be worked out. For too long, when disputes have arisen over release of documents or closing of government meetings, the only real recourse has been to take the matter to court.

The prospect of waging a costly and time-consuming legal challenge is daunting to many private citizens, even when their case is strong. Meanwhile, state government officials, most of whom want to do the right thing when it comes to government access, often are forced to interpret the law on their own.

A state Sunshine Office could address both problems. Staff could answer questions about the law, offer training seminars for public officials, and help resolve disputes short of going to court.

Already, about 10 states have such entities, with a range of authority. New York's office can issue regulations and mediate disputes. Maryland's can resolve disputes only involving open meetings.

A few states house the freedom-of-information center within the attorney general's office. That would be a bad idea in Virginia. Since the attorney general represents state agencies, he would encounter a conflict of interest in answering access questions involving those offices.

Whatever form the proposal for the new office takes, efforts should be made to minimize political interference in its work and to see that as many issues as possible are resolved before the courts have to be consulted.

The 1999 General Assembly made several improvements to the state's freedom of information law by limiting times when meetings can be closed and clarifying citizens' right to most official documents. In practice, though, the act is still hampered by ignorance of its provisions and reluctance to invoke them.

Creating an agency that would further ease observance and demystify the law would be a boon for Virginians. Citizens shouldn't have to hire a lawyer and schedule court time to get access to their government. And government officials should have a central place to turn for clarification when they're unclear about what the law requires.

Copyright © 1999, Landmark Communications, Inc.

(Norfolk) The Ledger-Star/The Virginian-Pilot.

© 2000 Landmark Communications, Inc. All rights reserved.

Dialog® File Number 741 Accession Number 10160006

HAVE A 'SUNSHINE OFFICE' WHERE POLITICS CAN'T DARKEN ITS DOOR

Roanoke Times , Edition: *METRO* , Page: *A12* , Friday, June 4, 1999 , Section: *EDITORIAL*

A PROPOSED new "sunshine office" to help citizens get public information to which they're entitled under the state's Freedom of Information Act has been needed in Virginia almost from the time the FOIA became law 31 years ago.

As it is now, citizens are sometimes required to bring a lawsuit and go to court simply to get public information from government entities that are financed by the public to serve the public.

So the sunshine office, proposed by a legislative study committee involved in an important two-year rewrite of the FOIA, would be a welcome development.

That law, lest some forget, was put on the books for citizens.

Not for the governor, not for legislators, not for judges, not for local officials, not for bureaucrats.

For citizens.

Bearing that in mind, the FOIA agency should be established as an independent agency.

Other suggestions - that it fall under the purview of the attorney general's office, that it go under the wing of the General Assembly, that it be overseen by a tenured college professor or by the Virginia Supreme Court - are all potentially problematic.

Citizens' FOIA disputes, after all, may involve the governor's office or state agencies, which the attorney general's office represents.

They may involve legislators' actions and decisions, or be at cross purposes with legislators' political interests.

They may involve documents, records and other information held by state colleges and universities.

They may involve state courts.

A sunshine office linked to any of the above, in other words, could find itself whipsawed by conflicts of interest and caught in political thickets where its integrity might be compromised or its credibility suspect.

A totally independent entity, though, may not be in the cards. If not, some of the alternatives are better than others.

The next-best choice probably is to put the new FOIA office under a legislative arm such as Legislative Services, an agency long respected for its apolitical professionalism.

Even there, however, strong guardrails should be erected to ensure that legislators keep out and keep hands off.

Copyright © 1999, Roanoke Times

Roanoke Times

© 2000 Roanoke Times. All rights reserved.

Dialog® File Number 577 Accession Number 10155076

**LEGISLATIVE COMMITTEE CONSIDERS DESIGNS FOR VA. 'SUNSHINE' OFFICE
OFFICE WOULD MEDIATE FREEDOM OF INFORMATION ACT DISPUTES**

CHRISTINA NUCKOLS THE ROANOKE TIMES

Roanoke Times, Edition: METRO, Page: B4, Thursday, June 3, 1999, Section: VIRGINIA

RICHMOND - If you're having trouble getting information from your local city council or a state agency, who would you rather listen to your complaint?

The Attorney General?

An employee of the General Assembly?

Or maybe a college professor?

The legislative committee that oversaw a massive rewrite of Virginia's Freedom of Information Act last year is now ready to decide how to set up a "sunshine office" that would mediate disputes between government agencies and individuals or members of the press. There's little opposition to having such an office. The controversial question is where to put it.

"In the words of the song from West Side Story, 'There's a place for us,'" quipped the committee chairman, Del. Clifton "Chip" Woodrum, D-Roanoke.

Woodrum said he prefers to create an office that would be part of the Virginia Supreme Court or Legislative Services, the research arm of the General Assembly. Del. Barnie Day, D-Patrick County, suggested instead that a tenured professor with a legal, business or mass communications background might be better because he or she would be "out of the line of political fire."

Committee members are most concerned about catching political fire from Gov. Jim Gilmore's administration if the office is set up so that it is not overseen by the Attorney General. Woodrum urged representatives for Gilmore and Attorney General Mark Earley to speak up early if they had concerns. Walter Felton, counsel to the governor, and Deputy Attorney General Frank Ferguson both indicated that they were not opposed to an independent office.

Members of the committee said putting the Attorney General in charge of FOI disputes would mean that attorneys within the same office would be on opposing sides in many instances because the Attorney General also represents state agencies. They said the arrangement also could create suspicions among members of the public who might perceive that a conflict of interest exists.

The committee will decide later this year where to place the sunshine office. Members also will consider whether to propose new laws requiring public access to information about private foundations that support colleges and universities.

Woodrum placed the onus on the Virginia Press Association, which wants more openness from foundations, to prove that more access is needed.

"What are we trying to correct?" he asked. "We don't want to go around just creating solutions unless there's a problem that we're solving."

Foundation officials have argued that opening them to public scrutiny will cause many of their contributions to dry up, but Woodrum said the committee has no intention of requiring that their contributors' lists be made public.

Christina Nuckols can be reached at (804) 697-1585 or christinan@roanoke.com

Copyright © 1999, Roanoke Times

Roanoke Times

© 2000 Roanoke Times. All rights reserved.

Dialog® File Number 577 Accession Number 10154065

OFFICE MAY SHINE ON FOI PROBLEM SOLVING, EDUCATION OF LAWS FOCUS OF NEW UNIT

Richmond Times-Dispatch, Thursday June 3, 1999

Michael Hardy Times-Dispatch Staff Writer

Edition: City, Section: Area/State, Page: B-1

Next year, Virginians may have an office to help uphold their right to know about the operations of state and local governments.

A so-called Sunshine Office not only could try to resolve disputes between officials and Virginians seeking information or access to governmental meetings but also train and educate sometimes confused officials about the state's complex Freedom of Information Act.

In addition to resolving disputes, the office, which would have to be endorsed by the General Assembly next winter, might offer advisory opinions on the sometimes knotty issues about the accessibility of government records and governmental meetings.

If it wins the assembly's endorsement, the office would be a major development in the 31-year history of Virginia's open government law. Enacted amid fanfare in 1968, the law has been steadily eroded, according to critics, by scores of exemptions.

Most states have some type of mechanism to deal with these problems, but the Old Dominion has generally required residents to sue in court to get records they've been denied or to attend what they claim are public meetings.

"In Virginia, no agency has implementation or enforcement authority relative to the open meeting and open records requirements under the Freedom of Information Act," explained Maria J.K. Everett, chief counsel to a legislative panel that has been studying the issues since last year.

"While Virginia law does provide for public bodies to make reasonable efforts to reach agreement with requesters regarding public records, there is no statutory provision mandating alternative dispute resolution, nor does there exist a statewide informal or voluntary program to resolve any such disputes."

The idea for such a new Virginia agency yesterday won the early and enthusiastic support of the legislative study commission as well as other groups representing the media, local governments and open government advocates.

"It should encourage people to use the office," said Del. Clifton A. Woodrum, D-Roanoke, chairman of the commission whose recommendations to tighten the law the assembly embraced this year.

Sen. William T. Bolling, R-Hanover, another commission member, said the office should be, among other things, a user-friendly mediator.

"A common complaint is that the only alternative now is to go to court - that's not very practical," Bolling said.

Lawmakers and other interest groups are calling for an agency that would be independent and insulated from political pressures.

Unlike in several other states, the contemplated Virginia agency would not be run by the attorney general's office and might not be staffed by appointees of the governor or legislature.

Everett summarized the structures of sunshine offices in 10 states. They range from New York's committee that issues regulations and mediates disputes to Maryland's compliance board that resolves complaints only on open meetings.

In four of the 10 states the office is operated by the state attorney general's office, a setup that virtually everyone at yesterday's commission meeting attacked.

"It would be an inherent conflict of interest if the attorney general issued opinions involving state agencies it also represents," Bolling argued. The proposed new office, he said, "ought to be a separate and distinct entity; that's the only way it becomes functional."

Del. **Barnie K. Day, D-Patrick**, who serves on the seven-member panel, agreed. "It's terribly important to keep it out of the political line of fire," he said. He suggested that it might be operated in "an academic setting" and its members not be selected by either the governor or legislature.

Forrest M. Landon, a former top Roanoke newspaper executive, said his organization first proposed the idea of an independent agency.

Executive director of the Virginia Coalition For Open Government, Landon backed the role of the agency as an informal and flexible mediator. Besides voluntary mediation, the agency would also issue advisory opinions and conduct training sessions for officials and the public, he said.

Despite the major role of newsgroups, including the Virginia Press Association, in pushing for reform, Landon reminded that open government laws are "citizens' laws, not media law."

Only 10 percent to 15 percent of requests to other sunshine offices come from the media. "Most are from citizens and officials," he said.

It appears that the establishment of the agency will be a major focus of the commission, but it also will tackle the politically thorny issue of whether the multibillion-dollar private foundations of state colleges and universities should be forced to open up more of their records and operations to the public.

Greater disclosure for the foundations will be a harder sell in the legislature. Already the universities have argued that it would dry up many of their contributions; some lawmakers have argued that the state had no right to meddle in such private fundraising.

Gov. **Jim Gilmore** has demanded greater disclosure and accountability for the foundations.

FOI panel

The members of a legislative panel that has been studying Virginia's Freedom of Information law since last year.

- * Del. **Clifton A. Woodrum, D-Roanoke**, chairman.
- * Del. **Joe T. May, R-Loudoun**
- * Del. **Barnie K. Day, D-Patrick**
- * Sen. **R. Edward Houck, D-Spotsylvania**
- * Sen. **William T. Bolling, R-Hanover**
- * **John Edwards**, editor and publisher of The Smithfield Times
- * **Roger C. Wiley**, Richmond lawyer and specialist on open government law.

Copyright © 1999, Richmond Newspapers Inc.

Richmond Times-Dispatch.

© 2000 Richmond Newspapers Inc. All rights reserved.

Dialog® File Number 709 Accession Number 10154012

LAWYER CITES REASONS FOR SECRET SESSIONS HE SAYS NEWS MEDIA MUST SHARE BLAME

Richmond Times-Dispatch, Friday March 19, 1999

Christine Neuberger Times-Dispatch Staff Writer

Edition: City, Section: Area/State, Page: B-4

MONTPELIER STATION - Local governing bodies too often meet behind closed doors needlessly yet legally to reach consensus on prickly issues, but the news media must share the blame, a former Charlottesville city attorney told an open-government conference yesterday.

The news media often hinder efforts to settle disputes by spotlighting controversy, said Roger C. Wiley, who represents local government lobbies on a legislative panel studying the state's government-in-the-sunshine law. "That's a big part of why local governments continue to want to have meetings in private," Wiley said.

Wiley's remarks came during a discussion of the General Assembly's just-approved rewrite of Virginia's open-government law during a Freedom of Information conference sponsored by the nonprofit Virginia Coalition for Open Government.

The reformed Freedom of Information Act is "no perfect bill," said Del. Clifton A. Woodrum, D-Roanoke, head of the seven-member study group that sought changes to the law. "All legislation is a work in progress."

During a segment of the conference held at President Madison's Montpelier home in Orange County, Woodrum and Sen. Bill Bolling, R-Hanover, said they expect their study group to continue to plow some rocky ground in the coming year.

The committee will consider allowing greater public scrutiny of the wealthy private foundations of state colleges and universities. It will also examine the creation of a "Sunshine office" to settle disputes over application of the law quickly and cheaply.

In Virginia, a citizen denied access to a document or meeting must mount an often costly challenge in court, Bolling said. "The current system doesn't work."

Some states have permanent state-level watchdog commissions assisted by a state-paid compliance officer. The New York Committee on Open Government's executive director, Robert J. Freeman, yesterday said he has no enforcement authority, but he has cultivated a reputation for independence that has made his nonbinding opinions influential.

"Everyone calls to avoid embarrassment," Freeman said. "What really matters is public opinion." His tiny office fields more than 8,000 phone inquiries and writes 800 opinions annually.

The Virginia Coalition for Open Government is a group of citizens, journalists, librarians, educators and others striving to promote a free exchange of information throughout the state. With headquarters in Roanoke, the coalition was formed three years ago.

The coalition's 1999 Freedom of Information Awards went to Bolling, Woodrum, the Montgomery County League of Women Voters; Will Corbin, editor of the (Newport News) Daily Press, and John Denniston, a Richmond Times-Dispatch editor.

The awards also went to the organizations that participated in a statewide survey by newspapers of local compliance with the Freedom of Information Act: the Associated Press, the Times-Dispatch, the Daily

Press, The Roanoke Times, the (Norfolk) Virginian-Pilot, the (Fredericksburg) Free Lance-Star, The (Lynchburg) News & Advance, the (Charlottesville) Daily Progress, the Danville Register & Bee, the Manassas Journal Messenger, the Potomac News in Woodbridge, the News-Virginian in Waynesboro, the Culpeper Star-Exponent, the Herald-Courier in Bristol and the Coalfield Progress in Norton.

The survey was the subject of a series that The Times-Dispatch and the other newspapers ran in November. Denniston was the project editor and Corbin the project chairman.

The Times-Dispatch and other properties owned by Media General Inc. are sponsoring organizations of the coalition.

Copyright © 1999, Richmond Newspapers Inc.

Richmond Times-Dispatch.

© 2000 Richmond Newspapers Inc. All rights reserved.

Dialog® File Number 709 Accession Number 10078074

