

**COMMON INTEREST COMMUNITY BOARD
SB 693 COMMITTEE**

***Tentative* AGENDA SEPTEMBER 22, 2022
9:00 A.M. BOARD ROOM 3-- SECOND FLOOR**

**DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION
PERIMETER CENTER -- 9960 MAYLAND DRIVE
RICHMOND, VIRGINIA 23233**

I. CALL TO ORDER

II. EMERGENCY EVACUATION PROCEDURES

III. APPROVAL OF AGENDA

- a. Committee Agenda, September 22, 2022

IV. PUBLIC COMMENT PERIOD

V. DISCUSSION

- a. Review Public Comments
- b. Review Draft Committee Findings and Report
- c. Adopt Recommendation to Board

VI. RESOURCES AND INFORMATION

- a. Statutes and Regulations
 - 1. Article 2 of Chapter 23.3 of Title 54.1 of the Code of Virginia
 - 2. Common Interest Community Ombudsman Regulations (18VAC48-70)
 - 3. Virginia Freedom of Information Act (Chapter 37 of Title 2.2 of the Code of Virginia) (excerpts)
 - 4. Section 54.1-108 of the Code of Virginia (DPOR records exemptions from FOIA)
 - 5. CIC Statutes (Excerpts)
- b. Senate Bill 693
 - i. Fiscal Impact Statement for SB 693 (as introduced)

VII. OTHER BUSINESS

VIII. COMPLETE CONFLICT OF INTEREST FORMS AND TRAVEL VOUCHERS

IX. ADJOURN

Persons desiring to participate in the meeting and requiring special accommodations or interpretative services should contact the Department at (804) 367-0362 at least ten days prior to the meeting so that suitable arrangements can be made for an appropriate accommodation. The Department fully complies with the Americans with Disabilities Act.

PERIMETER CENTER CONFERENCE CENTER
EMERGENCY EVACUATION OF BOARD AND TRAINING ROOMS
(Script to be read at the beginning of each meeting.)

PLEASE LISTEN TO THE FOLLOWING INSTRUCTIONS ABOUT EXITING THE PREMISES IN THE EVENT OF AN EMERGENCY.

In the event of a fire or other emergency requiring the evacuation of the building, alarms will sound. When the alarms sound, leave the room immediately. Follow any instructions given by Security staff

Board Room 1

Exit the room using one of the doors at the back of the room. Upon exiting the room, turn **RIGHT**. Follow the corridor to the emergency exit at the end of the hall.

Upon exiting the building, proceed straight ahead through the parking lot to the fence at the end of the lot. Wait there for further instructions.

Board Room 2

Exit the room using one of the doors at the back of the room. (Point) Upon exiting the room, turn **RIGHT**. Follow the corridor to the emergency exit at the end of the hall.

Upon exiting the building, proceed straight ahead through the parking lot to the fence at the end of the lot. Wait there for further instructions.

You may also exit the room using the side door, turn **Right** out the door and make an immediate **Left**. Follow the corridor to the emergency exit at the end of the hall.

Upon exiting the building, proceed straight ahead through the parking lot to the fence at the end of the lot. Wait there for further instructions.

Board Rooms 3 and 4

Exit the room using one of the doors at the back of the room. Upon exiting the room, turn **RIGHT**. Follow the corridor to the emergency exit at the end of the hall.

Upon exiting the building, proceed straight ahead through the parking lot to the fence at the end of the lot. Wait there for further instructions.

Training Room 1

Exit the room using one of the doors at the back of the room. Upon exiting the room, turn **LEFT**. Follow the corridor to the emergency exit at the end of the hall.

Upon exiting the building, proceed straight ahead through the parking lot to the fence at the end of the lot. Wait there for further instructions.

Training Room 2

Exit the room using one of the doors at the back of the room. Upon exiting the doors, turn **LEFT**. Follow the corridor to the emergency exit at the end of the hall.

Upon exiting the building, proceed straight ahead through the parking lot to the fence at the end of the lot. Wait there for further instructions.

PUBLIC COMMENT PERIOD

Five minute public comment, per person, with the exception of any open disciplinary or application files.

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Materials contained in this agenda are proposed topics for discussion
and are not to be construed as a question or official Board decision.
DRAFT AGENDA

DISCUSSION

- a. Review Public Comments
- b. Review Draft Committee Findings and Report
- c. Adopt Recommendation to Board

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Materials contained in this agenda are proposed for discussion
and are not to be construed as a final decision.
DRAFT AGENDA



DPOR Common Interest Community Board, rr <cic@dpor.virginia.gov>

Public Comment SB 693

jeffery porter <jeffery.porter3@verizon.net>
Reply-To: jeffery porter <jeffery.porter3@verizon.net>
To: "CIC@dpor.virginia.gov" <CIC@dpor.virginia.gov>

Mon, Aug 8, 2022 at 4:09 PM

Attached is comment for the subcommittee hearing on August 9.

Thank you for your time and assistance.

Best wishes,

Jeff Porter

 **subcommittee comment SB 693.docx**
19K

4435 Airlie Way
Annandale, VA 22003
August 8, 2022

Common Interest Community Board
Subcommittee on SB 693

PUBLIC COMMENT FOR AUGUST 9, 2022 Hearing

Thank you for the opportunity to comment on the subcommittee's consideration of § 54.1-23544 allowing submission of audio and video recordings to assist the Ombudsman in reviewing notice of final adverse hearings submitted by Homeowner Association (HOA) and Condominium Association members. After reviewing the legislation and the information packet for the subcommittee's consideration, I am offering the following comments. My comments reflect my experience as both Board Recorder and Board Secretary for a HOA. Additionally, my experience as a System of Records Administrator for the Freedom of Information Act and Privacy Act at the federal level influence my comments. The staff support in this effort is highly commendable and the exhibits made available for public review are invaluable.

COMMENTS

A. Burden upon board and association members and compliance with § 55.1-1816. Meetings of the board of directors.

Comment 1. Amending the applicable statute and related rule process should require clear and early written notice to all parties that either the board or the Association member(s) can request electronic recordings. The **requestor shall bear the costs** of placing the equipment, operating the equipment, maintaining the electronic records, and control of the recordings. This notice should include a statement that if a denial is referred to the Ombudsman, the electronic record becomes subject to Freedom of Information and Privacy Act provisions of the Virginia Code. This may seem redundant to existing statute language in the hearing process, but the point needs to be clear to those not familiar with the process.

Comment 2. Often complaint hearings are held outside regularly scheduled board meetings to meet statutory timeline requirements of the complaint process. Property management firms, per their contractual agreement, generally require expensive fees per hour outside of regular board meetings. The administrative and financial cost to Associations and their members should be a consideration during the legislative and rule making process. In short, the requesting party should cover all costs associated with the hearing outside of a regular board meeting. This would include property manager fees outside of normal board meetings and activities.

Comment 3. Potentially, the time length for conducting hearings and subsequent time and effort expended by the participants will make the hearing process more complex. This places a burden upon the volunteer board secretary who generally has responsibility for all board meeting minutes and knowledge of Association records. This is well documented in the numerous Oronoco Condominium exhibits in the subcommittee's August 9 hearing packet. It would be difficult to hold participants to the same standard of conduct and comment that we experience in professional settings such as hearings in conflict resolution, arbitration, and judicial proceedings. Speakers will refer to documents etc., and not identify them for the audio record. Speakers will often than not be recognized by name. The audio record might not be a value added or provide clarity to the hearing process.

B. Misstatements and Civility of Comments.

Comment 1. No doubt, the decision makers involved in this comment and review process are all too familiar with the emotions associated with common property interest management. Illustrative of this point are the comments in the

Oronoco exhibit that “it is clear that such privileges have been neutralized and given up the board of directors” and that “all financial records open to condominium owners.” Staff comments on the potential liability for the Commonwealth are well taken. While the “First Amendment” likely prevails here, the rules implementing electronic recordings should not place a board or Associate member at any greater risk of harassment, abuse based on the recording, etc. There should be encouragement in the rule for civility if that is at all possible.

Comment 2. The threat of litigation. The General Assembly revised applicable provisions of the HOA and Condominium statutes to state that a **specific threat** of litigation is sufficient for the board to terminate a meeting. As Board Secretary, and during Open Forums, when a threat was made, I asked the board to suspend discussion on the specific topic that prompted the threat and explained to the member why we were suspending the topic. The meeting continued and generally calm and reasoned discussion prevailed. In establishing legislation permitting electronic recordings, an opening statement would be helpful that either party feeling or understanding a comment that threatens litigation, they have the option to terminate the recording process. It should not require a board vote because this is a subjective opinion by the individual. Nor should the member be denied their right to stop recordings.

Comment 3. In reviewing the Freedom of Information Act process and the related privacy interests of board and Association members, I note the request for technology staff and that video and audio recordings will be sanitized prior to their release. I understand the process all to well. What is not clear, how will hearing participants be informed that the original record is sanitized? Will there be a statement that the release record is sanitized to protect the privacy of individuals? Will Board members and other participants recorded comments be entitled to full disclosure of the electronic recording? How would board secretaries and property managers respond to request for these records? Currently, there is a very liberal interpretation of records members can access. I surface these questions as lead into paragraph 3 below and the potential for this process to be used in continuing one on one issues between neighbors. It does appear that two electronic records could be generated. First, the actual hearing and then the review at the Ombudsman level with potential release of the records.

C. What might be needed

An education brochure or similar approved government publication should be prepared educating all participants in the electronic process on the who, what, when, and where electronic recordings will be permitted. In summary, the legislation and rulemaking should consider the following:

- (1) Responsibility of the board or the Association member to procure electronic recording devices
- (2) Assignment of the financial costs of electronic recordings
- (3) Maintenance and release of electronic recordings

Again, thank you for the opportunity to comment. I continue to monitor the process of the feasibility study. My comments do not reflect the position of a HOA with which I am affiliated or HOA organizations and associations where I maintain membership.

Electronic signature

Jeff Porter



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Agency

Department of Professional and Occupational Regulation

Board

Common Interest Community Board

[Back to List of Comments](#)

Commenter: Vic N

7/28/22 5:42 pm

No.

Not asking much to show up in person.

CommentID: 124129

1 COMMONWEALTH OF VIRGINIA
2 DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION
3

4 COMMON INTEREST COMMUNITY BOARD
5

6 IN RE: PUBLIC HEARING ON SB 693
7

8
9 AUGUST 9, 2022

10 SECOND FLOOR CONFERENCE CENTER

11 9960 MAYLAND DRIVE

12 HENRICO, VIRGINIA 23233

13 9:00 A.M.
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1 APPEARANCES :

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3 STAFF :

4 Joseph C. Haughwout, Jr., Board and Regulatory
5 Administrator.

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DRAFT AGENDA
Materials contained in this agenda are proposed topics for discussion
and are not to be construed as regulation or official Board position.
DRAFT AGENDA

1 NOTE: The public hearing commences
2 at 9:00 a.m., as follows:

3 MR. HAUGHWOUT: Good morning, ladies
4 and gentlemen. I am Joe Haughwout, and I am the Board
5 Administrator for the Common Interest Community Board.

6 This is a public hearing held at the
7 Department of Professional and Occupational Regulation,
8 9960 Mayland Drive, Richmond, Virginia.

9 This hearing is being held to
10 receive public comment for a review being conducted by
11 the Common Interest Community Board pursuant to Senate
12 Bill 693 to review the feasibility of allowing audio and
13 video recordings to be submitted with a notice of final
14 adverse decision as a record pertinent to the decision
15 in accordance with Section 54.1-2354.4 of the Code of
16 Virginia.

17 A committee selected by the Common
18 Interest Community Board will have an opportunity to
19 review and consider all public comments received,
20 including the transcript of this public hearing along
21 with all other information relevant to the subject
22 matter to consider a recommendation for the Board.

23 The committee's recommendation in
24 the form of a draft report prepared by staff will be
25 presented to the Board. The staff of the Department of

1 Professional and Occupational Regulation will then
2 submit a final written report to the Secretary of Labor,
3 and the Chairmen of the House Committee on General Law,
4 and the Senate Committee on General Laws and Technology.

5 The list of interested parties and
6 organizations which were notified of this process and
7 invited to comment is available upon request. The
8 opportunity for public comment was distributed to
9 registered individuals via the Virginia Regulatory Town
10 Hall.

11 Now I would like to present the
12 rules for this public hearing.

13 Comments will be received from any
14 member of the public and comments will be limited to a
15 maximum of 5 minutes depending on the number of
16 individual who wish to speak.

17 If you have not signed up to speak
18 and you wish to give testimony today, please sign your
19 name on the sign up seat at this time. Please note that
20 the public hearing is being transcribed by a court
21 reporter in order to provide an accurate and complete
22 account of the comments received today.

23 Staff members may ask speakers
24 questions or to clarify statements. However, this is
25 not the proper forum for questions to the Board. If you

1 have a question for the Board, please forward them in
2 writing to the Board.

3 Any speaker who wishes to provide a
4 written statement in addition to his oral testimony or
5 in lieu of oral testimony, may do so until 11:59 p.m.,
6 today, August 9, 2022. And we'll go off the record.

7 NOTE: A brief recess is now
8 taken.

9 MR. HAUGHWOUT: The record of the
10 public hearing will be kept open until 11:59 p.m. today,
11 August 9, 2022, and written comments will be accepted up
12 until that time. This hearing is now closed.

13 NOTE: The public hearing
14 concluded at 9:50 a.m.

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CERTIFICATE OF COURT REPORTER

I, Claudia M. Whisenand, hereby certify that I was the Court Reporter at the Public Hearing on SB 693, heard in the County of Henrico, Virginia, on August 9, 2022, at the time of the hearing herein.

I further certify that the foregoing transcript is, to the best of my ability, a true and accurate record of the testimony and incidents of the hearing herein.

Given under my hand this 9th day of August, 2022.



Claudia M. Whisenand
Notary Registration No. 291277

My Commission expires:
October 31, 2025

DRAFT REPORT PREPARED BY STAFF; CONTINGENT UPON COMMITTEE AND
BOARD REVIEW

PREFACE

Senate Bill 693, as originally introduced during the 2022 Session of the General Assembly, proposed to amend provisions in § 54.1-2354.4 of the Code of Virginia regarding the requirements for the filing of a notice of final adverse decision with the Common Interest Community Board (“the Board”) by a complainant who has received an adverse decision from a common interest community association through the association complaint process. Specifically, the bill required that audio and video recordings could be included with a notice of final adverse decision.

The original bill passed the Senate. During consideration of the bill by the House of Delegates, the original bill was amended by way of a substitute. The amended bill was subsequently passed by the House and the Senate, and approved by the Governor on April 8, 2022. The bill, as amended, directed the Board to “...review the feasibility of allowing audio and video recordings to be submitted with a notice of final adverse decision as a record pertinent to the decision in accordance with § 54.1-2354.4 of the Code of Virginia.”

The Board conducted the review with assistance from a committee comprised of common interest community attorneys, citizens residing in common interest communities, Board members, and the Common Interest Community Ombudsman.

Review Committee Membership

Matt Durham*

Paul Orlando

Lori Overholt,* Chair

Sue Tarley

Jerry Wright

Heather Gillespie, Common Interest Community Ombudsman (non-voting member)

Drew Mulhare, Common Interest Community Board Chair (ex-officio member)*

**Common Interest Community Board member*

Staff Acknowledgements

Demetrios "Mitch" Melis, Director

Department of Professional and Occupational Regulation

Trisha L. Lindsey, Executive Director

Common Interest Community Board

Joseph C. Haughwout, Jr., Board Administrator

Common Interest Community Board

Raven Custer, Administrative Coordinator

Common Interest Community Board

DRAFT REPORT PREPARED BY STAFF; CONTINGENT UPON COMMITTEE AND BOARD REVIEW

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 H. September 22, 2022, Draft Committee Meeting Minutes #

 I. September 22, 2022, Draft Board Meeting Minutes #

 J. Public Comments #

 K. August 9, 2022, Public Hearing Transcript #

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BOARD REVIEW

EXECUTIVE SUMMARY

Sections 54.1-2354.3 and 54.1-2354.4 of the Code of Virginia establish the Office of the Common Interest Community Ombudsman (“CICO”) and the requirement for each common interest community (“CIC”) association to establish an internal complaint procedure to resolve complaints made by an association member or citizen (“complainant”) against the association. A complainant who receives an adverse decision from an association may file a notice of final adverse decision (“NFAD”) with the Common Interest Community Board (“the Board”). The NFAD is to include all records pertinent to the association’s adverse decision. The CICO reviews the NFAD to determine whether the association’s decision conflicts with laws and regulations governing CICs. Under applicable statute and Board regulations, an NFAD must be in writing.

Senate Bill 693, as introduced during the 2022 General Assembly session, proposed to amend the Code of Virginia to require that an NFAD filed with the Board include “...any video or audio recordings...” The original bill was amended. The amended bill directed the Board to “...review the feasibility of allowing audio and video recordings to be submitted with a notice of final adverse decision as a record pertinent to the decision in accordance with § 54.1-2354.4 of the Code of Virginia.” The bill required the Board to:

- Identify pertinent statutory and regulatory amendments necessary to allow for the submission of recordings;
- Identify any impediments to the submission of recordings, including information technology limitations and compliance with the provisions of the Virginia Freedom of Information Act and other public records laws;
- Consider whether allowing the submission of recordings would assist the CICO in the performance of duties with respect to any NFAD;
- Solicit and consider public comments; and
- Report its findings and any legislative, regulatory, policy, or budgetary recommendations to the Secretary of Labor and the Chairmen of the House Committee on General Laws and the Senate Committee on General Laws and Technology.

The Board conducted the review with assistance from a committee comprised of common interest community attorneys, citizens residing in common interest communities, Board members, and the CICO. The committee identified pertinent statutory or regulatory changes that could allow for the submission of recordings with an NFAD. The committee concluded that there are no significant technological impediments to the submission of audio and video recordings. Compliance with the Freedom of Information Act would not create an impediment to the submission of recordings. There may be an impediment, though, on the ability to timely and appropriately comply with FOIA when fulfilling public records requests, as current staff lack the training and expertise to redact information from audio or video recordings, and do not have appropriate software to perform redactions. The ability to receive and review NFADs with audio and video recordings without need for additional staff would be contingent upon the number of NFADs received by the CICO that include recordings. Likewise, the ability to comply with

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public records requests without need for additional staff would be contingent upon the number of records requests received for closed cases that include audio or video recordings.

However, the committee concluded that allowing for submission of audio and video recordings would (i) not assist the CICO; (ii) be contrary to the role and purpose of the CICO and the association complaint process as designed by the General Assembly; and (iii) have negative unintended impacts on CICs. The committee further concluded that there was insufficient evidence that making a change to law or regulation to allow for recordings would address any identifiable public problem, and there was no substantial evidence of demand for a change.

[Insert text regarding Board's decision.]

DRAFT

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Materials contained in this agenda are for informational purposes only and are not to be construed as a final decision of the Board.
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BOARD REVIEW

BACKGROUND

Enabling Legislation

In April 2008, the General Assembly passed, and Governor Tim Kaine approved, Chapter 851 of the 2008 Acts of Assembly¹. This legislation created the Common Interest Community (“CIC”) Board, established a licensure requirement for common interest community managers, and made other significant changes to CIC statutes. The legislation also created the Office of the Common Interest Community Ombudsman (“CICO”).

The legislation, which was a recommendation of the Virginia Housing Commission², sought to address the significant number of constituent complaints received by legislators regarding CIC associations by establishing a state entity with the authority to resolve such complaints. The CICO replaced the Community Association Liaison, a position that was created by the General Assembly in 2001³.

In addition, the legislation charged the Board to establish a requirement for associations to develop a complaint procedure for association members and other citizens to resolve complaints, and created a mechanism for association members to file notices of final adverse decision with the Board in order to receive a final determination. The CICO is responsible for receiving notices of final adverse decision. The legislation authorizes the Director of the Department of Professional and Occupational Regulation (“DPOR”), or a designee, to determine whether the final adverse decision “...may be in conflict with laws or regulations governing common interest communities or interpretations thereof by the Board...” The determination is not binding upon the complainant or the association that made the final adverse decision.

Powers and Duties of the CICO

Section 54.1-2354.3 of the Code of Virginia establishes the Office of the CICO, and authorizes the Director of DPOR to appoint the CICO. Under the provisions of this section, the CICO must “...be a member in good standing in the Virginia State Bar.” The section also outlines the duties of the CICO, which can be grouped into three basic functions: (i) serving as an information resource for associations, association members, and the public; (ii) monitoring and reporting; and (iii) receiving notices of final adverse decision.

The duties of the CICO are to:

- Assist members in understanding rights and the processes available to them according to the laws and regulations governing CICs and respond to general inquiries;
- Make available, either separately or through an existing website, information concerning CICs and such additional information as may be deemed appropriate;

¹ Virginia Acts of Assembly, 2008 Session, Chapter 851, (<https://lis.virginia.gov/cgi-bin/legp604.exe?081+ful+CHAP0851>)

² Virginia Housing Commission, 2007 Annual Report, (<http://dls.virginia.gov/commissions/vhc/files/2007.pdf>)

³ Virginia Acts of Assembly, 2001 Session, Chapter 816 (<https://lis.virginia.gov/cgi-bin/legp604.exe?011+ful+CHAP0816&011+ful+CHAP0816>)

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- Upon request, assist members in understanding the rights and processes available under the laws and regulations governing CICs and provide referrals to public and private agencies offering alternative dispute resolution services, with a goal of reducing and resolving conflicts among associations and their members;
- Ensure that members have access to the services provided through the Office and that the members receive timely responses from the representatives of the Office to the inquiries;
- Maintain data on inquiries received, types of assistance requested, notices of final adverse decisions received, actions taken, and the disposition of each such matter;
- Monitor changes in federal and state laws relating to common interest communities;
- Provide information to the [DPOR] Director that will permit the Director to report annually⁴ on the activities of the Office of the CICO to the standing committees of the General Assembly having jurisdiction over CICs and to the Housing Commission. The report must be filed by December 1 of each year and include a summary of significant new developments in federal and state laws relating to common interest communities each year;
- Upon request to the [DPOR] Director by (i) any of the standing committees of the General Assembly having jurisdiction over CICs or (ii) the Housing Commission, provide to the Director for dissemination to the requesting parties assessments of proposed and existing CIC laws and other studies of CIC issues;
- Receive notices of final adverse decisions; and
- Carry out activities as the Board determines to be appropriate.

With respect to notices of final adverse decision, § 54.1-2354.4(C) of the Code of Virginia states, in part:

The Director or his designee may request additional information concerning any notice of final adverse decision from the association that made the final adverse decision....If the Director upon review determines that the final adverse decision may be in conflict with laws or regulations governing common interest communities or interpretations thereof by the Board, the Director may, in his sole discretion, provide the complainant and the association with information concerning such laws or regulations governing common interest communities or interpretations thereof by the Board. The determination of whether the final adverse decision may be in conflict with laws or regulations governing common interest communities or interpretations thereof by the Board shall be a matter within the sole discretion of the Director, whose decision is final and not subject to further review. The determination of the Director shall not be binding upon the complainant or the association that made the final adverse decision.

Though formal authority to issue non-binding determinations of notices of final adverse decision is vested with the Director of DPOR, the CICO is the authorized designee to perform this duty.

⁴ The Office of the CICO prepares and submits this annual report to the House Committee on General Laws, the Senate Committee on General Laws and Technology, and the Virginia Housing Commission (<https://rga.lis.virginia.gov/Published/2021/RD721>).

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Association Complaint Process

Section 54.1-2354.4(A) of the Code of Virginia provides that the Board "...establish by regulation a requirement that each association shall establish reasonable procedures for the resolution of written complaints from the members of the association and other citizens..." and that "[e]ach association shall adhere to the written procedures established ... when resolving association member and citizen complaints."

In July 2012, the Board established the Common Interest Community Ombudsman Regulations (18VAC48-70). This regulation requires associations to "...have a written process for resolving association complaints from members and citizens." The regulation further outlines the minimum requirements for an association complaint procedure, to include the process for consideration of a complaint by the association, and notification to the complainant of the association's final determination on the complaint. To the extent the final determination of the association does not result in the cure or corrective action sought by the complainant, the determination is considered an "adverse decision" or "final adverse decision" as defined⁵ in the regulation.

The regulation provides that the complainant "...may file a notice of final adverse decision in accordance with § 54.1-2354.4 B of the Code of Virginia concerning any final adverse decision that has been issued by an association..." The notice of final adverse decision must "...be in writing on forms provided by the Office of the Common Interest Community Ombudsman." The notice of final adverse decision must "...include a copy of the association complaint, the final adverse decision, reference to the laws and regulations the final adverse decision may have violated, any supporting documentation related to the final adverse decision, and a copy of the association complaint procedure."

The CICO, as designee of the DPOR Director, reviews⁶ the notice of final adverse decision. The CICO may request additional information from the association that provided the final adverse decision. The association must provide such information to the CICO within a reasonable time. If the CICO "...determines that the final adverse decision may be in conflict with laws or regulations governing common interest communities or interpretations thereof by the [CIC Board]..." the CICO may "...provide the complainant and the association with information concerning such laws or regulations governing common interest communities or interpretations thereof by the [CIC Board]..."

The determination made by the CICO is "...a matter within the sole discretion..." of the CICO, and "...is final and not subject to further review." However, the determination of the CICO shall "...not be binding upon the complainant or the association that made the final adverse decision."

⁵ 18VAC48-70-10 provides that "Adverse decision" or "final adverse decision" means the final determination issued by an association pursuant to an association complaint procedure that is opposite of, or does not provide for, either wholly or in part, the cure or corrective action sought by the complainant. Such decision means all avenues for internal appeal under the association complaint procedure have been exhausted.

⁶ Under the regulation, a complainant who files a notice of final adverse decision must also pay a \$25 filing fee as required by § 54.1-2354.4(B) of the Code of Virginia. This filing fee may be waived by the Board if the fee will cause a financial hardship to the complainant. Review of the adverse decision will not occur until the filing fee has either been received, or waived by the Board.

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The regulation provides that "...any matter involving a violation of applicable laws or regulations of the board may be referred for further action by the board in accordance with the provisions of Chapter 23.3 (§ 54.1-2345 et seq.) of Title 54.1; Chapters 18 (§ 55.1-1800 et seq.), 19 (55.1-1900 et seq.), and 21 (§ 55.1-2100 et seq.) of Title 55.1 of the Code of Virginia; and the board's regulations."

Generally, CICO review of a notice of final adverse decision typically results in one of the following outcomes:

- No violation. No action required of the association;
- Possible violation. The association is requested to come into compliance going forward or is given a timeframe for compliance (i.e. if the violation is related to access to books and records, allow two weeks to provide requested documents);
- Insufficient information to provide a determination; or
- No violation in relation to original complaint, but the association did not properly carry out the complaint process. The association is requested to come into compliance going forward.

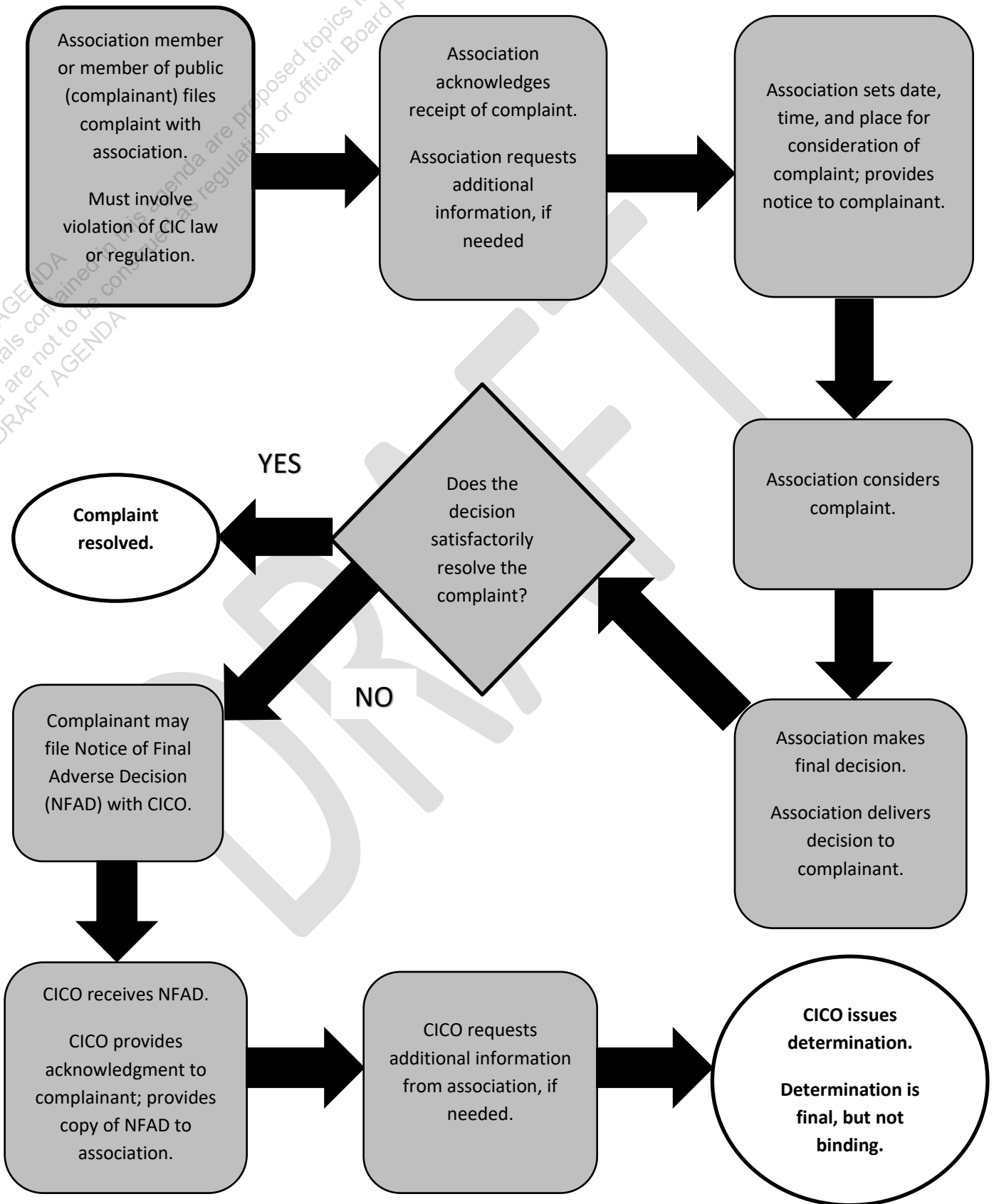
If an association does not come into compliance or meet a deadline, the CICO may refer the matter to the Board for enforcement.

The authority of the CICO is limited to review of adverse final decisions submitted as a part of a notice of final adverse decision, and only to the extent that such adverse decisions are inconsistent with applicable CIC law or regulations. Allegations involving violation of a community's governing documents, such as the declaration, bylaws, covenants, or rules and regulations, are outside the authority of the CICO to review. In addition, the CICO cannot address allegations involving statutes that may be applicable to CICs, such as the Virginia Non-stock Corporation Act (Chapter 10 of Title 13.1 of the Code of Virginia), but are not CIC laws. (See Appendix B for the guidelines for CICO complaint submissions.)

The CICO cannot consider information or documentation that is not part of the record of the association's decision. The CICO cannot receive and review *de novo* complaints against an association. In addition, the CICO does not investigate claims raised in an association complaint and cannot adjudicate such claims. Moreover, as the CICO can only issue non-binding determinations, the CICO cannot order an association to take action or provide remedy.

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Figure #1: Flowchart of the CICO Process



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Senate Bill 693

Senate Bill 693 was introduced in the Senate on January 20, 2022. As originally introduced, the bill would have amended subsection B of § 54.1-2354.4 of the Code of Virginia as follows:

B. A complainant may give notice to the Board of any final adverse decision in accordance with regulations promulgated by the Board. The notice shall be filed within 30 days of the final adverse decision, shall be in writing on forms prescribed by the Board, shall include copies of all records pertinent to the decision, *including any video or audio recordings*, and shall be accompanied by a \$25 filing fee. The fee shall be collected by the Director and paid directly into the state treasury and credited to the Common Interest Community Management Information Fund pursuant to § 54.1-2354.2. The Board may, for good cause shown, waive or refund the filing fee upon a finding that payment of the filing fee will cause undue financial hardship for the member. The Director shall provide a copy of the written notice to the association that made the final adverse decision.

The original bill passed the Senate without opposition on February 1, 2022. On March 3, 2022, a subcommittee of the House Committee on General Laws recommended reporting the bill with a substitute. The substitute directed the Board to "...review the feasibility of allowing audio and video recordings to be submitted with a notice of final adverse decision as a record pertinent to the decision in accordance with § 54.1-2354.4 of the Code of Virginia." The bill further specified:

In conducting its review, the Board shall (i) solicit and consider public comments; (ii) identify pertinent statutory and regulatory amendments necessary to allow for the submission of audio and video recordings in accordance with the provisions of this act; (iii) identify any impediments to the submission of audio and video recordings, including information technology limitations and compliance with the provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq. of the Code of Virginia) and other public records laws; and (iv) consider whether allowing the submission of audio and video recordings pursuant to the provisions of this act would assist the Common Interest Community Ombudsman in the performance of his duties with respect to any notice of final adverse decision.

During the original bill's consideration by the Senate Committee on General Laws and Technology⁷, the bill's patron indicated the bill was the result of a constituent request. In speaking to the committee, one of the requesting constituents indicated that since the Property Owners' Association Act allows for the recording of association board meetings, electronic recordings of meetings may be pertinent to an association complaint, and should be included with a notice of final adverse decision as relevant records.

⁷ Meeting of the Senate Committee on General Laws and Technology, January 26, 2022, (https://virginia-senate.granicus.com/ViewPublisher.php?view_id=3).

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Review Methodology

On June 9, 2022, DPOR staff requested and received authorization from the Board to form a committee to review the feasibility of allowing audio and video recordings to be submitted with a notice of final adverse decision as directed by SB 693.

DPOR and the Board sought public comment by posting a General Notice on the Virginia Regulatory Town Hall on July 21, 2022. The Board accepted comments from July 26, 2022, through August 9, 2022. The Board conducted a public hearing on August 9, 2022.

In addition, staff researched applicable laws and regulations, including those related to the association complaint process and the Virginia Freedom of Information Act, gathered information regarding the DPOR’s technical and administrative capacity to receive audio and video recordings, collected and analyzed information regarding notices of final adverse decision filed with the CICO, reviewed procedures in other jurisdictions that have a common interest community ombudsman office or similar office, and compiled public comments received.

RESEARCH

Review of CIC Laws and Regulations

Section 54.1-2354.4(B) of the Code of Virginia and the Common Interest Community Ombudsman Regulations (18VAC48-70) provide the requirements for filing of a notice of final adverse decision. The applicable statute states, in part:

A complainant may give notice to the Board of any final adverse decision in accordance with regulations promulgated by the Board. The notice shall be filed within 30 days of the final adverse decision, shall be in writing on forms prescribed by the Board, shall include copies of all records pertinent to the decision...

Section 18VAC48-70-90 states, in part:

A complainant may file a notice of final adverse decision in accordance with § 54.1-2354.4 B of the Code of Virginia concerning any final adverse decision that has been issued by an association in accordance with this chapter.

2. The notice shall be in writing on forms provided by the Office of the Common Interest Community Ombudsman.

3. The notice shall include a copy of the association complaint, the final adverse decision, reference to the laws and regulations the final adverse decision may have violated, any supporting documentation related to the final adverse decision, and a copy of the association complaint procedure.

The CICO interprets the underlined provisions as excluding audio or video recordings as part of the submission of a notice of final adverse decision. Although subdivision 3 of 18VAC48-70-90

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requires a notice to include “supporting documentation” related to the final adverse decision, this term refers to the documentation that supports the association’s adverse decision to the complainant.

The enabling statute does not provide a meaning for the term “records pertinent to the decision” used in subsection B of § 54.1-2354.4. The Board has not provided interpretative guidance regarding the meaning of this term.⁸

Under certain provisions of the Property Owners’ Association Act (Chapter 18 of Title 55.1 of the Code of Virginia) and the Virginia Condominium Act (Chapter 19 of Title 55.1 of the Code of Virginia), an owner is authorized to record meetings of the association’s governing board. Sections 55.1-1807 and 55.1-1939 provide in pertinent part:

Every [owner] who is a member in good standing of a [association] shall have the following rights:

3. The right to have notice of any meeting of the board of directors, to make a record of any such meeting by audio or visual means, and to participate in any such meeting...

In addition, §§ 55.1-1816 and 55.1-1949 provide in pertinent part:

Any [owner] may record any portion of a meeting that is required to be open. The board of directors or subcommittee or other committee of the board of directors conducting the meeting may adopt rules (a) governing the placement and use of equipment necessary for recording a meeting to prevent interference with the proceedings and (b) requiring the member recording the meeting to provide notice that the meeting is being recorded.

Notices of Final Adverse Decisions and Determinations Issued by the CICO

The CICO monitors and reports information regarding notices of final adverse decisions received by the Office of the CICO. These include the number of notices received and the topics or issues raised in complaints made to associations. The CICO provides this information as part of the annual report required by § 54.1-2354.3(B)(9) of the Code of Virginia.

During the previous four reporting periods, the CICO received a total of 163 notices of final adverse decision. The following table reflects the number of notices and top three topics in these final adverse decision received by the CICO:

⁸ Summary of Board Interpretations, Policies and Guidance Documents
(<https://townhall.virginia.gov/L/ViewGDoc.cfm?gdid=6256>)

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Table #1: Notices of Final Adverse Decision Received by the CICO.

Reporting Period ⁹	Number of Notices Received	Top Three Topics (% of Total Complaints)
2017-2018	32	1. Books & Records (41%) 2. Meeting Notice (13%) 3. Assessments (10%)
2018-2019	33	1. Notice/Meetings (21%) 2. Books & Records (21%) 3. Resale Disclosure (9%)
2019-2020	35	1. Notice/Meetings (32%) 2. Books & Records (18%) 3. Communication (13%)
2020-2021	63	1. Notice/Meetings (25%) 2. Books & Records (25%) 3. Communication (16%)

DPOR also posts determinations made by the CICO to the website for the Office of the CICO. The website lists the subjects addressed in the determinations. During the previous four fiscal years, the CICO issued 119 determinations. The following table reflects the number and top three topics addressed in these determinations:

Table #2: Determinations Issued by the CICO.

Period ¹⁰	Number of Determinations Issued	Top Three Topics (# of Total Cases with Issue)
2017-2018	27	1. Meetings & Minutes (10) 2. Notice & Access (10) 3. Books & Records (8)
2018-2019	42	1. Books & Records (15) 2. Meetings & Minutes (14) 3. Notice & Access (12)
2019-2020	17	1. Notice & Access (10) 2. Meetings & Minutes (8) 3. Books & Records (7)
2020-2021	33	1. Books & Records (14) 2. Meetings & Minutes (13) 3. Notice & Access (13)

See Appendix C for additional information on this subject.

⁹ Reporting periods are as follows: 2017-2018 (11/26/17 to 11/25/18); 2018-2019 (11/26/18 to 11/25/19); 2019-2020 (11/27/19 to 11/26/20); and 2020-2021 (11/27/20 to 11/26/21).

¹⁰ Period is Virginia state fiscal year (July 1 to June 30).

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Freedom of Information Act and Public Records Requirements

The Virginia Freedom of Information Act (Chapter 37 of Title 2.2 of the Code of Virginia) (FOIA) outlines the Commonwealth's laws regarding the public's access to public records in the custody of a public body or its officers and employees. Under the definition of "public records"¹¹ in FOIA, notices of final adverse decision and determinations issued by the CICO are considered public records.

FOIA contains numerous exclusions (§§ 2.2-3705.1 through 2.2-3706.1 of the Code of Virginia) for certain types of records or information. In addition, § 54.1-108 of the Code of Virginia outlines exclusions to FOIA applicable to DPOR specifically.

DPOR has adopted the following guidance¹² regarding release of information:

Pursuant to the Virginia Freedom of Information Act (§ 2.2-3700 et seq. of the Code of Virginia), the Department of Professional and Occupational Regulation assumes a predisposition toward full disclosure of all public records in the Department's possession. Specific exclusions shall apply in accordance with § 54.1-108 and §§ 2.2-3705.1 through 2.2-3706 of the Code of Virginia and, in the absence of any board policy to the contrary, when the Department exercises its discretionary authority to withhold personal or confidential information that may compromise an individual's safety and security. A subpoena duces tecum for the production of records shall be processed in accordance with Director's Policy #100-06, Subpoenas, Service of Process and Notices.

Section 54.1-108 permits DPOR to exclude from disclosure "[r]ecords of active investigations being conducted by [DPOR] or any board." DPOR's policy provides the following guidance regarding disclosure of information about complaint files:

Open complaints may be publicly acknowledged when a Department investigation has determined that sufficient evidence exists to establish probable cause that there was a violation of a law or regulation; however, the case file is exempt from disclosure until case closure. Cases where probable cause has been found are disclosed on the Department's web site. Nothing in this policy shall conflict with the release of complaint information during disciplinary investigations as provided for in the Administrative Process Act.

¹¹ "Public records" means all writings and recordings that consist of letters, words or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photography, magnetic impulse, optical or magneto-optical form, mechanical or electronic recording or other form of data compilation, however stored, and regardless of physical form or characteristics, prepared or owned by, or in the possession of a public body or its officers, employees or agents in the transaction of public business.

¹² DPOR Policy #100-04, Release of Information

(https://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\222\GDoc_DPOR_2388_v11.pdf)

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DPOR applies the guidance regarding complaint files to notices of final adverse decision received by the CICO. Once a matter has been closed by the CICO, the case file is subject to disclosure upon request.

In accordance with FOIA, DPOR policy treats the following information as non-disclosable:

- Nine (9) character social security numbers or Virginia DMV control numbers;
- Bank routing and account numbers;
- Credit/debit card numbers;
- Examination scores, pass/fail status, or number of times an examination was taken by a candidate/licensee unless a board policy to the contrary exists;
- State income, business and estate tax returns and personal property tax returns; and
- Any information that may compromise the privacy or safety of an individual or business (i.e., medical/mental records, scholastic records, etc.) may be disclosed only upon approval of the Director, Deputy Directors, or Information Management Director.

Identifying information of a complainant or respondent in a case, including the name, address, and contact information is subject to disclosure.

When DPOR receives a request for a case file, DPOR's public records management staff will review the case file for non-disclosable information and redact such information from the case file prior to fulfilling the request.

As permitted under § 2.2-3704(F) of FOIA, DPOR may assess reasonable charges for the actual costs associated with accessing, duplicating, supplying or searching for records.

DPOR Technical Capacity to Receive Audio and Video Recordings

DPOR is able to receive digital audio and video recordings provided such submissions are made by way of a secure portal approved by Virginia Information Technologies Agency (VITA). Such VITA-approved secure portals available to DPOR include the Box platform and the Microsoft SharePoint platform. Either of these portals may receive digital files up to 250 GB (250,000 MB) in size.¹³

DPOR has limited ability to receive digital recordings through email due to restrictions on the size of file attachments allowed by DPOR's VITA-authorized email vendor. DPOR is able to receive digital recordings stored on tangible media (e.g. DVD¹⁴ or flash drive).

DPOR has the ability to playback digital audio and video recordings that are in formats supported by Windows Media Player.

¹³ The file size of one hour of full HD (1080p resolution) video is 1.2 GB to 1.4 GB.

¹⁴ Most computers assigned to DPOR staff are laptop computers that do not contain a DVD drive. DPOR may need to procure one or more external DVD drives in order to accept submissions on disc.

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DPOR's electronic records are stored in a cloud-based network operated and maintained by VITA. Digital audio and video recordings retained by DPOR would be stored on this network. There are no limitations on the ability of DPOR to store or archive these recordings.

See Appendix D for additional information on this subject.

DPOR Administrative Capacity to Receive Audio and Video Recordings

Under DPOR's organizational structure, the Office of the CICO consists of the CICO (Hearing and Legal Services Manager III) and a CIC Administrative Support Specialist (General Administrative Coordinator I). The support specialist is a classified full-time position. The position has been vacant for several years. The CICO largely performs the functions of the Office of the CICO alone. As needed, the CICO has received administrative assistance from other members of DPOR staff on a part-time basis.

The Fiscal Impact Statement (FIS)¹⁵ for SB 693 as originally introduced indicated that DPOR anticipated "...needing one pay band 4 classified position to allow for the review of recordings by the Ombudsman's Office."

According to the FIS, the need for an additional position was based on "...estimates that approximately 50 complaints a year will include audio/video recordings of board and other meetings, interactions with board members, managers, and others, along with accompanying phone call records."

When DPOR receives a public records request for a complaint file, the agency's Records Manager (Policy and Planning Manager I) performs review of the file and, if needed, redacts any non-disclosable information.

According to the FIS, "...due to privacy issues and potential liability resulting from the recordings becoming public record, especially recordings that could include private meetings among private citizens, some of whom cannot be recorded due to their federal security positions, and other scenarios that [DPOR] anticipates could compromise information security, many of the recordings may include information that will be required to be redacted." The FIS indicated DPOR anticipated "...needing one pay band 4 classified IT Specialist to review and potentially edit the recordings."

Neither DPOR's Records Manager, nor current public records management staff, possess the requisite training or expertise to redact information from audio and video recordings. In addition, DPOR does not have appropriate software to perform redaction of audio and video recordings.

The FIS reflected additional non-general fund appropriation would be needed to pay for salaries and benefits for the new positions, as well as costs for furniture and equipment, and other recurring costs (e.g. telephone, computer support, and supplies).

¹⁵ SB 693, 2022 Fiscal Impact Statement, Department of Planning and Budget (<https://lis.virginia.gov/cgi-bin/legp604.exe?221+oth+SB693F122+PDF>)

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Other States with an Ombudsman or Similar Office

There are five (5) states other than Virginia that have an ombudsman, or similar, office: Colorado, Delaware, Florida, Illinois, and Nevada. The powers and duties of the ombudsman office in each state vary, including the authority to investigate and resolve complaints. Of these states, Delaware, Florida, and Nevada allow for the investigation of association complaints. Only the State of Nevada expressly permits audio or video recordings to be included with a complaint filing¹⁶.

Table #3: Comparison of States with Ombudsman or Similar Office.

State	File Association Complaint First?	Can Ombudsman Investigate?	Audio and Video Recordings Allowed?
Colorado ¹⁷	No	No – No enforcement authority.	N/A
Delaware	Yes	Yes	Unconfirmed ¹⁸
Florida	No	Yes	No
Illinois	Yes	No – May only assist parties to resolve disputes.	N/A
Nevada	Yes	Yes	Yes
Virginia	Yes	No	No

See Appendix F for additional information on this subject.

Public Comments

DPOR accepted public comments from July 26, 2022, to August 9, 2022. Comments were received from two (2) individuals¹⁹. Only one of these individuals substantively addressed the subject of the review. The commenter raised several concerns regarding allowing audio and video recordings to be included with a notice of final adverse decision. These concerns included (i) the potential for increased costs to associations; (ii) the potential for longer and more complex hearings, placing additional burdens on volunteer directors; (iii) the risk of directors being subject to abuse or harassment; and (iv) the need to provide notice that recordings will be subject to public records disclosure laws.

All comments are provided in Appendix J.

¹⁶ Those who submit such recordings must indicate the time stamp which identifies the alleged violation, and where the Nevada Real Estate Division may begin review.

¹⁷ The State of Colorado does not have an ombudsman office. The HOA Center housed in the Division of Real Estate in the state’s Department of Regulatory Agencies performs many of the duties as the ombudsman offices in the other states that were reviewed.

¹⁸ Staff attempted to make inquiry to the State of Delaware ombudsperson office to determine whether it allowed submission of audio or video recordings. Staff was unable to obtain confirmation.

¹⁹ The Board received one comment posted to the comment forum on Virginia Regulatory Town Hall, and one comment submitted directly to the Board by email. No commenters appeared for the public hearing.

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COMMITTEE FINDINGS

Committee Discussion

On August 9, 2022, following the public hearing, the Committee met to review resources and information gathered by staff and discuss the issues surrounding SB 693. The CICO provided the Committee with an overview of the association complaint process, including the requirements for filing a notice of final adverse decision. Committee members considered the research findings, and offered their own expertise and perspectives on the subject.

Committee discussion included the following:

- Applicable state law and regulations.
- The role and purpose for the Office of the CICO.
- The reason for the legislation and the problem it was intended to solve.
- The procedure for submission and review of notices of final adverse decision.
- Whether audio and video recordings would be relevant to association complaints.
- Whether audio and video recordings would assist the CICO in performing review of notices of final adverse decision.
- DPOR’s technical capacity to receive audio and video recordings.
- Requirements of FOIA and release of information as related to audio and video recordings.
- Various concerns regarding audio and video recordings, including concern about the ability of those reviewing recordings to identify individuals that are part of a recording and concern that a recording could be distorted or edited.
- DPOR’s administrative capacity to receive and review audio and video recordings.
- The potential effects on CIC associations of allowing audio and video recordings to be included with notices of final adverse decision.
- Whether there is demand for a change.

Findings

Potential Statutory or Regulatory Amendments

Subsection B of § 54.1-2354.4 of the Code of Virginia provides that “[t]he notice [of final adverse decision] ... shall be in writing on forms prescribed by the Board, [and] shall include copies of all records pertinent to the decision...” As interpreted by the CICO, the prescription that the notice “be in writing” precludes the submission of audio or video recordings. The enabling statute does not provide a meaning for the term “records pertinent to the decision.” It is not clear whether an audio or video recording could fall within the meaning of this term in cases where such a recording was pertinent to an association’s adverse decision to a complainant.

The General Assembly could amend the enabling statute to provide a meaning for the term “records pertinent to the decision,” which could include any audio or video recordings relevant to the association’s final adverse decision. Notwithstanding action by the General Assembly, the Board could amend the Common Interest Community Ombudsman Regulations to clarify the

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meaning of “records pertinent to the decision” to address the subject of audio or video recordings that are relevant to an association’s final adverse decision. Absent any change to statute or regulation, the Board could provide interpretive guidance regarding the meaning of the term used in the statute by way of issuing a guidance document.

It is important to draw distinction between records that might be pertinent (i.e. relevant or applicable) to the decision made by the association regarding the complaint made to the association, and records that might be pertinent to the complaint filed by the complainant. To the extent a complaint filed with an association included an audio or video recording, it is not clear that such recording would necessarily be admissible as part of a notice of final adverse decision unless it was relevant or applicable to the association’s decision.

The Role and Purpose of the Office of the CICO

Based on the powers and duties of the Office of the CICO established in the enabling statute, the General Assembly did not create the CICO to perform investigation of complaints or adjudicate claims. As to notices of final adverse decision, the role of the CICO is limited to reviewing the decision made by the association to determine whether the decision is in conflict with CIC laws or regulations. The CICO does not perform *de novo* review of the complaints made by a complainant. Moreover, final determinations made by the CICO are not binding on either the association that is the subject of the complaint, or the complainant. To the extent that there is a violation of applicable CIC law or regulation, the CICO may refer such cases for investigation by DPOR, and potential disciplinary action by the Board.

The CICO review process is not an evidentiary process, and is not intended to stand in the place of the civil court system.

The proposal to permit submission of audio and video recordings with a notice of final adverse decision, as reflected in the original SB 693, appears contrary to the role and purpose of the CICO as designed by the General Assembly.

Effect on the Association Complaint Process

The CICO’s review of a notice of final adverse decision includes the association’s final decision to the complaint made with the association, and the supporting documentation related to the association’s decision. The CICO cannot consider information or documentation that is not part of the record of the association’s decision. During Committee discussion, the CICO explained that when a complainant submits additional information or documents that were not part of the complaint to the association, the CICO excludes these from review of the final adverse decision²⁰.

From a standpoint of procedural fairness, it would be inappropriate for the CICO to receive and consider information that the association did not have an opportunity to review and consider when making its final decision to a complainant. If audio and video recordings were allowed to be submitted as part of a notice of final adverse decision, the CICO would be obligated to

²⁰ The Committee reviewed a sample notice of final adverse decision where this occurred. The CICO’s determination noted that the CICO did not consider documents that were not part of the association complaint in making the determination (see Appendix E).

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provide the association with the opportunity to review and respond to any recordings that are submitted. This would effectively re-open the matter previously decided by the association through the association complaint process. The association's final decision would not actually be "final."

The CICO review of association decisions of complaints is not intended to sanction or "punish" associations for making decisions that are inconsistent with CIC laws and regulations, but to inform and educate associations on these laws and regulations, and help ensure compliance in the future.

The proposal to permit submission of audio and video recordings with a notice of final adverse decision, as reflected in the original SB 693, appears contrary to the purpose of the association complaint process as designed by the General Assembly.

The Relevance of Audio or Video Recordings to Association Complaints

The Committee was not able to determine how audio or video recordings would be relevant to an association complaint. While the Property Owners' Association Act and the Virginia Condominium Act permit association members to make recordings of governing board meetings, the minutes of meeting are the official record of a governing board's meeting and actions taken.

During Committee discussion, concerns were raised as to the potential for audio or video recordings submitted to the CICO to be distorted or edited. Since the CICO review process is not an evidentiary one, it is not clear the CICO would be able to rely on such recordings as proof to substantiate a violation of CIC law or regulation.

DPOR's Technical Capacity to Receive Audio and Video Recordings

Generally, DPOR has the technical capacity to receive and archive digital audio and video recordings that might be submitted as part of notices of final adverse decision. During Committee discussion, it was determined that if audio and video recordings were allowed to be submitted to the CICO, DPOR would need to establish clear guidelines prescribing acceptable file formats and procedures for submission of recordings.

Compliance with FOIA and Public Records Requirements

Under FOIA, a notice of final adverse decision, including any audio or video recording submitted as part of such notice, is considered a public record. Compliance with FOIA would not be an impediment to the submission of audio or video recordings.

In accordance with DPOR's Release of Information Policy, consistent with the requirements of FOIA, whenever a request for a closed CICO case is received, DPOR's public records management staff would review any audio or video recordings included with a notice of final adverse decision, and redact any non-disclosable information. To the extent necessary to recover costs associated with fulfilling a records request, including staff time to review and redact audio or video files, DPOR may assess reasonable charges to a requesting party for actual costs incurred.

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DPOR's Administrative Capacity to Receive and Review Audio and Video Recordings

The Office of the CICO may be able to receive and review audio and video recordings submitted with notices of final adverse decision without the need for an additional staff position. During Committee discussion, the CICO indicated that the office plans to fill the existing vacant position. However, the ability to receive and review audio and video recordings without need for additional staff would be contingent upon the number of cases received by the Office of the CICO that include recordings.

DPOR may be able to fulfill public records requests for closed CICO cases without the need for an additional staff position. However, current staff lack (i) the training and expertise to redact information from audio or video recordings; and (ii) appropriate software to perform redaction of audio and video recordings. These may impose an impediment on the ability of DPOR to timely and appropriately comply with FOIA. In addition, the ability to fulfill public records requests without the need for additional staff would be contingent upon the number of records requests received by DPOR for closed cases that include audio or video recordings.

Potential Impacts on Common Interest Community Associations

During Committee discussion, Committee members identified multiple negative potential impacts that allowing for submission of audio and video recordings may have on associations. While it is expected that audio or video recordings of governing board meetings might be among the types of recordings submitted to the CICO, there is potential that recordings taken in other settings may be submitted. These could include recordings of telephone conversations or encounters between individuals within the community. This may create or contribute to discord within communities. There is also the potential for a "chilling effect" on interactions between governing board members and association members outside of meetings. Board members may be wary of interacting with community members if they believe that such interactions may be subject to a recording. This would likely result in less communication with, and less access to, board members, which would be detrimental to effective community governance.

In addition, there is the potential that allowing for recordings may have a similar effect on participation in association governance, such as attendance at governing board or association meetings, or service on governing boards. Individuals may be reluctant to appear at meetings if they believe that they will be subject to recording, particularly video recording, that would become public record if submitted as part of a notice of final adverse decision. In some cases, being recorded could create professional or personal risk to an individual²¹.

Further, there is the potential that submission of audio and video recordings to the CICO may impose costs on associations. These costs would likely include the time spent by board members to review recordings and provide a response to the CICO. These costs could also include legal fees to have recordings reviewed by an attorney, if so desired, and obtain advice. In addition, there may be pressure on associations to create their own recordings of board meetings in order to have a record available in the event of a complaint. Associations would assume the costs of creating and storing such recordings. This creates the potential that associations may raise assessments on members to offset these costs.

²¹ These include individuals possessing security clearances who are restricted by their employer from being identified in a recording, and individuals who may be victims of domestic abuse, among others.

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CIC associations are highly dependent upon volunteer community members. Associations often have a substantial challenge in finding and attracting individuals who are willing to commit their time and talents to serve. These potential negative effects would likely create disincentives for individuals to join governing boards, attend meetings, and otherwise participate in community governance. This would have a deleterious effect on associations.

Committee members did not identify any positive impacts that would result from allowing audio and video recordings to be submitted to the CICO.

Lack of Significant Demand for a Change in the CICO Process

There does not appear to be significant demand for a change to allow audio and video recordings to be submitted to the CICO. During Committee discussion, the CICO indicated that since the creation of the CICO office in 2008, there have only been two (2) instances where complainants made a request to submit a recording. The scant public feedback received during the public comment opportunities is further evidence there is lack of demand for a change. Moreover, the Committee was not able to identify a public problem that would be remedied by allowing audio and video recordings to be submitted to the CICO.

Relationship to the Ability of the Office of the CICO to Perform its Duties

The Committee was not able to identify how allowing submission of audio and video recordings would assist the CICO in the performance of duties with respect to any notice of final adverse decision. Allowing for the submission of audio and video recordings would potentially require the Office of the CICO to invest considerable time to review such recordings. Depending on the length and quality of a recording, the CICO and staff might need to spend several hours reviewing a recording for just a single case. It is common for association governing board meetings to last several hours. The CICO and staff would most likely have to review a recording without appropriate context, such as knowing the identity of individuals that are material to the recording (e.g. board members and complainant). The CICO and staff may be required to playback a recording multiple times in order to take notes and identify time stamps to track events. To the extent that a submitted recording is of poor quality, it may not even be useful.

As noted in the Committee's finding regarding the relevance of recordings to association complaints, there is the potential for a submitted recording to be distorted or edited, which diminishes the value a recording would have to the CICO.

Based on the issues the CICO addresses in final adverse decision cases, submission of audio or video recordings would not assist the CICO in determining whether an association's decision to a complainant is inconsistent with CIC laws or regulations.

Conclusion

The Committee concludes that there are generally no significant technical or administrative impediments to the submission of audio and video recordings to the CICO. DPOR may need to provide appropriate training and resources for its public records management staff to perform redactions of recordings in order to comply with FOIA. Additional staff may be required if DPOR experiences a high number of cases that include recordings.

**DRAFT REPORT PREPARED BY STAFF; CONTINGENT UPON COMMITTEE AND
BOARD REVIEW**

However, the Committee concludes that allowing for the submission of audio and video recordings with notices of final adverse decision, as reflected in the original SB 693, would be contrary to the role and purpose of the Office of the CICO, and the association complaint process, as designed by the General Assembly in the enabling legislation. There is no substantial evidence of demand for a change. There does not appear to be an identifiable public problem that making a change to law or regulation to allow for submission of recordings would address.

The Committee concludes that allowing for submission of audio or video recordings would not assist the CICO in performing the statutory duties of the Office of the CICO. Rather, allowing for the submission of audio and video recordings is more likely to be detrimental to the CICO in performing duties with respect to notices of final adverse decisions. Moreover, allowing for the submission of recordings to the CICO may result in unintended negative impacts to community associations.

RECOMMENDATION

[Insert text regarding Board's decision.]

Appendix A

Senate Bill 693 (2022)

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Materials contained in this agenda are proposed topics for discussion
and are not to be construed as regulation or official Board position.
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VIRGINIA ACTS OF ASSEMBLY -- 2022 SESSION

CHAPTER 244

An Act to direct the Common Interest Community Board to review the feasibility of allowing audio and video recordings to be submitted with a notice of final adverse decision; report.

[S 693]

Approved April 8, 2022

Be it enacted by the General Assembly of Virginia:

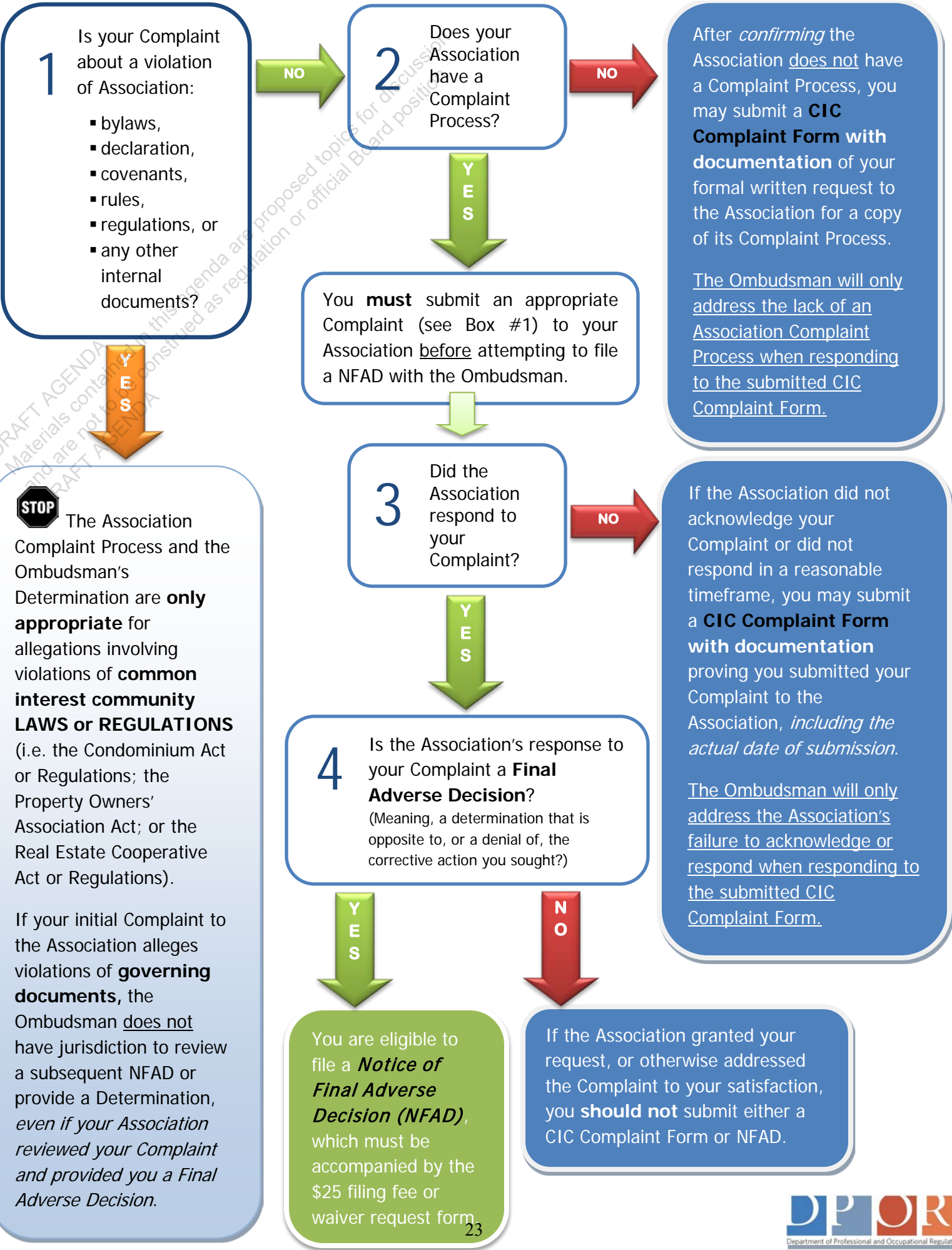
1. § 1. *That the Common Interest Community Board (the Board) shall review the feasibility of allowing audio and video recordings to be submitted with a notice of final adverse decision as a record pertinent to the decision in accordance with § 54.1-2354.4 of the Code of Virginia. In conducting its review, the Board shall (i) solicit and consider public comments; (ii) identify pertinent statutory and regulatory amendments necessary to allow for the submission of audio and video recordings in accordance with the provisions of this act; (iii) identify any impediments to the submission of audio and video recordings, including information technology limitations and compliance with the provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq. of the Code of Virginia) and other public records laws; and (iv) consider whether allowing the submission of audio and video recordings pursuant to the provisions of this act would assist the Common Interest Community Ombudsman in the performance of his duties with respect to any notice of final adverse decision.*

The Board shall report its findings and any legislative, regulatory, policy, or budgetary recommendations to the Secretary of Labor and the Chairmen of the House Committee on General Laws and the Senate Committee on General Laws and Technology on or before November 1, 2022.

Appendix B

Flowchart: Guidelines for Review of Complaint Submissions

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Materials contained in this agenda are proposed topics for discussion
and are not to be construed as resolution or official Board position.
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1

Is your Complaint about a violation of Association:

- bylaws,
- declaration,
- covenants,
- rules,
- regulations, or
- any other internal documents?

YES



The Association Complaint Process and the Ombudsman's Determination are **only appropriate** for allegations involving violations of **common interest community LAWS or REGULATIONS** (i.e. the Condominium Act or Regulations; the Property Owners' Association Act; or the Real Estate Cooperative Act or Regulations).

If your initial Complaint to the Association alleges violations of **governing documents**, the Ombudsman does not have jurisdiction to review a subsequent NFAD or provide a Determination, *even if your Association reviewed your Complaint and provided you a Final Adverse Decision.*

2

Does your Association have a Complaint Process?

YES

You **must** submit an appropriate Complaint (see Box #1) to your Association before attempting to file a NFAD with the Ombudsman.

3

Did the Association respond to your Complaint?

YES

4

Is the Association's response to your Complaint a **Final Adverse Decision**?

(Meaning, a determination that is opposite to, or a denial of, the corrective action you sought?)

YES

You are eligible to file a **Notice of Final Adverse Decision (NFAD)**, which must be accompanied by the \$25 filing fee or waiver request form.

NO

After *confirming* the Association does not have a Complaint Process, you may submit a **CIC Complaint Form with documentation** of your formal written request to the Association for a copy of its Complaint Process.

The Ombudsman will only address the lack of an Association Complaint Process when responding to the submitted CIC Complaint Form.

NO

If the Association did not acknowledge your Complaint or did not respond in a reasonable timeframe, you may submit a **CIC Complaint Form with documentation** proving you submitted your Complaint to the Association, *including the actual date of submission.*

The Ombudsman will only address the Association's failure to acknowledge or respond when responding to the submitted CIC Complaint Form.

NO

If the Association granted your request, or otherwise addressed the Complaint to your satisfaction, you **should not** submit either a CIC Complaint Form or NFAD.

Appendix C

CICO Notice of Final Adverse Decision

Statistics

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Materials contained in this agenda are proposed topics for discussion
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Notices of Final Adverse Decision (NFAD)¹

Reporting Period ²	2017-2018	2018-2019	2019-2020	2020-2021
NFADs Received	32	33	35	63
NFADs by Topic (% of Total Complaints)	<ul style="list-style-type: none"> • Books & Records (41%) • Meeting Notice (13%) • Assessments (13%) • Distribution of Information (10%) • Adoption/Enforcement of Rules (5%) • Association Charges (5%) • Complaint Process (5%) • Reserves (≈3%) • Fidelity Bond (≈3%) • Disclosure Packet (≈3%) 	<ul style="list-style-type: none"> • Notice/Meetings (21%) • Books & Records (21%) • Resale/Disclosure (9%) • Right to Vote (6%) • Distribution of Information (6%) • Executive Session (6%) • Due Process (6%) • Reserves (6%) • Open Forum (3%) • Association Charges (3%) • Annual Report (3%) • Violation of Declaration (3%) • Minutes (3%) • Agenda Packet (3%) 	<ul style="list-style-type: none"> • Notice/Meetings (32%) • Books & Records (18%) • Communication (13%) • Executive Session (11%) • Agenda Packets (8%) • Work Sessions/Informal Meetings (5%) • Reserve Study (≈3%) • Disclosure Packet (≈3%) • Complaint Procedure (≈3%) • Association Charges (≈3%) • Pesticide Application (≈3%) 	<ul style="list-style-type: none"> • Notice/Meetings (25%) • Books & Records (25%) • Communication (16%) • Reserves/Budget (13%) • Use of Technology (4%) • Pesticide Application (4%) • Resale/Disclosure (4%) • Upkeep of Condominium (2%) • Compliance w/ Governing Documents (2%) • Association Charges (2%) • Member Meetings (2%) • Right to Serve on Board (1%)

¹ Information obtained from CIC Ombudsman Annual Reports for [2017-2018](#), [2018-2019](#), [2019-2020](#), and [2020-2021](#).

² Reporting periods are as follows: 2017-2018 (11/26/17 to 11/25/18); 2018-2019 (11/26/18 to 11/25/19); 2019-2020 (11/27/19 to 11/26/20); and 2020-2021 (11/27/20 to 11/26/21)

CICO Determinations³

Period ⁴	2017-2018	2018-2019	2019-2020	2020-2021
Determinations Issued	27	42	17	33
Topic Areas (# Cases w/ Issue)	<ul style="list-style-type: none"> • Meetings & Minutes (10) • Notice & Access (10) • Books & Records (8) • Governing Documents (5) • Assessments & Dues (4) • Budget & Reserves (4) • Elections (4) • Governance & Management (4) • Common Areas (3) • Communication Methods (3) • Complaint Procedure (2) • Due Process (2) • Rules & Regulations (2) • Architectural (1) • Bond & Insurance (1) • Disclosure Packet (1) • “Homeowners Bill of Rights” (1) • Maximum Allowable Fees (1) • Ombudsman Regulations (1) 	<ul style="list-style-type: none"> • Books & Records (15) • Meetings & Minutes (14) • Notice & Access (12) • Governance & Management (9) • Governing Documents (9) • Communication Methods (6) • Assessments & Dues (3) • Budget & Reserves (3) • Due Process (3) • Maintenance & Repairs (3) • Association Charges (2) • Disclosure Packet (2) • CIC Board Regulations (1) • Complaint Procedure (1) • Resale Certificate (1) • Voting (1) 	<ul style="list-style-type: none"> • Notice & Access (10) • Meetings & Minutes (8) • Books & Records (7) • Governance & Management (5) • Complaint Procedure (5) • Communication Methods (4) • Architectural Standards (2) • Association Charges (2) • Budget & Reserves (2) • Disclosure Packet (2) • Assessments & Dues (1) • Capital Components (1) • Common Areas (1) • Insurance (1) • Rules & Regulations (1) • Statement of Owner Rights (1) 	<ul style="list-style-type: none"> • Books & Records (14) • Meetings & Minutes (13) • Notice & Access (13) • Budget & Reserves (6) • Complaint Procedure (6) • Distribution of Information (5) • Communication Methods (4) • Resale Certificate (3) • Due Process (2) • Non-Stock Corp. Act – Action w/o Meeting (2) • Pesticide (2) • Recording (2) • Reserve Study (2) • Agenda Packet (1) • Maintenance & Repairs (1) • Ombudsman Regulations (1)

³ Information derived from website for Office of Common Interest Community Ombudsman (<https://www.dpor.virginia.gov/CIC-Ombudsman>).

⁴ Period is Virginia state fiscal year (July 1 to June 30).

Appendix D

DPOR System Capacity to Receive

Audio and Video Recordings

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Information on DPOR System Capacity to Receive Audio and Video Recordings

Receiving of Files: The Department is able to receive digital audio and video recordings through a VITA-approved secure portal. The Department currently uses the Box (www.box.com) file sharing platform on a limited basis. The Department plans to transition to using the Microsoft SharePoint platform in the near future. Either of these portals may receive digital files up to 250 GB (250,000 MB) in size. For reference, the file size of one (1) hour of full HD (1080p resolution) video is 1.2 GB to 1.4 GB¹.

Common Name	Pixel Size	Also Known As	File Size for 1 hour of video
720p	1280 x 720	HD or "HD Ready"*	800 - 900MB
1080p	1920 x 1080	FHD or "Full HD"	1.2 - 1.4GB
2K	2048 x 1080	Digital Cinema (DCI)	2.8 - 3GB
4K	3840 x 2160	UHDTV1	20 - 22GB
8K	7680 x 4320	UHDTV2	36 - 38GB

Video File Size Chart

In order for an individual to submit a digital file to the Department through the file sharing platform, the individual would be required to request the Department provide the individual with a link to the platform. A staff member would provide the requesting external party with a link that would permit access to the platform to upload files only. External parties would not have the ability to download files from the platform. The staff member providing access to the external party would be the sole party able to download the files from the platform. The email of the external party that uploads files to the platform could not be shared.

The Department has limited ability to receive digital audio and video recordings through email. The Department's email vendor allows receipt of email file attachments up to 25 MB per email.

The Department is able to receive digital audio and video recordings stored on tangible media such as recordable DVD/CD or flash drive. Most of the personal computers issued to Department staff are laptop computers and can accept flash drives. However, most of these laptops do not contain a DVD/CD drive. The Department may need to procure one or more external DVD drives in order for staff to be able to accept submissions by DVD/CD.

The Department may not be able to receive audio and video recordings that are stored on analog media (e.g. tape) due to lack of available equipment to playback such media.

Playback/Storage/Archiving:

¹ <https://www.filecatalyst.com/blog/how-big-are-movie-files/> (Accessed 7/25/22).

The Department uses laptop computers with a Microsoft Windows operating system. The default media player for these systems is Windows Media Player. Windows Media Player is able to support the following file formats²:

Windows Media formats (.asf, .wma, .wmv, .wm)	Audio Visual Interleave (.avi)	Audio Interchange File Format (.aif, .aifc, .aiff)
Windows Media Metafiles (.asx, .wax, .wvx, .wmx, wpl)	Moving Pictures Experts Group (.mpg, .mpeg, .m1v, .mp2, .mp3, .mpa, .mpe, .m3u)	Sun Microsystems and NeXT (.au, .snd)
Microsoft Digital Video Recording (.dvr-ms)	Musical Instrument Digital Interface (.mid, .midi, .rmi)	Audio for Windows (.wav)
CD Audio Track (.cda)	Indeo Video Technology (.ivf)	QuickTime Movie file (.mov)
MP4 Audio file (.m4a)	MP4 Video file (.mp4, .m4v, .mp4v, .3g2, .3gp2, .3gp, .3gpp)	Windows audio file (.aac, .adt, .adts)
MPEG-2 TS Video file (.m2ts)	Free Lossless Audio Codec (.flac)	Windows Media Player Skins (.wmz, .wms)

The Department may not be able to playback files that are not supported by the Windows Media Player without additional modifications to the media player³.

The Department's electronic records are stored in a cloud-based network operated and maintained by VITA. Digital audio and video recordings submitted to the Department would be stored on this network. To the best knowledge, there are no limitations on the ability of the Department to store or archive these digital records.

² <https://support.microsoft.com/en-us/topic/file-types-supported-by-windows-media-player-32d9998e-dc8f-af54-7ba1-e996f74375d9> (Accessed 7/25/22).

³ <https://support.microsoft.com/en-us/windows/codecs-faq-392483a0-b9ac-27c7-0f61-5a7f18d408af> (Accessed 7/25/22).

Appendix E

Sample CICO Determination

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COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Gillem A. Youngkin
Governor

January 21, 2022

G. Bryan Slater
Secretary of Labor

Demetrios J. Melis
Director

Complainant: Stephen Eisenberg
Association: The Oronoco Association
File Number: 2022-01153

The Office of the Common Interest Community Ombudsman has been designated to review final adverse decisions and determine if they may be in conflict with laws or regulations governing common interest communities. Such determination is within the sole discretion of the Office of the Common Interest Community Ombudsman and not subject to further review.

Complaint

The Complainant submitted a complaint to the Association dated September 13, 2021. The Association provided a response to the association complaint dated November 23, 2021. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated December 2, 2021.

Authority

The Common Interest Community Ombudsman (CICO), as designee of the Director, is responsible for determining whether a "final adverse decision may be in conflict with laws or regulations governing common interest communities." (18VAC 48-70-120) The process of making such a determination begins with receipt of a NFAD that has been submitted to this office in accordance with §54.1-2354.4 (Code of Virginia) and the Common Interest Community Ombudsman Regulations (Regulations). A NFAD results from an association complaint submitted through an association complaint procedure. The association complaint must be submitted in accordance with the applicable association complaint procedure and, as very specifically set forth in the Regulations, "shall concern a matter regarding the action, inaction, or decision by the governing board, managing agent, or association inconsistent with applicable laws and regulations.

Under the Regulations, "applicable laws and regulations" pertain solely to common interest community laws and regulations. Any complaint that does not concern common interest community laws or regulations is not appropriate for submission through the association complaint procedure and we cannot provide a determination on such a complaint. Common interest community law is limited to the Virginia Condominium Act, the Property Owners' Association Act, and the Virginia Real Estate Cooperative Act.

Pursuant to the Regulations (18 VAC 48-70-90), the only documents that will be considered when reviewing a NFAD are the association complaint submitted by a complainant to the association (and any documents included with that original complaint), the final adverse decision from the association, and any supporting documentation related to that final adverse decision. Other documents submitted with the Notice of Final Adverse Decision cannot be reviewed or considered.

This Determination is final and not subject to further review.

Determination

Additional documents were included with the NFAD that were not, according to the Association, included with the original complaint submitted to the Association. Several memorandums were also included that were not part of the original complaint as evidenced by their date. None of these additional documents or memorandums will be considered for this Determination. The Regulations that govern the complaint process do not provide for the submission of additional documents outside those set forth in the Regulations and this office has never utilized such additional documents since it provides an unfair advantage to the party that submitted them.

The Complainant has alleged that the Association is in violation of §55.1-1949(B)(1)¹ of the Condominium Act. The Complainant alleges that the executive board communicated through informal meetings, casual discussions, and similar activities rather than holding formal and properly called Board meetings.

The Complainant also alleges that the Association improperly withheld association records from unit owners when it denied him documents pertaining to a forensic audit examination. This request was denied via email by one board member on May 25, 2020 and another, also by email, on September 21, 2021. A failure to provide

¹ B. 1. Except as otherwise provided in the condominium instruments, the provisions of this subsection shall apply to executive board meetings at which business of the unit owners' association is transacted or discussed. All meetings of the unit owners' association or the executive board, including any subcommittee or other committee of such association or board, shall be open to all unit owners of record. The executive board shall not use work sessions or other informal gatherings of the executive board to circumvent the open meeting requirements of this section. Minutes of the meetings of the executive board shall be recorded and shall be available as provided in § 55.1-1945.

access to or copies of association books and records may be a violation of 55.1-1945² of the Condominium Act.

The Complainant requested that the Association hold a formal meeting to consider and grant him his request. He further requested that if he is not provided the documents, the Association adhere to its association complaint procedure and provide an in-person hearing rather than a virtual one and that a neutral, professionally qualified recorder take minutes. The Complainant also asks that the Board recuse itself from the

² A. The declarant, managing agent, unit owners' association, or person specified in the by laws of the association shall keep detailed records of the receipts and expenditures affecting the operation and administration of the condominium and specifying the maintenance and repair expenses of the common elements and any other expenses incurred by or on behalf of the association. Subject to the provisions of subsections B, C, and E, upon request, any unit owner shall be provided a copy of such records and minutes. All financial books and records shall be kept in accordance with generally accepted accounting practices.

B. Subject to the provisions of subsection C, all books and records kept by or on behalf of the unit owners' association, including the unit owners' association membership list, and addresses and aggregate salary information of unit owners' association employees, shall be available for examination and copying by a unit owner in good standing or his authorized agent so long as the request is for a proper purpose related to his membership in the unit owners' association and not for pecuniary gain or commercial solicitation. Notwithstanding any provision of law to the contrary, this right of examination shall exist without reference to the duration of membership and may be exercised (i) only during reasonable business hours or at a mutually convenient time and location and (ii) upon five business days' written notice for a unit owner association managed by a common interest community manager and 10 business days' written notice for a self-managed unit owners' association, which notice shall reasonably identify the purpose for the request and the specific books and records of the unit owners' association requested.

C. Books and records kept by or on behalf of a unit owners' association may be withheld from examination or copying by unit owners and contract purchasers to the extent that they are drafts not yet incorporated into the books and records of the unit owners' association or if such books and records concern:

1. Personnel matters relating to specific, identified persons or a person's medical records;
2. Contracts, leases, and other commercial transactions to purchase or provide goods or services, currently in or under negotiation;
3. Pending or probable litigation. For purposes of this subdivision, "probable litigation" means those instances where there has been a specific threat of litigation from a person or the legal counsel of such person;
4. Matters involving state or local administrative or other formal proceedings before a government tribunal for enforcement of the condominium instruments or rules and regulations promulgated by the executive board;
5. Communications with legal counsel that relate to subdivisions 1 through 4 or that are protected by the attorney-client privilege or the attorney work product doctrine;
6. Disclosure of information in violation of law;
7. Meeting minutes or other confidential records of an executive session of the executive board held pursuant to subsection C of § 55.1-1029;
8. Documentation, correspondence or management or executive board reports compiled for or on behalf of the unit owners' association or the executive board by its agents or committees for consideration by the executive board in executive session; or
9. Individual unit owner or member files, other than those of the requesting unit owner, including any individual unit owner's files kept by or on behalf of the unit owners' association.

hearing due to conflicts of interest and that unit owners be appointed to review the matter instead. Finally, the Complainant asks that the Board cease communicating among themselves outside of meetings, and that meetings be formally carried out as required by law and policy. He specifically asks that the Board not use work sessions or other informal gatherings to circumvent open meeting requirements, and that duties of the Board be carried out by the Board and not individual directors.

The Association responded to the complaint by noting that the documents requested were not a forensic audit but instead were a work product of a billing review. The Association wrote that there was a dispute between the Association and the Declarant at the time the documents were requested, and the arbitrator was considering "the issue of attorneys' fees, as well as their reasonableness." The Association said, "The work product was withheld from the Declarant based upon the work-product privilege. Thus, the requested documents were properly withheld under Virginia Code §55.1-1945(C)(3)." The Association further wrote that both parties to the dispute have recently asked for dismissal and the Board of Directors announced the requested documents will be transferred to the Association's managing agent and will be available for inspection.

Regarding the allegation that the Board of Directors has met improperly, the Association stated that "the Board of Directors has regularly and continuously made all of its decisions at open Board of Directors meetings noticed and scheduled in accordance with Virginia Code §55.1-1949." The Association noted that the individual Board member responses to the Complainant's emails regarding the requested documents were simply "restating positions repeatedly discussed by the Board of Directors in open meetings and decisions made by the Board of Directors in open meetings."

It appears that the Association intends to make, or has already made, the requested documents available to the Complainant and all other owners in good standing. Determining whether the Association should have done so sooner, or even a year ago when the documents were originally requested is not something this office can do, since the Association has claimed an exclusion under §55.1-1945(C)(3). This office cannot determine what is or is not appropriate for exclusion under this statute. Determining what constitutes privileged information or work product does not fall under common interest community law. Therefore, this office can only accept an association's conclusion that a document or documents fall under the named exclusion.

As for the allegation that the Board was not holding meetings in accordance with the requirements under §55.1-1949, there is not sufficient evidence for this office to determine that such a violation of the law has occurred. The Association has countered the allegation by saying that all meetings have complied with the law and that the information passed on in emails was a result of decisions made in properly noticed meetings. I would note that association boards do not operate in a vacuum and there are times when board members will gather, communicate or otherwise share information, but they are not necessarily discussing or transacting the business of the association and thus not in violation of the law.

As to the requests from the Complainant, it appears a formal meeting was held to review his complaint. Requesting an in-person meeting over a virtual or electronic meeting is not a legal issue, but instead a preference and a decision that is up to the Association. Asking that a neutral, professionally qualified recorder take minutes is not required by common interest community law, nor is there a requirement under common interest community law that unit owners review complaints rather than executive boards. As for a cessation in communication outside of meetings among the executive board members, such a request is not required by law. What is required is that executive boards provide notice of all board meetings, to include committee and sub-committee meetings. Executive board members will always have the right to communicate outside a meeting if they are not discussing or transacting the business of the association. Executive boards may also have the right to make decisions outside of meetings if done so in a way that comports with the association's governing documents and any applicable law.

Required Actions

If the Association has not provided the Complainant the documents he requested, I would ask that they do so within the next fourteen days, to the extent provided under the applicable law.

Please feel free to contact me if you have questions.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
The Oronoco Association

Appendix F

Information on Other States with a CIC

Ombudsman or Similar Office

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Information on Other States with a CIC Ombudsman or Similar Office

Colorado¹: The State of Colorado has established an HOA Center within its Division of Real Estate in the Department of Regulatory Agencies. The HOA Center (i) provides information to homeowners regarding their basic rights and responsibilities under state's Common Interest Ownership Act; (ii) gathers, analyzes, and reports information through complaints and HOA registrations; (iii) creates resource materials; (iv) provides education and forums; (v) provides a website with information for the public; (vi) registers HOAs; (vii) provides an annual report to the Colorado State Legislature. The HOA Center does not act as a regulatory authority over associations, does not mediate or arbitrate, and cannot assess fines or penalties. Although the HOA Center does have a process for receiving complaints from the public, it does not have any investigative or enforcement capability to address complaints. Information received from complaints is recorded and compiled in the HOA Center's annual report.

Delaware²: The State of Delaware has established an Office of the Ombudsperson for the Common Interest Community within the Fraud & Consumer Protection Division of the Department of Justice. The Ombudsperson (i) assists members of the public to understand their rights and responsibilities, and the processes available to them according to the law, regulations, and documents governing their particular common interest community; (ii) prepare, publish, and make available on request, educational and reference materials about common interest communities; (iii) organize and conduct educational meetings for community members about their rights and responsibilities, and processes available to them; (iv) provide a template of reasonable procedures for community associations to use internally to resolve complaints with owners and other interested parties; (v) review the denial of a complaint that was first submitted to an internal dispute resolution process; (vi) investigate and refer meritorious allegations of violations of existing law to other sections of the Attorney General's Office or other appropriate law enforcement agency; (vii) provide alternative dispute resolution members of associations before or after first using the informal complaint procedure; (viii) develop and publicize procedures intended to result in fair elections of members and officers of associations; and (ix) provide election services such as election monitors and vote counting.

Delaware statute requires associations to establish an internal complaint procedure. Individuals must first try resolve a dispute through the internal complaint process. The template internal complaint procedure established by the Ombudsman specifies association complaints include "...any other document or evidence that supports the CIC Complaint, or applies to the claim..."

¹ HOA Center, Colorado Division of Real Estate website (<https://dre.colorado.gov/hoa-center>), Accessed on 8/1/22.

² Office of the Ombudsperson for the Common Interest Community, Delaware Department of Justice (<https://attorneygeneral.delaware.gov/fraud/cpu/ombudsperson/>), Accessed on 7/29/22.

However, the template procedure does not appear to specifically address audio or video recordings.

The Ombudsperson receives complaints when an association board does not take part in an internal complaint process, ignores a complaint, or does not resolve the complaint internally. The Ombudsperson can receive complaints involving violation of the law or community governing documents. The procedures for a complaint to the Ombudsperson include require (i) a written complaint on a complaint form; and (ii) submission of all supporting documents, correspondence, and other materials about the issue and the decision. The Ombudsman has the authority to investigate a complaint, if necessary, which can include taking evidence and “...subpoenaing books, records, papers, or other evidence needed for exercising the powers or performing the duties of the Ombudsperson.”

Florida³: The State of Florida has established an Office of the Condominium Ombudsman within the Division of Florida Condominiums, Timeshares, & Mobile Homes of the Department of Business and Professional Regulation. The Ombudsman (i) prepares and issues reports and recommendations on any matter or subject within the jurisdiction of the division, and makes recommendations for appropriate legislation relative to the division’s procedures, rules, jurisdiction, personnel, and functions; (ii) acts as a liaison between the division, unit owners, boards of directors, board members, community association managers, and other affected parties, and develops policies and procedures to assist such individuals to understand their rights and responsibilities as set forth in law and the condominium documents governing their respective association; (iii) coordinates and assists in the preparation and adoption of educational and reference material, and coordinates with private or volunteer providers of these services so that their availability is made known to the largest possible audience; (iv) monitor and review procedures and disputes concerning condominium elections or meetings, including recommending the division pursue enforcement action where there is reasonable cause to believe election misconduct has occurred; (v) make recommendations to the division for changes in rules and procedures for the filing, investigation, and resolution of complaints; (vi) provide resources to assist association boards and officers to carry out their powers and duties under law, regulation, and condominium documents governing their association; (vii) encourage and facilitate voluntary meetings with and between unit owners, boards of directors, board members, managers, and other parties when such meetings may assist in resolving a dispute within an association before a person submits a dispute for a formal or administrative remedy; and (viii) appoint election monitors to attend annual meetings of unit owners and conduct the election of directors, when petitioned by a requisite number of owners in a condominium association.

The division receives and investigates complaints involving violations of laws and regulations pertaining to condominiums and cooperatives. The division does not investigate contractual

³ Condominium Ombudsman, Division of Florida Condominiums, Timeshares & Mobile Homes (<http://www.myfloridalicense.com/DBPR/condos-timeshares-mobile-homes/>), Accessed 7/29/22.

disputes, criminal matters, discrimination issues, or internal disputes (e.g. related to noise, parking, pets). The division also does not generally investigate issues involving the maintenance or alteration of common elements or common areas, and violations of governing documents. The procedures for submission of complaints permit submission of documents supporting allegations that are made. It does not accept any evidence from audio or video recordings⁴.

Illinois⁵: The State of Illinois has established an office for a Condominium and Common Interest Community Ombudsperson within the Division of Real Estate for the Department of Financial and Professional Regulation. The Ombudsperson (i) offers training, outreach, and educational materials, and may arrange for the offering of courses to unit owners, associations, boards of managers, and boards of directors in subjects relevant to the operation and management of condominiums and common interest communities; and applicable Illinois CIC laws; (ii) publish information useful to unit owners, associations and their respective boards; and (iii) respond to relevant inquiries by providing educational materials and directing citizens to relevant resources.

Under current statute, associations are required to adopt a written policy for resolving complaints made by owners. Owners may request the Ombudsperson provide assistance in resolving disputes when the dispute involves a violation of the law, provided the owner has first utilized the association complaint procedure and receive a “final and adverse” decision from the association, and meets other requirements. The Ombudsperson can “...confer with the interested parties and assist in efforts to resolve the dispute by mutual agreement of the parties...” The Ombudsperson can only assist parties that mutually agree to participate in dispute resolution. (Note: The enabling statute for the Ombudsperson is set to be repealed on January 1, 2024.)

Nevada⁶: The State of Nevada has established the office of the Ombudsman for Owners in Common-Interest Communities and Condominium Hotels within the Real Estate Division of the Department of Business and Industry. The Ombudsman (i) assists in processing claims submitted to mediation or arbitration pursuant to Nevada law; (ii) assists owners in common-interest communities to understand their rights and responsibilities as set forth in law and the governing documents of their associations, including publishing materials related to those rights and responsibilities; (iii) investigate disputes involving applicable law, or the governing documents of an association, and assist in resolving such disputes; (iv) assist persons appointed or elected to serve on executive boards of associations to carry out their duties; and (v) compile and maintain a registration of each association organized within the state.

⁴ Email from Spencer E. Hennings, Esq., Florida Condominium Ombudsman, received August 30, 2022.

⁵ Illinois Condominium & Common Interest Community Ombudsperson, (<https://idfpr.illinois.gov/CCICO/>), Accessed on 7/29/22; Illinois Condominium and Common Interest Community Ombudsperson Act (Illinois Compiled Statutes, Ch. 765, Act 615, Sections 1 through 999), effective May 27, 2022.

⁶ About the Ombudsman's Office, (<https://red.nv.gov/Content/CIC/Ombudsman/About/>), Accessed on 8/1/22; Common-Interest Ownership (Uniform Act) (Nevada Revised Statutes – Chapter 116).

Under Nevada statute, a person aggrieved by a violation of applicable common interest community law or governing documents must first attempt to resolve the dispute within the association by, first, using any dispute process in the community's governing documents; and, second, by providing notification of the complaint to the executive board so that the complaint may be addressed by the executive board. If the complaint is not resolved, the individual may file complaint with the division (called an Intervention Affidavit). Complaints that involve disputes regarding governing documents must go through a mandatory ADR process. Complaints that involve violations of law or regulation may be investigated by the division. The Ombudsman may also convene an informal conference to help resolve the dispute. The procedure for filing a complaint allows for the submission of audio or video recordings⁷. Those who submit such recordings must indicate the time stamp which identifies the alleged violation, and where the division may begin review.

⁷ Intervention Affidavit (Form 530), Revised 9/1/2021, State of Nevada, Department of Business and Industry, Real Estate Division (<https://red.nv.gov/uploadedFiles/rednvgov/Content/Forms/530.pdf>)

Appendix G

August 9, 2022, Committee Meeting

Minutes

DRAFT AGENDA
Materials contained in this agenda are proposed topics for discussion
and are not to be construed as resolution or official Board position.
DRAFT AGENDA

SB 693 COMMITTEE
OF THE
COMMON INTEREST COMMUNITY BOARD

MINUTES OF MEETING

The SB 693 Committee of the Common Interest Community Board (Board) met on August 9, 2022 at the Department of Professional and Occupational Regulation (DPOR), 9960 Mayland Drive, 2nd Floor, Board Room 3, Richmond, Virginia 23233.

The following members were present:

Lori Overholt, Chair
Matt Durham
Heather Gillespie (Ex-officio, Non-voting)
Drew Mulhare (Ex-officio)
Paul Orlando
Sue Tarley
Jerry Wright

DPOR staff present for all or part of the meeting included:

Demetrios J. Melis, Director
Trisha L. Lindsey, Executive Director
Joseph C. Haughwout, Jr., Board and Regulatory Administrator
Raven Custer, Administrative Coordinator

Ms. Overholt, Chair, called the meeting to order at 10:32 a.m.

Call to Order

Mr. Haughwout advised the Committee of the emergency evacuation procedures.

**Emergency
Evacuation
Procedures**

Mr. Durham moved to approve the agenda as presented. Mr. Orlando seconded the motion which was unanimously approved by: Durham, Mulhare, Orlando, Overholt, Tarley, and Wright. Ms. Gillespie did not vote as she is a non-voting member of the committee.

Approval of Agenda

There were no members of the public present who wished to address the Committee. Mr. Haughwout informed the Committee that a public hearing had been held before the Committee meeting and no members of the public were present to comment.

**Public Comment
Period**

Mr. Haughwout provided the Committee with an overview of the purpose of the Committee and legislative study guidelines.

Overview

Mr. Haughwout introduced the Committee Members and Board Staff.

**Introduction of
Members and Staff**

Mr. Haughwout provided an overview of the resources available to the Committee Members.

**Resources and
Information**

The Committee was provided with (i) applicable common interest community laws and regulations, including those related to the association complaint process; (ii) Senate Bill 693; (iii) background on creation of CIC Ombudsman Office; (iv) information on CIC complaint procedure, including a sample NFAD; (v) information on DPOR system capacity to receive audio and video recordings; (vi) Freedom of Information Act (FOIA) requirements for public records; and (vii) information about other states that have an community association ombudsman or similar office.

Ms. Gillespie provided a presentation on the association complaint process, including requirements for filing of a Notice of Final Adverse Decision (NFAD).

Discussion

The Committee discussed the Department's technical capacity to receive and review audio and visual recordings as part of an NFAD, and related requirements for submission of recordings. The Committee also discussed whether recordings would assist the Ombudsman in performing review of an NFAD and making a determination, and related issues.

The Committee Recessed from 12:27 p.m. to 12:38 p.m.

Recess

The Committee discussed public records requirements under FOIA and the Department's practices related to the release of information. The Committee also discussed privacy issues related to common interest communities, and how allowing for audio and video recordings may affect associations.

**Discussion
Continued**

Discussion was held on the next steps for the Committee.

Other Business

The Committee agreed by consensus to move forward and authorize staff to prepare a report of findings.

The Committee agreed to plan for the next meeting to be held in September 2022.

**Future Meeting
Date**

There being no further business, the meeting adjourned at 1:07 p.m.

Adjourn

Drew Mulhare, Chair

Demetrios J. Melis, Secretary

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Appendix J

Public Comments

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Agency

Department of Professional and Occupational Regulation

Board

Common Interest Community Board

[Back to List of Comments](#)

Commenter: Vic N

7/28/22 5:42 pm

No.

Not asking much to show up in person.

CommentID: 124129

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 and are not to be construed as regulation or official Board positions
 DRAFT AGENDA



DPOR Common Interest Community Board, rr <cic@dpor.virginia.gov>

Public Comment SB 693

jeffery porter <jeffery.porter3@verizon.net>
Reply-To: jeffery porter <jeffery.porter3@verizon.net>
To: "CIC@dpor.virginia.gov" <CIC@dpor.virginia.gov>

Mon, Aug 8, 2022 at 4:09 PM

Attached is comment for the subcommittee hearing on August 9.

Thank you for your time and assistance.

Best wishes,

Jeff Porter

 **subcommittee comment SB 693.docx**
19K

4435 Airlie Way
Annandale, VA 22003
August 8, 2022

Common Interest Community Board
Subcommittee on SB 693

PUBLIC COMMENT FOR AUGUST 9, 2022 Hearing

Thank you for the opportunity to comment on the subcommittee's consideration of § 54.1-23544 allowing submission of audio and video recordings to assist the Ombudsman in reviewing notice of final adverse hearings submitted by Homeowner Association (HOA) and Condominium Association members. After reviewing the legislation and the information packet for the subcommittee's consideration, I am offering the following comments. My comments reflect my experience as both Board Recorder and Board Secretary for a HOA. Additionally, my experience as a System of Records Administrator for the Freedom of Information Act and Privacy Act at the federal level influence my comments. The staff support in this effort is highly commendable and the exhibits made available for public review are invaluable.

COMMENTS

A. Burden upon board and association members and compliance with § 55.1-1816. Meetings of the board of directors.

Comment 1. Amending the applicable statute and related rule process should require clear and early written notice to all parties that either the board or the Association member(s) can request electronic recordings. The **requestor shall bear the costs** of placing the equipment, operating the equipment, maintaining the electronic records, and control of the recordings. This notice should include a statement that if a denial is referred to the Ombudsman, the electronic record becomes subject to Freedom of Information and Privacy Act provisions of the Virginia Code. This may seem redundant to existing statute language in the hearing process, but the point needs to be clear to those not familiar with the process.

Comment 2. Often complaint hearings are held outside regularly scheduled board meetings to meet statutory timeline requirements of the complaint process. Property management firms, per their contractual agreement, generally require expensive fees per hour outside of regular board meetings. The administrative and financial cost to Associations and their members should be a consideration during the legislative and rule making process. In short, the requesting party should cover all costs associated with the hearing outside of a regular board meeting. This would include property manager fees outside of normal board meetings and activities.

Comment 3. Potentially, the time length for conducting hearings and subsequent time and effort expended by the participants will make the hearing process more complex. This places a burden upon the volunteer board secretary who generally has responsibility for all board meeting minutes and knowledge of Association records. This is well documented in the numerous Oronoco Condominium exhibits in the subcommittee's August 9 hearing packet. It would be difficult to hold participants to the same standard of conduct and comment that we experience in professional settings such as hearings in conflict resolution, arbitration, and judicial proceedings. Speakers will refer to documents etc., and not identify them for the audio record. Speakers will often than not be recognized by name. The audio record might not be a value added or provide clarity to the hearing process.

B. Misstatements and Civility of Comments.

Comment 1. No doubt, the decision makers involved in this comment and review process are all too familiar with the emotions associated with common property interest management. Illustrative of this point are the comments in the

Oronoco exhibit that “it is clear that such privileges have been neutralized and given up the board of directors” and that “all financial records open to condominium owners.” Staff comments on the potential liability for the Commonwealth are well taken. While the “First Amendment” likely prevails here, the rules implementing electronic recordings should not place a board or Associate member at any greater risk of harassment, abuse based on the recording, etc. There should be encouragement in the rule for civility if that is at all possible.

Comment 2. The threat of litigation. The General Assembly revised applicable provisions of the HOA and Condominium statutes to state that a **specific threat** of litigation is sufficient for the board to terminate a meeting. As Board Secretary, and during Open Forums, when a threat was made, I asked the board to suspend discussion on the specific topic that prompted the threat and explained to the member why we were suspending the topic. The meeting continued and generally calm and reasoned discussion prevailed. In establishing legislation permitting electronic recordings, an opening statement would be helpful that either party feeling or understanding a comment that threatens litigation, they have the option to terminate the recording process. It should not require a board vote because this is a subjective opinion by the individual. Nor should the member be denied their right to stop recordings.

Comment 3. In reviewing the Freedom of Information Act process and the related privacy interests of board and Association members, I note the request for technology staff and that video and audio recordings will be sanitized prior to their release. I understand the process all too well. What is not clear, how will hearing participants be informed that the original record is sanitized? Will there be a statement that the release record is sanitized to protect the privacy of individuals? Will Board members and other participants recorded comments be entitled to full disclosure of the electronic recording? How would board secretaries and property managers respond to request for these records? Currently, there is a very liberal interpretation of records members can access. I surface these questions as lead into paragraph 3 below and the potential for this process to be used in continuing one on one issues between neighbors. It does appear that two electronic records could be generated. First, the actual hearing and then the review at the Ombudsman level with potential release of the records.

C. What might be needed

An education brochure or similar approved government publication should be prepared educating all participants in the electronic process on the who, what, when, and where electronic recordings will be permitted. In summary, the legislation and rulemaking should consider the following:

- (1) Responsibility of the board or the Association member to procure electronic recording devices
- (2) Assignment of the financial costs of electronic recordings
- (3) Maintenance and release of electronic recordings

Again, thank you for the opportunity to comment. I continue to monitor the process of the feasibility study. My comments do not reflect the position of a HOA with which I am affiliated or HOA organizations and associations where I maintain membership.

Electronic signature

Jeff Porter

Appendix K

August 9, 2022, Public Hearing

Transcript

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DRAFT AGENDA

1 COMMONWEALTH OF VIRGINIA
2 DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION
3

4 COMMON INTEREST COMMUNITY BOARD
5

6 IN RE: PUBLIC HEARING ON SB 693
7

8
9 AUGUST 9, 2022

10 SECOND FLOOR CONFERENCE CENTER

11 9960 MAYLAND DRIVE

12 HENRICO, VIRGINIA 23233

13 9:00 A.M.
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1 APPEARANCES :

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3 STAFF :

4 Joseph C. Haughwout, Jr., Board and Regulatory
5 Administrator.

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DRAFT AGENDA
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DRAFT AGENDA

1 NOTE: The public hearing commences
2 at 9:00 a.m., as follows:

3 MR. HAUGHWOUT: Good morning, ladies
4 and gentlemen. I am Joe Haughwout, and I am the Board
5 Administrator for the Common Interest Community Board.

6 This is a public hearing held at the
7 Department of Professional and Occupational Regulation,
8 9960 Mayland Drive, Richmond, Virginia.

9 This hearing is being held to
10 receive public comment for a review being conducted by
11 the Common Interest Community Board pursuant to Senate
12 Bill 693 to review the feasibility of allowing audio and
13 video recordings to be submitted with a notice of final
14 adverse decision as a record pertinent to the decision
15 in accordance with Section 54.1-2354.4 of the Code of
16 Virginia.

17 A committee selected by the Common
18 Interest Community Board will have an opportunity to
19 review and consider all public comments received,
20 including the transcript of this public hearing along
21 with all other information relevant to the subject
22 matter to consider a recommendation for the Board.

23 The committee's recommendation in
24 the form of a draft report prepared by staff will be
25 presented to the Board. The staff of the Department of

1 Professional and Occupational Regulation will then
2 submit a final written report to the Secretary of Labor,
3 and the Chairmen of the House Committee on General Law,
4 and the Senate Committee on General Laws and Technology.

5 The list of interested parties and
6 organizations which were notified of this process and
7 invited to comment is available upon request. The
8 opportunity for public comment was distributed to
9 registered individuals via the Virginia Regulatory Town
10 Hall.

11 Now I would like to present the
12 rules for this public hearing.

13 Comments will be received from any
14 member of the public and comments will be limited to a
15 maximum of 5 minutes depending on the number of
16 individual who wish to speak.

17 If you have not signed up to speak
18 and you wish to give testimony today, please sign your
19 name on the sign up seat at this time. Please note that
20 the public hearing is being transcribed by a court
21 reporter in order to provide an accurate and complete
22 account of the comments received today.

23 Staff members may ask speakers
24 questions or to clarify statements. However, this is
25 not the proper forum for questions to the Board. If you

1 have a question for the Board, please forward them in
2 writing to the Board.

3 Any speaker who wishes to provide a
4 written statement in addition to his oral testimony or
5 in lieu of oral testimony, may do so until 11:59 p.m.,
6 today, August 9, 2022. And we'll go off the record.

7 NOTE: A brief recess is now
8 taken.

9 MR. HAUGHWOUT: The record of the
10 public hearing will be kept open until 11:59 p.m. today,
11 August 9, 2022, and written comments will be accepted up
12 until that time. This hearing is now closed.

13 NOTE: The public hearing
14 concluded at 9:50 a.m.

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CERTIFICATE OF COURT REPORTER

I, Claudia M. Whisenand, hereby certify that I was the Court Reporter at the Public Hearing on SB 693, heard in the County of Henrico, Virginia, on August 9, 2022, at the time of the hearing herein.

I further certify that the foregoing transcript is, to the best of my ability, a true and accurate record of the testimony and incidents of the hearing herein.

Given under my hand this 9th day of August, 2022.



Claudia M. Whisenand
Notary Registration No. 291277

My Commission expires:
October 31, 2025

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Code of Virginia

Title 54.1. Professions and Occupations

Subtitle II. Professions and Occupations Regulated by the Department of Professional and Occupational Regulation and Boards within the Department

Chapter 23.3. Common Interest Communities

Article 2. Common Interest Community Management Information Fund; Common Interest Community Ombudsman; Common Interest Community Management Recovery Fund

§ 54.1-2354.1. Definitions

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

"Balance of the fund" means cash, securities that are legal investments for fiduciaries under the provisions of subdivisions A 1, 2, and 4 of § [2.2-4519](#), and repurchase agreements secured by obligations of the United States government or any agency thereof, and shall not mean accounts receivable, judgments, notes, accrued interest, or other obligations to the fund.

"Claimant" means, upon proper application to the Director, a receiver for a common interest community manager appointed pursuant to § [54.1-2353](#) in those cases in which there are not sufficient funds to restore all funds that were or ought to have been held in a fiduciary capacity by the subject common interest community manager or to pay an award of reasonable fees, costs, and expenses to the receiver.

"Director" means the Director of the Department of Professional and Occupational Regulation.

1993, c. 958; 2008, cc. [851](#), [871](#), § 55-528; 2019, c. [712](#).

§ 54.1-2354.2. Common Interest Community Management Information Fund

A. There is hereby created the Common Interest Community Management Information Fund, referred to in this section as "the Fund," to be used in the discretion of the Board to promote the improvement and more efficient operation of common interest communities through research and education. The Fund shall be established on the books of the Comptroller. The Fund shall consist of money paid into it pursuant to §§ [54.1-2349](#), [55.1-1835](#), [55.1-1980](#), and [55.1-2182](#), and such money shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but, at the discretion of the Board, shall remain in the Fund or shall be transferred to the Common Interest Community Management Recovery Fund established pursuant to § [54.1-2354.5](#).

B. Expenses for the operations of the Office of the Common Interest Community Ombudsman, including the compensation paid to the Common Interest Community Ombudsman, shall be paid first from interest earned on deposits constituting the Fund and the balance from the moneys collected annually in the Fund. The Board may use the remainder of the interest earned on the balance of the Fund and of the moneys collected annually and deposited in the Fund for financing or promoting the following:

1. Information and research in the field of common interest community management and operation;
2. Expedient and inexpensive procedures for resolving complaints about an association from members of the association or other citizens;
3. Seminars and educational programs designed to address topics of concern to community associations; and
4. Other programs deemed necessary and proper to accomplish the purpose of this article.

C. Following the close of any biennium, when the Common Interest Community Management Information Fund shows expenses allocated to it for the past biennium to be more than 10 percent greater or less than moneys collected on behalf of the Board, the Board shall revise the fees levied by it for placement into the Fund so that the fees are sufficient but not excessive to cover expenses. A fee established pursuant to § [55.1-1835](#), [55.1-1980](#), or [55.1-2182](#) shall not exceed \$25 unless such fee is based on the number of units or lots in the association.

1993, c. 958, § 55-529; 2008, cc. [851](#), [871](#); 2019, cc. [391](#), [712](#).

§ 54.1-2354.3. Common Interest Community Ombudsman; appointment; powers and duties

A. The Director in accordance with § [54.1-303](#) shall appoint a Common Interest Community Ombudsman (the Ombudsman) and shall establish the Office of the Common Interest Community Ombudsman (the Office). The Ombudsman shall be a member in good standing in the Virginia State Bar. All state agencies shall assist and cooperate with the Office in the performance of its duties under this article.

B. The Office shall:

1. Assist members in understanding rights and the processes available to them according to the laws and regulations governing common interest communities and respond to general inquiries;
2. Make available, either separately or through an existing website, information concerning common interest communities and such additional information as may be deemed appropriate;
3. Receive notices of final adverse decisions;
4. Upon request, assist members in understanding the rights and processes available under the laws and regulations governing common interest communities and provide referrals to public and private agencies offering alternative dispute resolution services, with a goal of reducing and resolving conflicts among associations and their members;
5. Ensure that members have access to the services provided through the Office and that the members receive timely responses from the representatives of the Office to the inquiries;
6. Maintain data on inquiries received, types of assistance requested, notices of final adverse decisions received, actions taken, and the disposition of each such matter;
7. Upon request to the Director by (i) any of the standing committees of the General Assembly having jurisdiction over common interest communities or (ii) the Housing Commission, provide to the Director for dissemination to the requesting parties assessments of proposed and existing common interest community laws and other studies of common interest community issues;
8. Monitor changes in federal and state laws relating to common interest communities;
9. Provide information to the Director that will permit the Director to report annually on the activities of the Office of the Common Interest Community Ombudsman to the standing committees of the General Assembly having jurisdiction over common interest communities and to the Housing Commission. The Director's report shall be filed by December 1 of each year and shall include a summary of significant new developments in federal and state laws relating to common interest communities each year; and
10. Carry out activities as the Board determines to be appropriate.

1993, c. 958, § 55-530; 1997, c. [222](#); 1998, c. [463](#); 2001, c. [816](#); 2008, cc. [851](#), [871](#); 2010, cc. [59](#), [208](#); 2012, cc. [481](#), [797](#); 2019, c. [712](#).

§ 54.1-2354.4. Association complaint procedures; final adverse decisions

A. The Board shall establish by regulation a requirement that each association shall establish reasonable procedures for the resolution of written complaints from the members of the association and other citizens. Each association shall

adhere to the written procedures established pursuant to this subsection when resolving association member and citizen complaints. The procedures shall include the following:

1. A record of each complaint shall be maintained for no less than one year after the association acts upon the complaint.
2. Such association shall provide complaint forms or written procedures to be given to persons who wish to register written complaints. The forms or procedures shall include the address and telephone number of the association or its common interest community manager to which complaints shall be directed and the mailing address, telephone number, and electronic mailing address of the Office. The forms and written procedures shall include a clear and understandable description of the complainant's right to give notice of adverse decisions pursuant to this section.

B. A complainant may give notice to the Board of any final adverse decision in accordance with regulations promulgated by the Board. The notice shall be filed within 30 days of the final adverse decision, shall be in writing on forms prescribed by the Board, shall include copies of all records pertinent to the decision, and shall be accompanied by a \$25 filing fee. The fee shall be collected by the Director and paid directly into the state treasury and credited to the Common Interest Community Management Information Fund pursuant to § [54.1-2354.2](#). The Board may, for good cause shown, waive or refund the filing fee upon a finding that payment of the filing fee will cause undue financial hardship for the member. The Director shall provide a copy of the written notice to the association that made the final adverse decision.

C. The Director or his designee may request additional information concerning any notice of final adverse decision from the association that made the final adverse decision. The association shall provide such information to the Director within a reasonable time upon request. If the Director upon review determines that the final adverse decision may be in conflict with laws or regulations governing common interest communities or interpretations thereof by the Board, the Director may, in his sole discretion, provide the complainant and the association with information concerning such laws or regulations governing common interest communities or interpretations thereof by the Board. The determination of whether the final adverse decision may be in conflict with laws or regulations governing common interest communities or interpretations thereof by the Board shall be a matter within the sole discretion of the Director, whose decision is final and not subject to further review. The determination of the Director shall not be binding upon the complainant or the association that made the final adverse decision.

1993, c. 958, § 55-530; 1997, c. [222](#); 1998, c. [463](#); 2001, c. [816](#); 2008, cc. [851](#), [871](#); 2010, cc. [59](#), [208](#); 2012, cc. [481](#), [797](#); 2019, c. [712](#).

§ 54.1-2354.5. Common Interest Community Management Recovery Fund

A. There is hereby created the Common Interest Community Management Recovery Fund, referred to in this section as "the Fund," to be used in the discretion of the Board to protect the interests of associations.

B. Each common interest community manager, at the time of initial application for licensure, and each association filing its first annual report after the effective date shall be assessed \$25, which shall be specifically assigned to the Fund. Initial payments may be incorporated in any application fee payment or annual filing fee and transferred to the Fund by the Director within 30 days.

All assessments, except initial assessments, for the Fund shall be deposited within three business days after their receipt by the Director, in one or more federally insured banks, savings and loan associations, or savings banks located in the Commonwealth. Funds deposited in banks, savings institutions, or savings banks in excess of insurance afforded by the Federal Deposit Insurance Corporation or other federal insurance agency shall be secured under the Virginia Security for Public Deposits Act (§ [2.2-4400](#) et seq.). The deposit of these funds in federally insured banks, savings and loan associations, or savings banks located in the Commonwealth shall not be considered investment of such funds for purposes of this section. Funds maintained by the Director may be invested in securities that are legal investments for fiduciaries under the provisions of § [64.2-1502](#).

Interest earned on the deposits constituting the Fund shall be used for administering the Fund. The remainder of this interest, at the discretion of the Board, may be transferred to the Common Interest Community Management Information Fund, established pursuant to § [54.1-2354.2](#), or accrue to the Fund.

C. On and after July 1, 2011, the minimum balance of the Fund shall be \$150,000. Whenever the Director determines that the principal balance of the Fund is or will be less than such minimum principal balance, the Director shall immediately inform the Board. At the same time, the Director may recommend that the Board transfer a fixed amount from the Common Interest Community Management Information Fund to the Fund to bring the principal balance of the Fund to the amount required by this subsection. Such transfer shall be considered by the Board within 30 days of the notification of the Director.

D. If any such transfer of funds is insufficient to bring the principal balance of the Fund to the minimum amount required by this section, or if a transfer to the Fund has not occurred, the Board shall assess each association and each common interest community manager, within 30 days of notification by the Director, a sum sufficient to bring the principal balance of the Fund to the required minimum amount. The amount of such assessment shall be allocated among the associations and common interest community managers in proportion to each payor's most recently paid annual assessment, or if an association or common interest community manager has not paid an annual assessment previously, in proportion to the average annual assessment most recently paid by associations or common interest community managers, respectively. The Board may order an assessment at any time in addition to any required assessment. Assessments made pursuant to this subsection may be issued by the Board (i) after a determination made by it or (ii) at the time of license renewal.

Notice to common interest community managers and the governing boards of associations of these assessments shall be by first-class mail, and payment of such assessments shall be made by first-class mail addressed to the Director within 45 days after the mailing of such notice.

E. If any common interest community manager fails to remit the required payment within 45 days of the mailing, the Director shall notify the common interest community manager by first-class mail at the latest address of record filed with the Board. If no payment has been received by the Director within 30 days after mailing the second notice, the license shall be automatically suspended. The license shall be restored only upon the actual receipt by the Director of the delinquent assessment.

F. If any association fails to remit the required payment within 45 days of the mailing, the Director shall notify the association by first-class mail at the latest address of record filed with the Board. If no payment has been received by the Director within 30 days after mailing the second notice, it shall be deemed a knowing and willful violation of this section by the governing board of the association.

G. At the close of each fiscal year, whenever the balance of the Fund exceeds \$5 million, the amount in excess of \$5 million shall be transferred to the Virginia Housing Trust Fund established pursuant to Chapter 9 (§ [36-141](#) et seq.) of Title 36. Except for payments of costs as set forth in this article and transfers pursuant to this subsection, there shall be no transfers out of the Fund, including transfers to the general fund, regardless of the balance of the Fund.

H. A claimant may seek recovery from the Fund subject to the following conditions:

1. A claimant may file a verified claim in writing to the Director for a recovery from the Fund.

2. Upon proper application to the Director, in those cases in which there are not sufficient funds to pay an award of reasonable fees, costs, and expenses to the receiver or to restore all funds that were or ought to have been held in a fiduciary capacity by the subject common interest community manager, the Director shall report to the Board the amount of any shortfall to the extent that there are not sufficient funds (i) to pay any award of fees, costs, and expenses pursuant to subsection G of § [54.1-2353](#) by the court appointing the receiver; or (ii) to restore all funds that were or ought to have been held in a fiduciary capacity by the subject common interest community manager, as certified by the court appointing the receiver.

3. If the Board finds there has been compliance with the required conditions, the Board shall issue a directive ordering payment of the amount of such shortfall to the claimant from the Fund, provided that in no event shall such payment exceed the balance in the Fund. When the Fund balance is not sufficient to pay the aggregate amount of such shortfall, the Board shall direct that payment be applied first in satisfaction of any award of reasonable fees, costs, and expenses to the receiver and second to restore the funds that were or ought to have been held in a fiduciary capacity by the subject common interest community manager. If the Board has reason to believe that there may be additional claims against the Fund, the Board may withhold any payment from the Fund for a period of not more than one year. After such one-year

period, if the aggregate of claims received exceeds the Fund balance, the Fund balance shall be prorated by the Board among the claimants and paid in the above payment order from the Fund in proportion to the amounts of claims remaining unpaid.

4. The Director shall, subject to the limitations set forth in this subsection, pay to the claimant from the Fund such amount as shall be directed by the Board upon the execution and delivery to the Director by such claimant of an assignment to the Board of the claimant's rights on its behalf and on behalf of the associations receiving distributions from the Fund against the common interest community manager to the extent that such rights were satisfied from the Fund.

5. The claimant shall be notified in writing of the findings of the Board. The Board's findings shall be considered a case decision as defined in § [2.2-4001](#), and judicial review of these findings shall be in accordance with § [2.2-4025](#) of the Administrative Process Act (§ [2.2-4000](#) et seq.).

6. Notwithstanding any other provision of law, the Board shall have the right to appeal a decision of any court that is contrary to any distribution recommended or authorized by it.

7. Upon payment by the Director to a claimant from the Fund as provided in this subsection, the Board shall immediately revoke the license of the common interest community manager whose actions resulted in payment from the Fund. The common interest community manager whose license was so revoked shall not be eligible to apply for a license as a common interest community manager until he has repaid in full the amount paid from the Fund on his account, plus interest at the judgment rate of interest from the date of payment from the Fund.

8. Nothing contained in this subsection shall limit the authority of the Board to take disciplinary action against any common interest community manager for any violation of statute or regulation, nor shall the repayment in full by a common interest community manager of the amount paid from the Fund on such common interest community manager's account nullify or modify the effect of any disciplinary proceeding against such common interest community manager for any such violation.

2008, cc. [851](#), [871](#), § 55-530.1; 2009, c. [557](#); 2013, c. [754](#); 2019, c. [712](#).

The chapters of the acts of assembly referenced in the historical citation at the end of this section(s) may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

Virginia Administrative Code
Title 18. Professional And Occupational Licensing
Agency 48. Common Interest Community Board
Chapter 70. Common Interest Community Ombudsman Regulations

Part I. General

18VAC48-70-10. Definitions.

Section 54.1-2345 of the Code of Virginia provides definitions of the following terms and phrases as used in this chapter:

Association

Board

Common interest community

Declaration

Governing board

Lot

Section 55.1-1900 of the Code of Virginia provides definition of the following term as used in this chapter:

Condominium instruments

The following words, terms, and phrases, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

"Adverse decision" or "final adverse decision" means the final determination issued by an association pursuant to an association complaint procedure that is opposite of, or does not provide for, either wholly or in part, the cure or corrective action sought by the complainant. Such decision means all avenues for internal appeal under the association complaint procedure have been exhausted. The date of the final adverse decision shall be the date of the notice issued pursuant to subdivisions 8 and 9 of 18VAC48-70-50.

"Association complaint" means a written complaint filed by a member of the association or a citizen pursuant to an association complaint procedure. An association complaint shall concern a matter regarding the action, inaction, or decision by the governing board, managing agent, or association inconsistent with applicable laws and regulations.

"Association complaint procedure" means the written process adopted by an association to receive and consider association complaints from members and citizens. The complaint procedure shall include contact information for the Office of the Common Interest Community Ombudsman in accordance with § 54.1-2354.4 of the Code of Virginia. An appeal process, if applicable, shall be set out in an association complaint procedure adopted by the association, including relevant timeframes for filing the request for appeal. If no appeal process is available, the association complaint procedure shall indicate that no appeal process is available and that the rendered decision is final.

"Association governing documents" means collectively the applicable organizational documents, including the current and effective (i) articles of incorporation, declaration, and bylaws of a property owners' association, (ii) condominium instruments of a condominium, and (iii) declaration and bylaws of a real estate cooperative, all as may be amended from time to time. Association governing documents also include, to the extent in existence, resolutions, rules and regulations, or other guidelines governing association member conduct and association governance.

"Complainant" means an association member or citizen who makes a written complaint pursuant to an association complaint procedure.

"Director" means the Director of the Department of Professional and Occupational Regulation.

"Record of complaint" means all documents, correspondence, and other materials related to a decision made pursuant to an association complaint procedure.

Statutory Authority

§§ 54.1-2349 and 54.1-2354.4 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 28, Issue 19, eff. July 1, 2012; amended, Virginia Register Volume 36, Issue 6, eff. December 11, 2019.

18VAC48-70-20. Submission of documentation.

Any documentation required to be filed with or provided to the board, director, or Office of the Common Interest Community Ombudsman pursuant to this chapter and Article 2 (§ 54.1-2354.1 et seq.) of Chapter 23.3 of Title 54.1 of the Code of Virginia shall be filed with or provided to the Department of Professional and Occupational Regulation.

Statutory Authority

§§ 54.1-2349 and 54.1-2354.4 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 28, Issue 19, eff. July 1, 2012; amended, Virginia Register Volume 36, Issue 6, eff. December 11, 2019.

Part II. Association Complaint Procedure

18VAC48-70-30. Requirement for association to develop an association complaint procedure.

In accordance with § 54.1-2354.4 of the Code of Virginia, each association shall have a written process for resolving association complaints from members and citizens. The association complaint procedure or form shall conform with the requirements set forth in § 54.1-2354.4 of the Code of Virginia and this chapter, as well as the association governing documents, which shall not be in conflict with § 54.1-2354.4 of the Code of Virginia or this chapter.

Statutory Authority

§§ 54.1-2349 and 54.1-2354.4 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 28, Issue 19, eff. July 1, 2012; amended, Virginia Register Volume 36, Issue 6, eff. December 11, 2019.

18VAC48-70-40. Establishment and adoption of written association complaint procedure.

A. Associations filing an initial application for registration pursuant to § 55.1-1835, 55.1-1980, or 55.1-2182 of the Code of Virginia must certify that an association complaint procedure has been established and adopted at the date of registering or within 90 days of registering with the board.

B. An association that has been delinquent in registering the association and filing its required annual reports is still required to have an established and adopted written association complaint procedure. At the time such an association files an application for registration, it must certify that an association complaint procedure has been established and adopted by the governing board.

C. The association shall certify with each annual report filing that the association complaint procedure has been adopted and is in effect.

Statutory Authority

§§ 54.1-2349 and 54.1-2354.4 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 28, Issue 19, eff. July 1, 2012; amended, Virginia Register Volume 33, Issue 15, eff. May 1, 2017; Volume 36, Issue 6, eff. December 11, 2019.

18VAC48-70-50. Association complaint procedure requirements.

The association complaint procedure shall be in writing and shall include the following provisions in addition to any specific requirements contained in the association's governing documents that do not conflict with § 54.1-2354.4 of the Code of Virginia or the requirements of this chapter.

1. The association complaint must be in writing.
2. A sample of the form, if any, on which the association complaint must be filed shall be provided upon request.
3. The association complaint procedure shall include the process by which complaints shall be delivered to the association.
4. The association shall provide written acknowledgment of receipt of the association complaint to the complainant within seven days of receipt. Such acknowledgment shall be hand delivered or mailed by registered or certified mail, return receipt requested, to the complainant at the address provided, or if consistent with established association procedure, by electronic means provided the sender retains sufficient proof of the electronic delivery.
5. Any specific documentation that must be provided with the association complaint shall be clearly described in the association complaint procedure. In addition, to the extent the complainant has knowledge of the law or regulation applicable to the complaint, the complainant shall provide that reference, as well as the requested action or resolution.
6. The association shall have a reasonable, efficient, and timely method for identifying and requesting additional information that is necessary for the complainant to provide in order to continue processing the association complaint. The association shall establish a reasonable timeframe for responding to and for the disposition of the association complaint if the request for information is not received within the required timeframe.
7. Notice of the date, time, and location that the matter will be considered shall be hand delivered or mailed by registered or certified mail, return receipt requested, to the complainant at the address provided or, if consistent with established association procedure, delivered by electronic means, provided the sender retains sufficient proof of the electronic delivery, within a reasonable time prior to consideration as established by the association complaint procedure.
8. After the final determination is made, the written notice of final determination shall be hand delivered or mailed by registered or certified mail, return receipt requested, to the complainant at the address provided or, if consistent with established association procedure, delivered by electronic means, provided the sender retains sufficient proof of the electronic delivery, within seven days.
9. The notice of final determination shall be dated as of the date of issuance and include specific citations to applicable association governing documents, laws, or regulations that led to the final determination, as well as the registration number of the association. If applicable, the name and license number of the common interest community manager shall also be provided.
10. The notice of final determination shall include the complainant's right to file a Notice of Final Adverse Decision with the Common Interest Community Board via the Common Interest Community Ombudsman and the applicable contact information.

Statutory Authority

§§ 54.1-2349 and 54.1-2354.4 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 28, Issue 19, eff. July 1, 2012; amended, Virginia Register Volume 36, Issue 6, eff. December 11, 2019.

18VAC48-70-60. Distribution of association complaint procedure.

A. The association complaint procedure must be readily available upon request to all members of the association and citizens.

B. The association complaint procedure shall be included as an attachment to the resale certificate or the association disclosure packet.

Statutory Authority

§§ 54.1-2349 and 54.1-2354.4 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 28, Issue 19, eff. July 1, 2012.

18VAC48-70-70. Maintenance of association record of complaint.

A. A record of each association complaint filed with the association shall be maintained in accordance with § 54.1-2354.4 A 1 of the Code of Virginia.

B. Unless otherwise specified by the director or his designee, the association shall provide to the director or his designee, within 14 days of receipt of the request, any document, book, or record concerning the association complaint. The director or his designee may extend such timeframe upon a showing of extenuating circumstances prohibiting delivery within 14 days of receiving the request.

Statutory Authority

§§ 54.1-2349 and 54.1-2354.4 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 28, Issue 19, eff. July 1, 2012; amended, Virginia Register Volume 36, Issue 6, eff. December 11, 2019.

18VAC48-70-80. Failure of association to establish and utilize association complaint procedure.

Failure of an association to establish and utilize an association complaint procedure in accordance with this chapter may result in the board seeking any of the remedies available pursuant to Chapter 23.3 (§ 54.1-2345 et seq.) of Title 54.1 of the Code of Virginia.

Statutory Authority

§§ 54.1-2349 and 54.1-2354.4 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 28, Issue 19, eff. July 1, 2012.

Part III. Final Adverse Decision

18VAC48-70-90. Filing of notice of final adverse decision.

A complainant may file a notice of final adverse decision in accordance with § 54.1-2354.4 B of the Code of Virginia concerning any final adverse decision that has been issued by an association in accordance with this chapter.

1. The notice shall be filed within 30 days of the date of the final adverse decision.
2. The notice shall be in writing on forms provided by the Office of the Common Interest Community Ombudsman. Such forms shall request the following information:
 - a. Name and contact information of complainant;
 - b. Name, address, and contact information of association;
 - c. Applicable association governing documents; and

d. Date of final adverse decision.

3. The notice shall include a copy of the association complaint, the final adverse decision, reference to the laws and regulations the final adverse decision may have violated, any supporting documentation related to the final adverse decision, and a copy of the association complaint procedure.

4. The notice shall be accompanied by a \$25 filing fee or a request for waiver pursuant to 18VAC48-70-100.

Statutory Authority

§§ 54.1-2349 and 54.1-2354.4 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 28, Issue 19, eff. July 1, 2012; amended, Virginia Register Volume 36, Issue 6, eff. December 11, 2019.

18VAC48-70-100. Waiver of filing fee.

In accordance with § 54.1-2354.4 B of the Code of Virginia, the board may, for good cause shown, waive or refund the filing fee upon a finding that payment of the filing fee will cause undue financial hardship for the complainant.

Statutory Authority

§§ 54.1-2349 and 54.1-2354.4 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 28, Issue 19, eff. July 1, 2012; amended, Virginia Register Volume 36, Issue 6, eff. December 11, 2019.

18VAC48-70-110. Review of final adverse decision.

Upon receipt of the notice of final adverse decision from the complainant, along with the filing fee or a board-approved waiver of filing fee, the Office of the Common Interest Community Ombudsman shall provide written acknowledgment of receipt of the notice to the complainant and shall provide a copy of the written notice to the association that made the final adverse decision. The notice of adverse decision will not be reviewed until the filing fee has been received or a waiver of filing fee has been granted by the board.

In accordance with § 54.1-2354.4 C of the Code of Virginia, additional information may be requested from the association that made the final adverse decision. Upon request, the association shall provide such information to the Office of the Common Interest Community Ombudsman within a reasonable time.

Statutory Authority

§§ 54.1-2349 and 54.1-2354.4 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 28, Issue 19, eff. July 1, 2012; amended, Virginia Register Volume 36, Issue 6, eff. December 11, 2019.

18VAC48-70-120. Decision from the notice of final adverse decision.

Upon review of the notice of final adverse decision in accordance with § 54.1-2354.4 C of the Code of Virginia, if the director determines that the final adverse decision may be in conflict with laws or regulations governing common interest communities or interpretations thereof by the board, the director may, in his sole discretion, provide the complainant and the association with information concerning such laws or regulations governing common interest communities or interpretations thereof by the board.

The determination of whether the final adverse decision may be in conflict with laws or regulations governing common interest communities or interpretations thereof by the board shall be a matter within the sole discretion of the director. Such decision is final and not subject to further review. The determination of the director shall not be binding upon the complainant or the association that made the final adverse decision.

Statutory Authority

§§ 54.1-2349 and 54.1-2354.4 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 28, Issue 19, eff. July 1, 2012; amended, Virginia Register Volume 36, Issue 6, eff. December 11, 2019.

18VAC48-70-125. Referral for further action.

In addition to the provisions of this chapter, any matter involving a violation of applicable laws or regulations of the board may be referred for further action by the board in accordance with the provisions of Chapter 23.3 (§ 54.1-2345 et seq.) of Title 54.1; Chapters 18 (§ 55.1-1800 et seq.), 19 (55.1-1900 et seq.), and 21 (§ 55.1-2100 et seq.) of Title 55.1 of the Code of Virginia; and the board's regulations.

Statutory Authority

§§ 54.1-2349 and 54.1-2354.4 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 28, Issue 19, eff. July 1, 2012; amended, Virginia Register Volume 36, Issue 6, eff. December 11, 2019.

Part IV. Office of the Common Interest Community Ombudsman**18VAC48-70-130. Purpose, responsibilities, and limitations.**

The Office of the Common Interest Community Ombudsman shall carry out those activities as enumerated in § 54.1-2354.3 of the Code of Virginia.

Statutory Authority

§§ 54.1-2349 and 54.1-2354.4 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 28, Issue 19, eff. July 1, 2012; amended, Virginia Register Volume 36, Issue 6, eff. December 11, 2019.

FORMS (18VAC48-70).

[Common Interest Community Complaint Form, F491-CICCOMP-vs4 \(rev. 4/2022\)](#)

[Notice of Final Adverse Decision, F491-CICNOTE-vs3 \(eff. 4/2022\)](#)

[Waiver of Filing Fee Request Form, F491-CICFW-vs3 \(eff. 4/2022\)](#)

Statutory Authority**Historical Notes**

Website addresses provided in the Virginia Administrative Code to documents incorporated by reference are for the reader's convenience only, may not necessarily be active or current, and should not be relied upon. To ensure the information incorporated by reference is accurate, the reader is encouraged to use the source document described in the regulation.

As a service to the public, the Virginia Administrative Code is provided online by the Virginia General Assembly. We are unable to answer legal questions or respond to requests for legal advice, including application of law to specific fact. To understand and protect your legal rights, you should consult an attorney.

Code of Virginia
Title 2.2. Administration of Government
Subtitle II. Administration of State Government
Part B. Transaction of Public Business
Chapter 37. Virginia Freedom of Information Act

§ 2.2-3700. Short title; policy

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

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

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

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

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

1968, c. 479, § 2.1-340; 1976, c. 467, § 2.1-340.1; 1989, c. 358; 1990, c. 538; 1999, cc. [703](#), [726](#); 2001, c. [844](#); 2002, c. [393](#).

§ 2.2-3701. Definitions

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

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

"Electronic communication" means the use of technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities to transmit or receive information.

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

"Information" as used in the exclusions established by §§ [2.2-3705.1](#) through [2.2-3705.7](#), means the content within a public record that references a specifically identified subject matter, and shall not be interpreted to require the production of information that is not embodied in a public record.

"Meeting" or "meetings" means the meetings including work sessions, when sitting physically, or through electronic communication means pursuant to § [2.2-3708.2](#), as a body or entity, or as an informal assemblage of (i) as many as three members or (ii) a quorum, if less than three, of the constituent membership, wherever held, with or without minutes being taken, whether or not votes are cast, of any public body. Neither the gathering of employees of a public body nor the gathering or attendance of two or more members of a public body (a) 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 (b) at a public forum, candidate appearance, or debate, the purpose of which is to inform the electorate and not to transact public business or to hold discussions relating to the transaction of public business, even though the performance of the members individually or collectively in the conduct of public business may be a topic of discussion or debate at such public meeting, shall be deemed a "meeting" subject to the provisions of this chapter.

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

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

For the purposes of the provisions of this chapter applicable to access to public records, constitutional officers and private police departments as defined in § [9.1-101](#) shall be considered public bodies and, except as otherwise expressly provided by law, shall have the same obligations to disclose public records as other custodians of public records.

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

"Regional public body" means a unit of government organized as provided by law within defined boundaries, as determined by the General Assembly, which unit includes two or more localities.

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

"Trade secret" means the same as that term is defined in the Uniform Trade Secrets Act (§ [59.1-336](#) et seq.).

1968, c. 479, § 2.1-341; 1970, c. 456; 1974, c. 332; 1975, c. 307; 1977, c. 677; 1978, cc. 573, 826; 1979, cc. 369, 687; 1980, c. 754; 1984, c. 252; 1989, c. 358; 1990, c. 538; 1993, cc. 270, 720; 1994, cc. [845](#), [931](#); 1996, c. [609](#); 1997, c. [641](#); 1999, cc. [703](#), [726](#); 2001, c. [844](#); 2002, c. [393](#); 2003, c. [897](#); 2007, c. [945](#); 2008, cc. [233](#), [789](#); 2010, c. [706](#); 2011, c. [242](#); 2015, cc. [131](#), [195](#), [224](#); 2016, cc. [620](#), [716](#); 2017, cc. [616](#), [778](#); 2018, cc. [54](#), [55](#); 2019, c. [358](#).

§ 2.2-3702. Notice of chapter

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

1976, c. 467, § 2.1-341.1; 1999, cc. [703](#), [726](#); 2001, c. [844](#); 2002, c. [393](#).

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

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

1. The Virginia Parole Board, except that (i) information from the Virginia Parole Board providing the number of inmates considered by the Board for discretionary parole, the number of inmates granted or denied parole, and the number of parolees returned to the custody of the Department of Corrections solely as a result of a determination by the

Board of a violation of parole shall be open to inspection and available for release, on a monthly basis, as provided by § [2.2-3704](#); (ii) all guidance documents, as defined in § [2.2-4101](#), shall be public records and subject to the provisions of this chapter; and (iii) all records concerning the finances of the Virginia Parole Board shall be public records and subject to the provisions of this chapter. The information required by clause (i) shall be furnished by offense, sex, race, age of the inmate, and the locality in which the conviction was obtained, upon the request of the party seeking the information. The information required by clause (ii) shall include all documents establishing the policy of the Board or any change in or clarification of such policy with respect to grant, denial, deferral, revocation, or supervision of parole or geriatric release or the process for consideration thereof, and shall be clearly and conspicuously posted on the Board's website. However, such information shall not include any portion of any document reflecting the application of any policy or policy change or clarification of such policy to an individual inmate;

2. Petit juries and grand juries;

3. Family assessment and planning teams established pursuant to § [2.2-5207](#);

4. Sexual assault response teams established pursuant to § [15.2-1627.4](#), except that records relating to (i) protocols and policies of the sexual assault response team and (ii) guidelines for the community's response established by the sexual assault response team shall be public records and subject to the provisions of this chapter;

5. Multidisciplinary child sexual abuse response teams established pursuant to § [15.2-1627.5](#);

6. The Virginia State Crime Commission; and

7. The records maintained by the clerks of the courts of record, as defined in § [1-212](#), for which clerks are custodians under § [17.1-242](#), and courts not of record, as defined in § [16.1-69.5](#), for which clerks are custodians under § [16.1-69.54](#), including those transferred for storage, maintenance, or archiving. Such records shall be requested in accordance with the provisions of §§ [16.1-69.54:1](#) and [17.1-208](#), as appropriate. However, other records maintained by the clerks of such courts shall be public records and subject to the provisions of this chapter.

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

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

1999, cc. [703](#), [726](#), § 2.1-341.2; 2001, c. [844](#); 2003, cc. [989](#), [1018](#); 2004, cc. [398](#), [690](#); 2007, cc. [438](#), [548](#), [626](#); 2017, c. [620](#); 2018, cc. [127](#), [584](#); 2019, c. [729](#).

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

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

2014, c. [319](#).

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

A. Except as otherwise specifically provided by law, all public records shall be open to citizens of the Commonwealth, representatives of newspapers and magazines with circulation in the Commonwealth, and representatives of radio and television stations broadcasting in or into the Commonwealth during the regular office hours of the custodian of such records. Access to such records shall be provided by the custodian in accordance with this chapter by inspection or by providing copies of the requested records, at the option of the requester. The custodian may require the requester to

provide his name and legal address. The custodian of such records shall take all necessary precautions for their preservation and safekeeping.

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

1. The requested records are being entirely withheld. Such response shall identify with reasonable particularity the volume and subject matter of withheld records, and cite, as to each category of withheld records, the specific Code section that authorizes the withholding of the records.

2. The requested records are being provided in part and are being withheld in part. Such response shall identify with reasonable particularity the subject matter of withheld portions, and cite, as to each category of withheld records, the specific Code section that authorizes the withholding of the records.

3. The requested records could not be found or do not exist. However, if the public body that received the request knows that another public body has the requested records, the response shall include contact information for the other public body.

4. It is not practically possible to provide the requested records or to determine whether they are available within the five-work-day period. Such response shall specify the conditions that make a response impossible. If the response is made within five working days, the public body shall have an additional seven work days or, in the case of a request for criminal investigative files pursuant to § [2.2-3706.1](#), 60 work days in which to provide one of the four preceding responses.

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

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

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

F. A public body may make reasonable charges not to exceed its actual cost incurred in accessing, duplicating, supplying, or searching for the requested records. No public body shall impose any extraneous, intermediary, or surplus fees or expenses to recoup the general costs associated with creating or maintaining records or transacting the general business of the public body. Any duplicating fee charged by a public body shall not exceed the actual cost of duplication. The public body may also make a reasonable charge for the cost incurred in supplying records produced from a geographic information system at the request of anyone other than the owner of the land that is the subject of the request. However, such charges shall not exceed the actual cost to the public body in supplying such records, except that the public body may charge, on a pro rata per acre basis, for the cost of creating topographical maps developed by the public body, for such maps or portions thereof, which encompass a contiguous area greater than 50 acres. All charges for the supplying of requested records shall be estimated in advance at the request of the citizen. The period within which the public body shall respond under this section shall be tolled for the amount of time that elapses between notice of the cost estimate and the response of the requester. If the public body receives no response from the requester within 30 days of sending the cost estimate, the request shall be deemed to be withdrawn.

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

records, the public body may provide access to the exempt records if not otherwise prohibited by law, but shall provide access to the nonexempt records as provided by this chapter.

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

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

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

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

1968, c. 479, § 2.1-342; 1973, c. 461; 1974, c. 332; 1975, cc. 307, 312; 1976, cc. 640, 709; 1977, c. 677; 1978, c. 810; 1979, cc. 682, 684, 686, 689; 1980, cc. 678, 754; 1981, cc. 456, 464, 466, 589; 1982, cc. 225, 449, 452, 560, 635; 1983, cc. 372, 462, 607; 1984, cc. 85, 395, 433, 513, 532; 1985, cc. 81, 155, 502, 618; 1986, cc. 273, 291, 383, 469, 592; 1987, cc. 401, 491, 581; 1988, cc. 39, 151, 395, 411, 891, 902; 1989, cc. 56, 358, 478; 1990, cc. 217, 538, 721, 819, 968; 1991, cc. 213, 561; 1992, cc. 40, 150, 167, 200, 203, 207, 593, 612; 1993, cc. 205, 270, 296, 537, 552, 638, 750, 883; 1994, cc. [485](#), [532](#), [606](#), [839](#), [853](#), [918](#); 1995, cc. [299](#), [362](#), [499](#), [562](#), [638](#), [722](#), [812](#), [837](#); 1996, cc. [168](#), [469](#), [589](#), [599](#), [783](#), [786](#), [794](#), [855](#), [862](#), [902](#), [905](#), [1001](#), [1046](#); 1997, cc. [198](#), [295](#), [439](#), [567](#), [636](#), [641](#), [777](#), [782](#), [785](#), [838](#), [861](#); 1998, cc. [427](#), [891](#); 1999, cc. [438](#), [703](#), [726](#); 2001, c. [844](#); 2002, cc. [715](#), [830](#); 2003, cc. [275](#), [981](#), [1021](#); 2007, c. [439](#); 2009, c. [626](#); 2010, c. [627](#); 2011, c. [604](#); 2016, cc. [620](#), [716](#); 2017, c. [778](#); 2020, c. [1142](#); 2021, Sp. Sess. I, c. [483](#).

§ 2.2-3704.01. Records containing both excluded and nonexcluded information; duty to redact

No provision of this chapter is intended, nor shall it be construed or applied, to authorize a public body to withhold a public record in its entirety on the grounds that some portion of the public record is excluded from disclosure by this chapter or by any other provision of law. A public record may be withheld from disclosure in its entirety only to the extent that an exclusion from disclosure under this chapter or other provision of law applies to the entire content of the public record. Otherwise, only those portions of the public record containing information subject to an exclusion under this chapter or other provision of law may be withheld, and all portions of the public record that are not so excluded shall be disclosed.

2016, cc. [620](#), [716](#).

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

The following information contained in a public record is excluded from the mandatory disclosure provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law. Redaction of information excluded under this section from a public record shall be conducted in accordance with § [2.2-3704.01](#).

1. Personnel information concerning identifiable individuals, except that access shall not be denied to the person who is the subject thereof. Any person who is the subject of such information and who is 18 years of age or older may waive, in writing, the protections afforded by this subdivision. If the protections are so waived, such information shall be disclosed. Nothing in this subdivision shall be construed to authorize the withholding of any resumes or applications submitted by persons who are appointed by the Governor pursuant to § [2.2-106](#) or [2.2-107](#).

No provision of this chapter or any provision of Chapter 38 (§ [2.2-3800](#) et seq.) shall be construed as denying public access to (i) contracts between a public body and its officers or employees, other than contracts settling public employee employment disputes held confidential as personnel records under § [2.2-3705.1](#); (ii) records of the name, position, job classification, official salary, or rate of pay of, and records of the allowances or reimbursements for expenses paid to, any officer, official, or employee of a public body; or (iii) the compensation or benefits paid by any corporation organized by the Virginia Retirement System or its officers or employees. The provisions of this subdivision, however, shall not require public access to records of the official salaries or rates of pay of public employees whose annual rate of pay is \$10,000 or less.

2. Written advice of legal counsel to state, regional or local public bodies or the officers or employees of such public bodies, and any other information protected by the attorney-client privilege.

3. Legal memoranda and other work product compiled specifically for use in litigation or for use in an active administrative investigation concerning a matter that is properly the subject of a closed meeting under § [2.2-3711](#).

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

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

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

5. Records recorded in or compiled exclusively for use in closed meetings lawfully held pursuant to § [2.2-3711](#). However, no record that is otherwise open to inspection under this chapter shall be deemed exempt by virtue of the fact that it has been reviewed or discussed in a closed meeting.

6. Vendor proprietary information software that may be in the public records of a public body. For the purpose of this subdivision, "vendor proprietary information software" means computer programs acquired from a vendor for purposes of processing data for agencies or political subdivisions of the Commonwealth.

7. Computer software developed by or for a state agency, public institution of higher education in the Commonwealth, or political subdivision of the Commonwealth.

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

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

10. Personal contact information furnished to a public body or any of its members for the purpose of receiving electronic communications from the public body or any of its members, unless the recipient of such electronic communications indicates his approval for the public body to disclose such information. However, access shall not be denied to the person who is the subject of the record. As used in this subdivision, "personal contact information" means the information provided to the public body or any of its members for the purpose of receiving electronic communications from the public body or any of its members and includes home or business (i) address, (ii) email address, or (iii) telephone number or comparable number assigned to any other electronic communication device.

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

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

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

1999, cc. [485](#), [518](#), [703](#), [726](#), [793](#), [849](#), [852](#), [867](#), [868](#), [881](#), § 2.1-342.01; 2000, cc. [66](#), [237](#), [382](#), [400](#), [430](#), [583](#), [589](#), [592](#), [594](#), [618](#), [632](#), [657](#), [720](#), [932](#), [933](#), [947](#), [1006](#), [1064](#); 2001, cc. [288](#), [518](#), [844](#), § 2.2-3705; 2002, cc. [87](#), [155](#), [242](#), [393](#), [478](#), [481](#), [499](#), [522](#), [571](#), [572](#), [633](#), [655](#), [715](#), [798](#), [830](#); 2003, cc. [274](#), [307](#), [327](#), [332](#), [358](#), [704](#), [801](#), [884](#), [891](#), [893](#), [897](#), [968](#); 2004, c. [690](#); 2010, c. [553](#); 2016, cc. [620](#), [716](#), [729](#); 2017, cc. [140](#), [778](#); 2021, Sp. Sess. I, c. [484](#).

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

The following information contained in a public record is excluded from the mandatory disclosure provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law. Redaction of information excluded under this section from a public record shall be conducted in accordance with § [2.2-3704.01](#).

1. Confidential information, including victim identity, provided to or obtained by staff in a rape crisis center or a program for battered spouses.
2. Information that describes the design, function, operation, or access control features of any security system, whether manual or automated, which is used to control access to or use of any automated data processing or telecommunications system.
3. Information that would disclose the security aspects of a system safety program plan adopted pursuant to Federal Transit Administration regulations by the Commonwealth's designated Rail Fixed Guideway Systems Safety Oversight agency; and information in the possession of such agency, the release of which would jeopardize the success of an ongoing investigation of a rail accident or other incident threatening railway safety.
4. Information concerning security plans and specific assessment components of school safety audits, as provided in § [22.1-279.8](#).

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

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

6. Subscriber data provided directly or indirectly by a communications services provider to a public body that operates a 911 or E-911 emergency dispatch system or an emergency notification or reverse 911 system if the data is in a form not made available by the communications services provider to the public generally. Nothing in this subdivision shall prevent the disclosure of subscriber data generated in connection with specific calls to a 911 emergency system, where the requester is seeking to obtain public records about the use of the system in response to a specific crime, emergency or other event as to which a citizen has initiated a 911 call.

For the purposes of this subdivision:

"Communications services provider" means the same as that term is defined in § [58.1-647](#).

"Subscriber data" means the name, address, telephone number, and any other information identifying a subscriber of a communications services provider.

7. Subscriber data collected by a local governing body in accordance with the Enhanced Public Safety Telephone Services Act (§ [56-484.12](#) et seq.) and other identifying information of a personal, medical, or financial nature provided to a local governing body in connection with a 911 or E-911 emergency dispatch system or an emergency notification or reverse 911 system if such records are not otherwise publicly available.

Nothing in this subdivision shall prevent the disclosure of subscriber data generated in connection with specific calls to a 911 emergency system, where the requester is seeking to obtain public records about the use of the system in response to a specific crime, emergency or other event as to which a citizen has initiated a 911 call.

For the purposes of this subdivision:

"Communications services provider" means the same as that term is defined in § [58.1-647](#).

"Subscriber data" means the name, address, telephone number, and any other information identifying a subscriber of a communications services provider.

8. Information held by the Virginia Military Advisory Council or any commission created by executive order for the purpose of studying and making recommendations regarding preventing closure or realignment of federal military and national security installations and facilities located in Virginia and relocation of such facilities to Virginia, or a local or regional military affairs organization appointed by a local governing body, that would (i) reveal strategies under consideration or development by the Council or such commission or organizations to prevent the closure or realignment of federal military installations located in Virginia or the relocation of national security facilities located in Virginia, to limit the adverse economic effect of such realignment, closure, or relocation, or to seek additional tenant activity growth from the Department of Defense or federal government or (ii) disclose trade secrets provided to the Council or such commission or organizations in connection with their work.

In order to invoke the trade secret protection provided by clause (ii), the submitting entity shall, in writing and at the time of submission (a) invoke this exclusion, (b) identify with specificity the information for which such protection is sought, and (c) state the reason why such protection is necessary. Nothing in this subdivision shall be construed to prevent the disclosure of all or part of any record, other than a trade secret that has been specifically identified as required by this subdivision, after the Department of Defense or federal agency has issued a final, unappealable decision, or in the event of litigation, a court of competent jurisdiction has entered a final, unappealable order concerning the closure, realignment, or expansion of the military installation or tenant activities, or the relocation of the national security facility, for which records are sought.

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

10. Information relating to the Statewide Agencies Radio System (STARS) or any other similar local or regional public safety communications system that (i) describes the design, function, programming, operation, or access control features of the overall system, components, structures, individual networks, and subsystems of the STARS or any other similar local or regional communications system or (ii) relates to radio frequencies assigned to or utilized by STARS or any other similar local or regional communications system, code plugs, circuit routing, addressing schemes, talk groups, fleet maps, encryption, or programming maintained by or utilized by STARS or any other similar local or regional public safety communications system.

11. Information concerning a salaried or volunteer Fire/EMS company or Fire/EMS department if disclosure of such information would reveal the telephone numbers for cellular telephones, pagers, or comparable portable communication devices provided to its personnel for use in the performance of their official duties.

12. Information concerning the disaster recovery plans or the evacuation plans in the event of fire, explosion, natural disaster, or other catastrophic event for hospitals and nursing homes regulated by the Board of Health pursuant to Chapter 5 (§ [32.1-123](#) et seq.) of Title 32.1 provided to the Department of Health. Nothing in this subdivision shall be construed to prevent the disclosure of information relating to the effectiveness of executed evacuation plans after the occurrence of fire, explosion, natural disaster, or other catastrophic event.

13. Records received by the Department of Criminal Justice Services pursuant to §§ [9.1-184](#), [22.1-79.4](#), and [22.1-279.8](#) or for purposes of evaluating threat assessment teams established by a public institution of higher education pursuant to § [23.1-805](#) or by a private nonprofit institution of higher education, to the extent such records reveal security plans, walk-through checklists, or vulnerability and threat assessment components.

14. Information contained in (i) engineering, architectural, or construction drawings; (ii) operational, procedural, tactical planning, or training manuals; (iii) staff meeting minutes; or (iv) other records that reveal any of the following, the disclosure of which would jeopardize the safety or security of any person; governmental facility, building, or structure or persons using such facility, building, or structure; or public or private commercial office, multifamily residential, or retail building or its occupants:

- a. Critical infrastructure information or the location or operation of security equipment and systems of any public building, structure, or information storage facility, including ventilation systems, fire protection equipment, mandatory building emergency equipment or systems, elevators, electrical systems, telecommunications equipment and systems, or utility equipment and systems;
- b. Vulnerability assessments, information not lawfully available to the public regarding specific cybersecurity threats or vulnerabilities, or security plans and measures of an entity, facility, building structure, information technology system, or software program;
- c. Surveillance techniques, personnel deployments, alarm or security systems or technologies, or operational or transportation plans or protocols; or
- d. Interconnectivity, network monitoring, network operation centers, master sites, or systems related to the Statewide Agencies Radio System (STARS) or any other similar local or regional public safety communications system.

The same categories of records of any person or entity submitted to a public body for the purpose of antiterrorism response planning or cybersecurity planning or protection may be withheld from disclosure if such person or entity in writing (a) invokes the protections of this subdivision, (b) identifies with specificity the records or portions thereof for which protection is sought, and (c) states with reasonable particularity why the protection of such records from public

disclosure is necessary to meet the objective of antiterrorism, cybersecurity planning or protection, or critical infrastructure information security and resilience. Such statement shall be a public record and shall be disclosed upon request.

Any public body receiving a request for records excluded under clauses (a) and (b) of this subdivision 14 shall notify the Secretary of Public Safety and Homeland Security or his designee of such request and the response made by the public body in accordance with § [2.2-3704](#).

Nothing in this subdivision 14 shall prevent the disclosure of records relating to (1) the structural or environmental soundness of any such facility, building, or structure or (2) an inquiry into the performance of such facility, building, or structure after it has been subjected to fire, explosion, natural disaster, or other catastrophic event.

As used in this subdivision, "critical infrastructure information" means the same as that term is defined in 6 U.S.C. § 131.

15. Information held by the Virginia Commercial Space Flight Authority that is categorized as classified or sensitive but unclassified, including national security, defense, and foreign policy information, provided that such information is exempt under the federal Freedom of Information Act, 5 U.S.C. § 552.

1999, cc. [485](#), [518](#), [703](#), [726](#), [793](#), [849](#), [852](#), [867](#), [868](#), [881](#), § 2.1-342.01; 2000, cc. [66](#), [237](#), [382](#), [400](#), [430](#), [583](#), [589](#), [592](#), [594](#), [618](#), [632](#), [657](#), [720](#), [932](#), [933](#), [947](#), [1006](#), [1064](#); 2001, cc. [288](#), [518](#), [844](#), § 2.2-3705; 2002, cc. [87](#), [155](#), [242](#), [393](#), [478](#), [481](#), [499](#), [522](#), [571](#), [572](#), [633](#), [655](#), [715](#), [798](#), [830](#); 2003, cc. [274](#), [307](#), [327](#), [332](#), [358](#), [704](#), [801](#), [884](#), [891](#), [893](#), [897](#), [968](#); 2004, cc. [398](#), [482](#), [690](#), [770](#); 2005, c. [410](#); 2008, c. [721](#); 2009, c. [418](#); 2010, c. [672](#); 2011, cc. [111](#), [536](#); 2012, cc. [617](#), [803](#), [835](#); 2013, c. [600](#); 2015, c. [183](#); 2016, cc. [554](#), [620](#), [716](#), [717](#); 2017, c. [778](#); 2018, cc. [52](#), [741](#); 2019, c. [358](#).

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

The following information contained in a public record is excluded from the mandatory disclosure provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law. Redaction of information excluded under this section from a public record shall be conducted in accordance with § [2.2-3704.01](#).

1. Information relating to investigations of applicants for licenses and permits, and of all licensees and permittees, made by or submitted to the Virginia Alcoholic Beverage Control Authority, the Virginia Lottery, the Virginia Racing Commission, the Department of Agriculture and Consumer Services relating to investigations and applications pursuant to Article 1.1:1 (§ [18.2-340.15](#) et seq.) of Chapter 8 of Title 18.2, or the Private Security Services Unit of the Department of Criminal Justice Services.
2. Records of active investigations being conducted by the Department of Health Professions or by any health regulatory board in the Commonwealth pursuant to § [54.1-108](#).
3. Investigator notes, and other correspondence and information, furnished in confidence with respect to an active investigation of individual employment discrimination complaints made to the Department of Human Resource Management, to such personnel of any local public body, including local school boards, as are responsible for conducting such investigations in confidence, or to any public institution of higher education. However, nothing in this subdivision shall prevent the disclosure of information taken from inactive reports in a form that does not reveal the identity of charging parties, persons supplying the information, or other individuals involved in the investigation.
4. Records of active investigations being conducted by the Department of Medical Assistance Services pursuant to Chapter 10 (§ [32.1-323](#) et seq.) of Title 32.1.
5. Investigative notes and other correspondence and information furnished in confidence with respect to an investigation or conciliation process involving an alleged unlawful discriminatory practice under the Virginia Human Rights Act (§ [2.2-3900](#) et seq.) or under any local ordinance adopted in accordance with the authority specified in § [2.2-524](#), or adopted pursuant to § [15.2-965](#), or adopted prior to July 1, 1987, in accordance with applicable law, relating to local human rights or human relations commissions. However, nothing in this subdivision shall prevent the distribution of

information taken from inactive reports in a form that does not reveal the identity of the parties involved or other persons supplying information.

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

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

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

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

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

11. Information contained in (i) an application for licensure or renewal of a license for teachers and other school personnel, including transcripts or other documents submitted in support of an application, and (ii) an active investigation conducted by or for the Board of Education related to the denial, suspension, cancellation, revocation, or reinstatement of teacher and other school personnel licenses including investigator notes and other correspondence and information, furnished in confidence with respect to such investigation. However, this subdivision shall not prohibit the disclosure of such (a) application information to the applicant at his own expense or (b) investigation information to a local school board or division superintendent for the purpose of permitting such board or superintendent to consider or to take personnel action with regard to an employee. Information contained in completed investigations shall be disclosed in a form that does not reveal the identity of any complainant or person supplying information to investigators. The completed investigation information disclosed shall include information regarding the school or facility involved, the identity of the person who was the subject of the complaint, the nature of the complaint, and the actions taken to resolve the complaint. If an investigation fails to support a complaint or does not lead to corrective action, the identity of the

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

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

13. Records of active investigations being conducted by the Department of Behavioral Health and Developmental Services pursuant to Chapter 4 (§ [37.2-400](#) et seq.) of Title 37.2.

1999, cc. [485](#), [518](#), [703](#), [726](#), [793](#), [849](#), [852](#), [867](#), [868](#), [881](#), § 2.1-342.01; 2000, cc. [66](#), [237](#), [382](#), [400](#), [430](#), [583](#), [589](#), [592](#), [594](#), [618](#), [632](#), [657](#), [720](#), [932](#), [933](#), [947](#), [1006](#), [1064](#); 2001, cc. [288](#), [518](#), [844](#), § 2.2-3705; 2002, cc. [87](#), [155](#), [242](#), [393](#), [478](#), [481](#), [499](#), [522](#), [571](#), [572](#), [633](#), [655](#), [715](#), [798](#), [830](#); 2003, cc. [274](#), [307](#), [327](#), [332](#), [358](#), [704](#), [801](#), [884](#), [891](#), [893](#), [897](#), [968](#); 2004, cc. [605](#), [690](#), [766](#); 2005, c. [601](#); 2006, cc. [25](#), [95](#); 2008, cc. [387](#), [668](#), [689](#), [758](#); 2009, cc. [237](#), [326](#), [340](#); 2011, cc. [798](#), [871](#); 2012, cc. [476](#), [507](#), [803](#), [835](#); 2013, cc. [571](#), [572](#), [690](#), [717](#), [723](#); 2014, cc. [225](#), [414](#), [609](#), [788](#); 2015, cc. [38](#), [730](#); 2016, cc. [272](#), [620](#), [716](#); 2017, c. [778](#); 2020, c. [48](#).

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

A. The following information contained in a public record is excluded from the mandatory disclosure provisions of this chapter but may be disclosed by the custodian in his discretion, except as provided in subsection B or where such disclosure is otherwise prohibited by law. Redaction of information excluded under this section from a public record shall be conducted in accordance with § [2.2-3704.01](#).

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

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

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

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

3. Information held by the Brown v. Board of Education Scholarship Committee that would reveal personally identifiable information, including scholarship applications, personal financial information, and confidential correspondence and letters of recommendation.

4. Information of a proprietary nature produced or collected by or for faculty or staff of public institutions of higher education, other than the institutions' financial or administrative records, in the conduct of or as a result of study or research on medical, scientific, technical or scholarly issues, whether sponsored by the institution alone or in conjunction

with a governmental body or a private concern, where such information has not been publicly released, published, copyrighted or patented.

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

6. Personal information, as defined in § [2.2-3801](#), provided to the Board of the Virginia College Savings Plan or its employees by or on behalf of individuals who have requested information about, applied for, or entered into prepaid tuition contracts or savings trust account agreements pursuant to Chapter 7 (§ [23.1-700](#) et seq.) of Title 23.1, including personal information related to (i) qualified beneficiaries as that term is defined in § [23.1-700](#), (ii) designated survivors, or (iii) authorized individuals. Nothing in this subdivision shall be construed to prevent disclosure or publication of information in a statistical or other form that does not identify individuals or provide personal information. Individuals shall be provided access to their own personal information.

For purposes of this subdivision:

"Authorized individual" means an individual who may be named by the account owner to receive information regarding the account but who does not have any control or authority over the account.

"Designated survivor" means the person who will assume account ownership in the event of the account owner's death.

7. Information maintained in connection with fundraising activities by or for a public institution of higher education that would reveal (i) personal fundraising strategies relating to identifiable donors or prospective donors or (ii) wealth assessments; estate, financial, or tax planning information; health-related information; employment, familial, or marital status information; electronic mail addresses, facsimile or telephone numbers; birth dates or social security numbers of identifiable donors or prospective donors. The exclusion provided by this subdivision shall not apply to protect from disclosure (a) information relating to the amount, date, purpose, and terms of the pledge or donation or the identity of the donor or (b) the identities of sponsors providing grants to or contracting with the institution for the performance of research services or other work or the terms and conditions of such grants or contracts. For purposes of clause (a), the identity of the donor may be withheld if (1) the donor has requested anonymity in connection with or as a condition of making a pledge or donation and (2) the pledge or donation does not impose terms or conditions directing academic decision-making.

8. Information held by a threat assessment team established by a local school board pursuant to § [22.1-79.4](#) or by a public institution of higher education pursuant to § [23.1-805](#) relating to the assessment or intervention with a specific individual. However, in the event an individual who has been under assessment commits an act, or is prosecuted for the commission of an act that has caused the death of, or caused serious bodily injury, including any felony sexual assault, to another person, such information of the threat assessment team concerning the individual under assessment shall be made available as provided by this chapter, with the exception of any criminal history records obtained pursuant to § [19.2-389](#) or [19.2-389.1](#), health records obtained pursuant to § [32.1-127.1:03](#), or scholastic records as defined in § [22.1-289](#). The public body providing such information shall remove personally identifying information of any person who provided information to the threat assessment team under a promise of confidentiality.

9. Records provided to the Governor or the designated reviewers by a qualified institution, as those terms are defined in § [23.1-1239](#), related to a proposed memorandum of understanding, or proposed amendments to a memorandum of understanding, submitted pursuant to Chapter 12.1 (§ [23.1-1239](#) et seq.) of Title 23.1. A memorandum of understanding entered into pursuant to such chapter shall be subject to public disclosure after it is agreed to and signed by the Governor.

B. The custodian of a scholastic record shall not release the address, phone number, or email address of a student in response to a request made under this chapter without written consent. For any student who is (i) 18 years of age or older, (ii) under the age of 18 and emancipated, or (iii) attending an institution of higher education, written consent of the

student shall be required. For any other student, written consent of the parent or legal guardian of such student shall be required.

1999, cc. [485](#), [518](#), [703](#), [726](#), [793](#), [849](#), [852](#), [867](#), [868](#), [881](#), § 2.1-342.01; 2000, cc. [66](#), [237](#), [382](#), [400](#), [430](#), [583](#), [589](#), [592](#), [594](#), [618](#), [632](#), [657](#), [720](#), [932](#), [933](#), [947](#), [1006](#), [1064](#); 2001, cc. [288](#), [518](#), [844](#), § 2.2-3705; 2002, cc. [87](#), [155](#), [242](#), [393](#), [478](#), [481](#), [499](#), [522](#), [571](#), [572](#), [633](#), [655](#), [715](#), [798](#), [830](#); 2003, cc. [274](#), [307](#), [327](#), [332](#), [358](#), [704](#), [801](#), [884](#), [891](#), [893](#), [897](#), [968](#); 2004, c. [690](#); 2006, c. [518](#); 2008, cc. [561](#), [665](#); 2010, cc. [456](#), [524](#); 2014, c. [313](#); 2016, cc. [554](#), [620](#), [716](#); 2017, c. [778](#); 2018, c. [756](#); 2019, cc. [638](#), [639](#); 2020, cc. [71](#), [78](#).

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

The following information contained in a public record is excluded from the mandatory disclosure provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law. Redaction of information excluded under this section from a public record shall be conducted in accordance with § [2.2-3704.01](#).

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

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

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

For the purposes of this chapter, statistical summaries of incidents and statistical data concerning abuse of individuals receiving services compiled by the Commissioner of Behavioral Health and Developmental Services shall be disclosed. No such summaries or data shall include any information that identifies specific individuals receiving services.

2. Applications for admission to examinations or for licensure and scoring records maintained by the Department of Health Professions or any board in that department on individual licensees or applicants; information required to be provided to the Department of Health Professions by certain licensees pursuant to § [54.1-2506.1](#); information held by the Health Practitioners' Monitoring Program Committee within the Department of Health Professions that identifies any practitioner who may be, or who is actually, impaired to the extent that disclosure is prohibited by § [54.1-2517](#); and information relating to the prescribing and dispensing of covered substances to recipients and any abstracts from such information that are in the possession of the Prescription Monitoring Program (Program) pursuant to Chapter 25.2 (§ [54.1-2519](#) et seq.) of Title 54.1 and any material relating to the operation or security of the Program.

3. Reports, documentary evidence, and other information as specified in §§ [51.5-122](#) and [51.5-184](#) and Chapter 1 (§ [63.2-100](#) et seq.) of Title 63.2 and information and statistical registries required to be kept confidential pursuant to Chapter 1 (§ [63.2-100](#) et seq.) of Title 63.2.

4. Investigative notes; proprietary information not published, copyrighted or patented; information obtained from employee personnel records; personally identifiable information regarding residents, clients or other recipients of services; other correspondence and information furnished in confidence to the Department of Education in connection with an active investigation of an applicant or licensee pursuant to Chapter 14.1 (§ [22.1-289.02](#) et seq.) of Title 22.1; other correspondence and information furnished in confidence to the Department of Social Services in connection with an active investigation of an applicant or licensee pursuant to Chapters 17 (§ [63.2-1700](#) et seq.) and 18 (§ [63.2-1800](#) et

seq.) of Title 63.2; and information furnished to the Office of the Attorney General in connection with an investigation or litigation pursuant to Article 19.1 (§ [8.01-216.1](#) et seq.) of Chapter 3 of Title 8.01 and Chapter 9 (§ [32.1-310](#) et seq.) of Title 32.1. However, nothing in this subdivision shall prevent the disclosure of information from the records of completed investigations in a form that does not reveal the identity of complainants, persons supplying information, or other individuals involved in the investigation.

5. Information collected for the designation and verification of trauma centers and other specialty care centers within the Statewide Emergency Medical Services System and Services pursuant to Article 2.1 (§ [32.1-111.1](#) et seq.) of Chapter 4 of Title 32.1.

6. Reports and court documents relating to involuntary admission required to be kept confidential pursuant to § [37.2-818](#).

7. Information acquired (i) during a review of any child death conducted by the State Child Fatality Review Team established pursuant to § [32.1-283.1](#) or by a local or regional child fatality review team to the extent that such information is made confidential by § [32.1-283.2](#); (ii) during a review of any death conducted by a family violence fatality review team to the extent that such information is made confidential by § [32.1-283.3](#); (iii) during a review of any adult death conducted by the Adult Fatality Review Team to the extent made confidential by § [32.1-283.5](#) or by a local or regional adult fatality review team to the extent that such information is made confidential by § [32.1-283.6](#); (iv) by a local or regional overdose fatality review team to the extent that such information is made confidential by § [32.1-283.7](#); (v) during a review of any death conducted by the Maternal Mortality Review Team to the extent that such information is made confidential by § [32.1-283.8](#); or (vi) during a review of any death conducted by the Developmental Disabilities Mortality Review Committee to the extent that such information is made confidential by § [37.2-314.1](#).

8. Patient level data collected by the Board of Health and not yet processed, verified, and released, pursuant to § [32.1-276.9](#), to the Board by the nonprofit organization with which the Commissioner of Health has contracted pursuant to § [32.1-276.4](#).

9. Information relating to a grant application, or accompanying a grant application, submitted to the Commonwealth Neurotrauma Initiative Advisory Board pursuant to Article 12 (§ [51.5-178](#) et seq.) of Chapter 14 of Title 51.5 that would (i) reveal (a) medical or mental health records or other data identifying individual patients or (b) proprietary business or research-related information produced or collected by the applicant in the conduct of or as a result of study or research on medical, rehabilitative, scientific, technical, or scholarly issues, when such information has not been publicly released, published, copyrighted, or patented, and (ii) be harmful to the competitive position of the applicant.

10. Any information 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.

11. Records of the Virginia Birth-Related Neurological Injury Compensation Program required to be kept confidential pursuant to § [38.2-5002.2](#).

12. Information held by the State Health Commissioner relating to the health of any person subject to an order of quarantine or an order of isolation pursuant to Article 3.02 (§ [32.1-48.05](#) et seq.) of Chapter 2 of Title 32.1. However, nothing in this subdivision shall be construed to prevent the disclosure of statistical summaries, abstracts, or other information in aggregate form.

13. The names and addresses or other contact information of persons receiving transportation services from a state or local public body or its designee under Title II of the Americans with Disabilities Act, (42 U.S.C. § 12131 et seq.) or funded by Temporary Assistance for Needy Families (TANF) created under § [63.2-600](#).

14. Information held by certain health care committees and entities that may be withheld from discovery as privileged communications pursuant to § [8.01-581.17](#).

15. Data and information specified in § [37.2-308.01](#) relating to proceedings provided for in Article 16 (§ [16.1-335](#) et seq.) of Chapter 11 of Title 16.1 and Chapter 8 (§ [37.2-800](#) et seq.) of Title 37.2.

16. Records of and information held by the Emergency Department Care Coordination Program required to be kept confidential pursuant to § [32.1-372](#).

1999, cc. [485](#), [518](#), [703](#), [726](#), [793](#), [849](#), [852](#), [867](#), [868](#), [881](#), § 2.1-342.01; 2000, cc. [66](#), [237](#), [382](#), [400](#), [430](#), [583](#), [589](#), [592](#), [594](#), [618](#), [632](#), [657](#), [720](#), [932](#), [933](#), [947](#), [1006](#), [1064](#); 2001, cc. [288](#), [518](#), [844](#), § 2.2-3705; 2002, cc. [87](#), [155](#), [242](#), [393](#), [478](#), [481](#), [499](#), [522](#), [571](#), [572](#), [633](#), [655](#), [715](#), [798](#), [830](#); 2003, cc. [274](#), [307](#), [327](#), [332](#), [358](#), [704](#), [801](#), [884](#), [891](#), [893](#), [897](#), [968](#); 2004, cc. [65](#), [666](#), [690](#), [773](#), [1014](#), [1021](#); 2005, cc. [181](#), [227](#), [716](#); 2008, c. [539](#); 2009, cc. [472](#), [813](#), [840](#); 2011, cc. [110](#), [175](#), [535](#); 2012, cc. [476](#), [479](#), [507](#), [803](#), [835](#); 2015, cc. [22](#), [108](#), [127](#); 2016, cc. [620](#), [716](#); 2017, cc. [188](#), [475](#), [600](#), [719](#), [778](#); 2018, c. [600](#); 2019, c. [834](#); 2020, cc. [851](#), [860](#), [861](#).

§ 2.2-3705.6. (Effective until October 1, 2021) Exclusions to application of chapter; proprietary records and trade secrets

The following information contained in a public record is excluded from the mandatory disclosure provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law. Redaction of information excluded under this section from a public record shall be conducted in accordance with § [2.2-3704.01](#).

1. Proprietary information gathered by or for the Virginia Port Authority as provided in § [62.1-132.4](#) or [62.1-134.1](#).
2. Financial statements not publicly available filed with applications for industrial development financings in accordance with Chapter 49 (§ [15.2-4900](#) et seq.) of Title 15.2.
3. Proprietary information, voluntarily provided by private business pursuant to a promise of confidentiality from a public body, used by the public body for business, trade, and tourism development or retention; and memoranda, working papers, or other information related to businesses that are considering locating or expanding in Virginia, prepared by a public body, where competition or bargaining is involved and where disclosure of such information would adversely affect the financial interest of the public body.
4. Information that was filed as confidential under the Toxic Substances Information Act (§ [32.1-239](#) et seq.), as such Act existed prior to July 1, 1992.
5. Fisheries data that would permit identification of any person or vessel, except when required by court order as specified in § [28.2-204](#).
6. Confidential financial statements, balance sheets, trade secrets, and revenue and cost projections provided to the Department of Rail and Public Transportation, provided such information is exempt under the federal Freedom of Information Act or the federal Interstate Commerce Act or other laws administered by the Surface Transportation Board or the Federal Railroad Administration with respect to data provided in confidence to the Surface Transportation Board and the Federal Railroad Administration.
7. Proprietary information related to inventory and sales, voluntarily provided by private energy suppliers to the Department of Mines, Minerals and Energy, used by that Department for energy contingency planning purposes or for developing consolidated statistical information on energy supplies.
8. Confidential proprietary information furnished to the Board of Medical Assistance Services or the Medicaid Prior Authorization Advisory Committee pursuant to Article 4 (§ [32.1-331.12](#) et seq.) of Chapter 10 of Title 32.1.
9. Proprietary, commercial or financial information, balance sheets, trade secrets, and revenue and cost projections provided by a private transportation business to the Virginia Department of Transportation and the Department of Rail and Public Transportation for the purpose of conducting transportation studies needed to obtain grants or other financial assistance under the Transportation Equity Act for the 21st Century (P.L. 105-178) for transportation projects if disclosure of such information is exempt under the federal Freedom of Information Act or the federal Interstate Commerce Act or other laws administered by the Surface Transportation Board or the Federal Railroad Administration with respect to data provided in confidence to the Surface Transportation Board and the Federal Railroad Administration. However, the exclusion provided by this subdivision shall not apply to any wholly owned subsidiary of a public body.

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

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

b. Information provided by a private entity to a responsible public entity, affected jurisdiction, or affected local jurisdiction pursuant to the provisions of the Public-Private Transportation Act of 1995 (§ [33.2-1800](#) et seq.) or the Public-Private Education Facilities and Infrastructure Act of 2002 (§ [56-575.1](#) et seq.) if disclosure of such information would reveal (i) trade secrets of the private entity; (ii) financial information of the private entity, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise; or (iii) other information submitted by the private entity where if such information was made public prior to the execution of an interim agreement or a comprehensive agreement, the financial interest or bargaining position of the public or private entity would be adversely affected. In order for the information specified in clauses (i), (ii), and (iii) to be excluded from the provisions of this chapter, the private entity shall make a written request to the responsible public entity:

- (1) Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;
- (2) Identifying with specificity the data or other materials for which protection is sought; and
- (3) Stating the reasons why protection is necessary.

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

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

For the purposes of this subdivision, the terms "affected jurisdiction," "affected local jurisdiction," "comprehensive agreement," "interim agreement," "qualifying project," "qualifying transportation facility," "responsible public entity," and "private entity" shall mean the same as those terms are defined in the Public-Private Transportation Act of 1995 (§ [33.2-1800](#) et seq.) or in the Public-Private Education Facilities and Infrastructure Act of 2002 (§ [56-575.1](#) et seq.).

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

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

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

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

14. Information of a proprietary or confidential nature furnished by a supplier or manufacturer of charitable gaming supplies to the Department of Agriculture and Consumer Services (i) pursuant to subsection E of § [18.2-340.34](#) and (ii) pursuant to regulations promulgated by the Charitable Gaming Board related to approval of electronic and mechanical equipment.

15. Information related to Virginia apple producer sales provided to the Virginia State Apple Board pursuant to § [3.2-1215](#).

16. Trade secrets submitted by CMRS providers as defined in § [56-484.12](#) to the former Wireless Carrier E-911 Cost Recovery Subcommittee created pursuant to former § [56-484.15](#), relating to the provision of wireless E-911 service.

17. Information relating to a grant or loan application, or accompanying a grant or loan application, to the Commonwealth Health Research Board pursuant to Chapter 5.3 (§ [32.1-162.23](#) et seq.) of Title 32.1 if disclosure of such information would (i) reveal proprietary business or research-related information produced or collected by the applicant in the conduct of or as a result of study or research on medical, rehabilitative, scientific, technical, technological, or scholarly issues, when such information has not been publicly released, published, copyrighted, or patented, and (ii) be harmful to the competitive position of the applicant.

18. Confidential proprietary information and trade secrets developed and held by a local public body (i) providing telecommunication services pursuant to § [56-265.4:4](#) and (ii) providing cable television services pursuant to Article 1.1 (§ [15.2-2108.2](#) et seq.) of Chapter 21 of Title 15.2 if disclosure of such information would be harmful to the competitive position of the locality.

In order for confidential proprietary information or trade secrets to be excluded from the provisions of this chapter, the locality in writing shall (a) invoke the protections of this subdivision, (b) identify with specificity the information for which protection is sought, and (c) state the reasons why protection is necessary. However, the exemption provided by this subdivision shall not apply to any authority created pursuant to the BVU Authority Act (§ [15.2-7200](#) et seq.).

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

20. Trade secrets or financial information of a business, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise, provided to the Department of Small Business and Supplier Diversity as part of an application for certification as a small, women-owned, or minority-owned business in accordance with Chapter 16.1 (§ [2.2-1603](#) et seq.). In order for such trade secrets or financial information to be excluded from the provisions of this chapter, the business shall (i) invoke such exclusion upon submission of the data

or other materials for which protection from disclosure is sought, (ii) identify the data or other materials for which protection is sought, and (iii) state the reasons why protection is necessary.

21. Information of a proprietary or confidential nature disclosed by a carrier to the State Health Commissioner pursuant to §§ [32.1-276.5:1](#) and [32.1-276.7:1](#).

22. Trade secrets, including, but not limited to, financial information, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise, and revenue and cost projections supplied by a private or nongovernmental entity to the State Inspector General for the purpose of an audit, special investigation, or any study requested by the Office of the State Inspector General in accordance with law.

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

- a. Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;
- b. Identifying with specificity the data or other materials for which protection is sought; and
- c. Stating the reasons why protection is necessary.

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

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

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

- a. Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;
- b. Identifying with specificity the data, information or other materials for which protection is sought; and
- c. Stating the reasons why protection is necessary.

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

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

b. Information provided by a private entity to the Commercial Space Flight Authority if disclosure of such information would (i) reveal (a) trade secrets of the private entity; (b) financial information of the private entity, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise; or (c) other information submitted by the private entity and (ii) adversely affect the financial interest or bargaining position of the Authority or private entity.

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

- (1) Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;
- (2) Identifying with specificity the data or other materials for which protection is sought; and
- (3) Stating the reasons why protection is necessary.

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

25. Information of a proprietary nature furnished by an agricultural landowner or operator to the Department of Conservation and Recreation, the Department of Environmental Quality, the Department of Agriculture and Consumer Services, or any political subdivision, agency, or board of the Commonwealth pursuant to §§ [10.1-104.7](#), [10.1-104.8](#), and [10.1-104.9](#), other than when required as part of a state or federal regulatory enforcement action.

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

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

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

- a. Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;
- b. Identifying with specificity the data or other materials for which protection is sought; and
- c. Stating the reasons why protection is necessary.

28. Information relating to a grant, loan, or investment application, or accompanying a grant, loan, or investment application, submitted to the Commonwealth of Virginia Innovation Partnership Authority (the Authority) established pursuant to Article 11 (§ [2.2-2351](#) et seq.) of Chapter 22, an advisory committee of the Authority, or any other entity designated by the Authority to review such applications, to the extent that such records would (i) reveal (a) trade secrets; (b) financial information of a party to a grant, loan, or investment application that is not a public body, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise; or (c) research-related information produced or collected by a party to the application in the conduct of or as a result of study or research on medical, rehabilitative, scientific, technical, technological, or scholarly issues, when such information has not been publicly released, published, copyrighted, or patented, and (ii) be harmful to the competitive position of a party to a grant, loan, or investment application; and memoranda, staff evaluations, or other information prepared by the Authority or its staff, or a reviewing entity designated by the Authority, exclusively for the evaluation of grant, loan, or investment applications, including any scoring or prioritization documents prepared for and forwarded to the Authority.

29. Proprietary information, voluntarily provided by a private business pursuant to a promise of confidentiality from a public body, used by the public body for a solar services or carbon sequestration agreement, where disclosure of such information would (i) reveal (a) trade secrets of the private business; (b) financial information of the private business, including balance sheets and financial statements, that are not generally available to the public through regulatory

disclosure or otherwise; or (c) other information submitted by the private business and (ii) adversely affect the financial interest or bargaining position of the public body or private business.

In order for the information specified in clauses (i)(a), (b), and (c) to be excluded from the provisions of this chapter, the private business shall make a written request to the public body:

- a. Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;
- b. Identifying with specificity the data or other materials for which protection is sought; and
- c. Stating the reasons why protection is necessary.

30. Information contained in engineering and construction drawings and plans submitted for the sole purpose of complying with the Building Code in obtaining a building permit if disclosure of such information would identify specific trade secrets or other information that 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.

31. Trade secrets, including, but not limited to, financial information, including balance sheets and financial statements that are not generally available to the public through regulatory disclosure or otherwise, and revenue and cost projections supplied by a private or nongovernmental entity to the Virginia Department of Transportation for the purpose of an audit, special investigation, or any study requested by the Virginia Department of Transportation in accordance with law.

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

- a. Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;
- b. Identifying with specificity the data or other materials for which protection is sought; and
- c. Stating the reasons why protection is necessary.

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

32. Information related to a grant application, or accompanying a grant application, submitted to the Department of Housing and Community Development that would (i) reveal (a) trade secrets, (b) financial information of a grant applicant that is not a public body, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise, or (c) research-related information produced or collected by the applicant in the conduct of or as a result of study or research on medical, rehabilitative, scientific, technical, technological, or scholarly issues, when such information has not been publicly released, published, copyrighted, or patented, and (ii) be harmful to the competitive position of the applicant. The exclusion provided by this subdivision shall only apply to grants administered by the Department, the Director of the Department, or pursuant to § [36-139](#), Article 26 (§ [2.2-2484](#) et seq.) of Chapter 24, or the Virginia Telecommunication Initiative as authorized by the appropriations act.

In order for the information submitted by the applicant and specified in this subdivision to be excluded from the provisions of this chapter, the applicant shall make a written request to the Department:

- a. Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;
- b. Identifying with specificity the data, information, or other materials for which protection is sought; and
- c. Stating the reasons why protection is necessary.

The Department shall determine whether the requested exclusion from disclosure is necessary to protect the trade secrets or confidential proprietary information of the applicant. The Department shall make a written determination of the nature

and scope of the protection to be afforded by it under this subdivision.

33. Financial and proprietary records submitted with a loan application to a locality for the preservation or construction of affordable housing that is related to a competitive application to be submitted to either the U.S. Department of Housing and Urban Development (HUD) or the Virginia Housing Development Authority (VHDA), when the release of such records would adversely affect the bargaining or competitive position of the applicant. Such records shall not be withheld after they have been made public by HUD or VHDA.

1999, cc. [485](#), [518](#), [703](#), [726](#), [793](#), [849](#), [852](#), [867](#), [868](#), [881](#), § 2.1-342.01; 2000, cc. [66](#), [237](#), [382](#), [400](#), [430](#), [583](#), [589](#), [592](#), [594](#), [618](#), [632](#), [657](#), [720](#), [932](#), [933](#), [947](#), [1006](#), [1064](#); 2001, cc. [288](#), [518](#), [844](#), § 2.2-3705; 2002, cc. [87](#), [155](#), [242](#), [393](#), [478](#), [481](#), [499](#), [522](#), [571](#), [572](#), [633](#), [655](#), [715](#), [798](#), [830](#); 2003, cc. [274](#), [307](#), [327](#), [332](#), [358](#), [704](#), [801](#), [884](#), [891](#), [893](#), [897](#), [968](#); 2004, cc. [593](#), [690](#); 2005, cc. [258](#), [411](#); 2006, cc. [73](#), [76](#), [467](#), [831](#), [921](#), [936](#); 2006, Sp. Sess. I, c. [1](#); 2007, cc. [374](#), [693](#); 2008, cc. [71](#), [102](#), [266](#), [387](#), [633](#), [689](#), [736](#), [743](#); 2009, cc. [246](#), [311](#), [325](#), [765](#), [810](#), [869](#); 2010, cc. [310](#), [808](#); 2011, cc. [541](#), [781](#), [798](#), [871](#); 2012, cc. [693](#), [709](#); 2013, cc. [54](#), [482](#), [574](#); 2015, cc. [696](#), [697](#); 2016, cc. [620](#), [716](#), [724](#), [725](#), [775](#); 2017, cc. [662](#), [737](#), [778](#), [796](#), [816](#); 2018, cc. [470](#), [532](#), [533](#); 2019, cc. [358](#), [629](#); 2020, cc. [72](#), [79](#), [1164](#), [1169](#); 2021, Sp. Sess. I, c. [298](#).

This section has more than one version with varying effective dates. Scroll down to see all versions.

§ 2.2-3705.6. (Effective October 1, 2021, until January 1, 2022) Exclusions to application of chapter; proprietary records and trade secrets

The following information contained in a public record is excluded from the mandatory disclosure provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law. Redaction of information excluded under this section from a public record shall be conducted in accordance with § [2.2-3704.01](#).

1. Proprietary information gathered by or for the Virginia Port Authority as provided in § [62.1-132.4](#) or [62.1-134.1](#).
2. Financial statements not publicly available filed with applications for industrial development financings in accordance with Chapter 49 (§ [15.2-4900](#) et seq.) of Title 15.2.
3. Proprietary information, voluntarily provided by private business pursuant to a promise of confidentiality from a public body, used by the public body for business, trade, and tourism development or retention; and memoranda, working papers, or other information related to businesses that are considering locating or expanding in Virginia, prepared by a public body, where competition or bargaining is involved and where disclosure of such information would adversely affect the financial interest of the public body.
4. Information that was filed as confidential under the Toxic Substances Information Act (§ [32.1-239](#) et seq.), as such Act existed prior to July 1, 1992.
5. Fisheries data that would permit identification of any person or vessel, except when required by court order as specified in § [28.2-204](#).
6. Confidential financial statements, balance sheets, trade secrets, and revenue and cost projections provided to the Department of Rail and Public Transportation, provided such information is exempt under the federal Freedom of Information Act or the federal Interstate Commerce Act or other laws administered by the Surface Transportation Board or the Federal Railroad Administration with respect to data provided in confidence to the Surface Transportation Board and the Federal Railroad Administration.
7. Proprietary information related to inventory and sales, voluntarily provided by private energy suppliers to the Department of Energy, used by that Department for energy contingency planning purposes or for developing consolidated statistical information on energy supplies.
8. Confidential proprietary information furnished to the Board of Medical Assistance Services or the Medicaid Prior Authorization Advisory Committee pursuant to Article 4 (§ [32.1-331.12](#) et seq.) of Chapter 10 of Title 32.1.

9. Proprietary, commercial or financial information, balance sheets, trade secrets, and revenue and cost projections provided by a private transportation business to the Virginia Department of Transportation and the Department of Rail and Public Transportation for the purpose of conducting transportation studies needed to obtain grants or other financial assistance under the Transportation Equity Act for the 21st Century (P.L. 105-178) for transportation projects if disclosure of such information is exempt under the federal Freedom of Information Act or the federal Interstate Commerce Act or other laws administered by the Surface Transportation Board or the Federal Railroad Administration with respect to data provided in confidence to the Surface Transportation Board and the Federal Railroad Administration. However, the exclusion provided by this subdivision shall not apply to any wholly owned subsidiary of a public body.

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

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

b. Information provided by a private entity to a responsible public entity, affected jurisdiction, or affected local jurisdiction pursuant to the provisions of the Public-Private Transportation Act of 1995 (§ [33.2-1800](#) et seq.) or the Public-Private Education Facilities and Infrastructure Act of 2002 (§ [56-575.1](#) et seq.) if disclosure of such information would reveal (i) trade secrets of the private entity; (ii) financial information of the private entity, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise; or (iii) other information submitted by the private entity where if such information was made public prior to the execution of an interim agreement or a comprehensive agreement, the financial interest or bargaining position of the public or private entity would be adversely affected. In order for the information specified in clauses (i), (ii), and (iii) to be excluded from the provisions of this chapter, the private entity shall make a written request to the responsible public entity:

- (1) Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;
- (2) Identifying with specificity the data or other materials for which protection is sought; and
- (3) Stating the reasons why protection is necessary.

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

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

For the purposes of this subdivision, the terms "affected jurisdiction," "affected local jurisdiction," "comprehensive agreement," "interim agreement," "qualifying project," "qualifying transportation facility," "responsible public entity,"

and "private entity" shall mean the same as those terms are defined in the Public-Private Transportation Act of 1995 (§ [33.2-1800](#) et seq.) or in the Public-Private Education Facilities and Infrastructure Act of 2002 (§ [56-575.1](#) et seq.).

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

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

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

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

14. Information of a proprietary or confidential nature furnished by a supplier or manufacturer of charitable gaming supplies to the Department of Agriculture and Consumer Services (i) pursuant to subsection E of § [18.2-340.34](#) and (ii) pursuant to regulations promulgated by the Charitable Gaming Board related to approval of electronic and mechanical equipment.

15. Information related to Virginia apple producer sales provided to the Virginia State Apple Board pursuant to § [3.2-1215](#).

16. Trade secrets submitted by CMRS providers as defined in § [56-484.12](#) to the former Wireless Carrier E-911 Cost Recovery Subcommittee created pursuant to former § [56-484.15](#), relating to the provision of wireless E-911 service.

17. Information relating to a grant or loan application, or accompanying a grant or loan application, to the Commonwealth Health Research Board pursuant to Chapter 5.3 (§ [32.1-162.23](#) et seq.) of Title 32.1 if disclosure of such information would (i) reveal proprietary business or research-related information produced or collected by the applicant in the conduct of or as a result of study or research on medical, rehabilitative, scientific, technical, technological, or scholarly issues, when such information has not been publicly released, published, copyrighted, or patented, and (ii) be harmful to the competitive position of the applicant.

18. Confidential proprietary information and trade secrets developed and held by a local public body (i) providing telecommunication services pursuant to § [56-265.4:4](#) and (ii) providing cable television services pursuant to Article 1.1 (§ [15.2-2108.2](#) et seq.) of Chapter 21 of Title 15.2 if disclosure of such information would be harmful to the competitive position of the locality.

In order for confidential proprietary information or trade secrets to be excluded from the provisions of this chapter, the locality in writing shall (a) invoke the protections of this subdivision, (b) identify with specificity the information for which protection is sought, and (c) state the reasons why protection is necessary. However, the exemption provided by this subdivision shall not apply to any authority created pursuant to the BVU Authority Act (§ [15.2-7200](#) et seq.).

19. Confidential proprietary information and trade secrets developed by or for a local authority created in accordance with the Virginia Wireless Service Authorities Act (§ [15.2-5431.1](#) et seq.) to provide qualifying communications services as authorized by Article 5.1 (§ [56-484.7:1](#) et seq.) of Chapter 15 of Title 56, where disclosure of such information would

be harmful to the competitive position of the authority, except that information required to be maintained in accordance with § [15.2-2160](#) shall be released.

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

21. Information of a proprietary or confidential nature disclosed by a carrier to the State Health Commissioner pursuant to §§ [32.1-276.5:1](#) and [32.1-276.7:1](#).

22. Trade secrets, including, but not limited to, financial information, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise, and revenue and cost projections supplied by a private or nongovernmental entity to the State Inspector General for the purpose of an audit, special investigation, or any study requested by the Office of the State Inspector General in accordance with law.

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

- a. Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;
- b. Identifying with specificity the data or other materials for which protection is sought; and
- c. Stating the reasons why protection is necessary.

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

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

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

- a. Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;
- b. Identifying with specificity the data, information or other materials for which protection is sought; and
- c. Stating the reasons why protection is necessary.

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

24. a. Information held by the Commercial Space Flight Authority relating to rate structures or charges for the use of projects of, the sale of products of, or services rendered by the Authority if disclosure of such information would

adversely affect the financial interest or bargaining position of the Authority or a private entity providing the information to the Authority; or

b. Information provided by a private entity to the Commercial Space Flight Authority if disclosure of such information would (i) reveal (a) trade secrets of the private entity; (b) financial information of the private entity, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise; or (c) other information submitted by the private entity and (ii) adversely affect the financial interest or bargaining position of the Authority or private entity.

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

- (1) Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;
- (2) Identifying with specificity the data or other materials for which protection is sought; and
- (3) Stating the reasons why protection is necessary.

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

25. Information of a proprietary nature furnished by an agricultural landowner or operator to the Department of Conservation and Recreation, the Department of Environmental Quality, the Department of Agriculture and Consumer Services, or any political subdivision, agency, or board of the Commonwealth pursuant to §§ [10.1-104.7](#), [10.1-104.8](#), and [10.1-104.9](#), other than when required as part of a state or federal regulatory enforcement action.

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

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

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

- a. Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;
- b. Identifying with specificity the data or other materials for which protection is sought; and
- c. Stating the reasons why protection is necessary.

28. Information relating to a grant, loan, or investment application, or accompanying a grant, loan, or investment application, submitted to the Commonwealth of Virginia Innovation Partnership Authority (the Authority) established pursuant to Article 11 (§ [2.2-2351](#) et seq.) of Chapter 22, an advisory committee of the Authority, or any other entity designated by the Authority to review such applications, to the extent that such records would (i) reveal (a) trade secrets; (b) financial information of a party to a grant, loan, or investment application that is not a public body, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise; or (c) research-related information produced or collected by a party to the application in the conduct of or as a result of study or research on medical, rehabilitative, scientific, technical, technological, or scholarly issues, when such information has not been publicly released, published, copyrighted, or patented, and (ii) be harmful to the competitive position of a party to a grant, loan, or investment application; and memoranda, staff evaluations, or other information

prepared by the Authority or its staff, or a reviewing entity designated by the Authority, exclusively for the evaluation of grant, loan, or investment applications, including any scoring or prioritization documents prepared for and forwarded to the Authority.

29. Proprietary information, voluntarily provided by a private business pursuant to a promise of confidentiality from a public body, used by the public body for a solar services or carbon sequestration agreement, where disclosure of such information would (i) reveal (a) trade secrets of the private business; (b) financial information of the private business, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise; or (c) other information submitted by the private business and (ii) adversely affect the financial interest or bargaining position of the public body or private business.

In order for the information specified in clauses (i)(a), (b), and (c) to be excluded from the provisions of this chapter, the private business shall make a written request to the public body:

- a. Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;
- b. Identifying with specificity the data or other materials for which protection is sought; and
- c. Stating the reasons why protection is necessary.

30. Information contained in engineering and construction drawings and plans submitted for the sole purpose of complying with the Building Code in obtaining a building permit if disclosure of such information would identify specific trade secrets or other information that 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.

31. Trade secrets, including, but not limited to, financial information, including balance sheets and financial statements that are not generally available to the public through regulatory disclosure or otherwise, and revenue and cost projections supplied by a private or nongovernmental entity to the Virginia Department of Transportation for the purpose of an audit, special investigation, or any study requested by the Virginia Department of Transportation in accordance with law.

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

- a. Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;
- b. Identifying with specificity the data or other materials for which protection is sought; and
- c. Stating the reasons why protection is necessary.

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

32. Information related to a grant application, or accompanying a grant application, submitted to the Department of Housing and Community Development that would (i) reveal (a) trade secrets, (b) financial information of a grant applicant that is not a public body, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise, or (c) research-related information produced or collected by the applicant in the conduct of or as a result of study or research on medical, rehabilitative, scientific, technical, technological, or scholarly issues, when such information has not been publicly released, published, copyrighted, or patented, and (ii) be harmful to the competitive position of the applicant. The exclusion provided by this subdivision shall only apply to grants administered by the Department, the Director of the Department, or pursuant to § [36-139](#), Article 26 (§ [2.2-2484](#) et seq.) of Chapter 24, or the Virginia Telecommunication Initiative as authorized by the appropriations act.

In order for the information submitted by the applicant and specified in this subdivision to be excluded from the provisions of this chapter, the applicant shall make a written request to the Department:

- a. Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;
- b. Identifying with specificity the data, information, or other materials for which protection is sought; and
- c. Stating the reasons why protection is necessary.

The Department shall determine whether the requested exclusion from disclosure is necessary to protect the trade secrets or confidential proprietary information of the applicant. The Department shall make a written determination of the nature and scope of the protection to be afforded by it under this subdivision.

33. Financial and proprietary records submitted with a loan application to a locality for the preservation or construction of affordable housing that is related to a competitive application to be submitted to either the U.S. Department of Housing and Urban Development (HUD) or the Virginia Housing Development Authority (VHDA), when the release of such records would adversely affect the bargaining or competitive position of the applicant. Such records shall not be withheld after they have been made public by HUD or VHDA.

1999, cc. [485](#), [518](#), [703](#), [726](#), [793](#), [849](#), [852](#), [867](#), [868](#), [881](#), § 2.1-342.01; 2000, cc. [66](#), [237](#), [382](#), [400](#), [430](#), [583](#), [589](#), [592](#), [594](#), [618](#), [632](#), [657](#), [720](#), [932](#), [933](#), [947](#), [1006](#), [1064](#); 2001, cc. [288](#), [518](#), [844](#), § 2.2-3705; 2002, cc. [87](#), [155](#), [242](#), [393](#), [478](#), [481](#), [499](#), [522](#), [571](#), [572](#), [633](#), [655](#), [715](#), [798](#), [830](#); 2003, cc. [274](#), [307](#), [327](#), [332](#), [358](#), [704](#), [801](#), [884](#), [891](#), [893](#), [897](#), [968](#); 2004, cc. [593](#), [690](#); 2005, cc. [258](#), [411](#); 2006, cc. [73](#), [76](#), [467](#), [831](#), [921](#), [936](#); 2006, Sp. Sess. I, c. [1](#); 2007, cc. [374](#), [693](#); 2008, cc. [71](#), [102](#), [266](#), [387](#), [633](#), [689](#), [736](#), [743](#); 2009, cc. [246](#), [311](#), [325](#), [765](#), [810](#), [869](#); 2010, cc. [310](#), [808](#); 2011, cc. [541](#), [781](#), [798](#), [871](#); 2012, cc. [693](#), [709](#); 2013, cc. [54](#), [482](#), [574](#); 2015, cc. [696](#), [697](#); 2016, cc. [620](#), [716](#), [724](#), [725](#), [775](#); 2017, cc. [662](#), [737](#), [778](#), [796](#), [816](#); 2018, cc. [470](#), [532](#), [533](#); 2019, cc. [358](#), [629](#); 2020, cc. [72](#), [79](#), [1164](#), [1169](#); 2021, Sp. Sess. I, c. [298](#), [532](#).

This section has more than one version with varying effective dates. Scroll down to see all versions.

§ 2.2-3705.6. (Effective January 1, 2022) Exclusions to application of chapter; proprietary records and trade secrets

The following information contained in a public record is excluded from the mandatory disclosure provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law. Redaction of information excluded under this section from a public record shall be conducted in accordance with § [2.2-3704.01](#).

1. Proprietary information gathered by or for the Virginia Port Authority as provided in § [62.1-132.4](#) or [62.1-134.1](#).
2. Financial statements not publicly available filed with applications for industrial development financings in accordance with Chapter 49 (§ [15.2-4900](#) et seq.) of Title 15.2.
3. Proprietary information, voluntarily provided by private business pursuant to a promise of confidentiality from a public body, used by the public body for business, trade, and tourism development or retention; and memoranda, working papers, or other information related to businesses that are considering locating or expanding in Virginia, prepared by a public body, where competition or bargaining is involved and where disclosure of such information would adversely affect the financial interest of the public body.
4. Information that was filed as confidential under the Toxic Substances Information Act (§ [32.1-239](#) et seq.), as such Act existed prior to July 1, 1992.
5. Fisheries data that would permit identification of any person or vessel, except when required by court order as specified in § [28.2-204](#).
6. Confidential financial statements, balance sheets, trade secrets, and revenue and cost projections provided to the Department of Rail and Public Transportation, provided such information is exempt under the federal Freedom of Information Act or the federal Interstate Commerce Act or other laws administered by the Surface Transportation Board or the Federal Railroad Administration with respect to data provided in confidence to the Surface Transportation Board and the Federal Railroad Administration.

7. Proprietary information related to inventory and sales, voluntarily provided by private energy suppliers to the Department of Energy, used by that Department for energy contingency planning purposes or for developing consolidated statistical information on energy supplies.

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

9. Proprietary, commercial or financial information, balance sheets, trade secrets, and revenue and cost projections provided by a private transportation business to the Virginia Department of Transportation and the Department of Rail and Public Transportation for the purpose of conducting transportation studies needed to obtain grants or other financial assistance under the Transportation Equity Act for the 21st Century (P.L. 105-178) for transportation projects if disclosure of such information is exempt under the federal Freedom of Information Act or the federal Interstate Commerce Act or other laws administered by the Surface Transportation Board or the Federal Railroad Administration with respect to data provided in confidence to the Surface Transportation Board and the Federal Railroad Administration. However, the exclusion provided by this subdivision shall not apply to any wholly owned subsidiary of a public body.

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

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

b. Information provided by a private entity to a responsible public entity, affected jurisdiction, or affected local jurisdiction pursuant to the provisions of the Public-Private Transportation Act of 1995 (§ [33.2-1800](#) et seq.) or the Public-Private Education Facilities and Infrastructure Act of 2002 (§ [56-575.1](#) et seq.) if disclosure of such information would reveal (i) trade secrets of the private entity; (ii) financial information of the private entity, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise; or (iii) other information submitted by the private entity where if such information was made public prior to the execution of an interim agreement or a comprehensive agreement, the financial interest or bargaining position of the public or private entity would be adversely affected. In order for the information specified in clauses (i), (ii), and (iii) to be excluded from the provisions of this chapter, the private entity shall make a written request to the responsible public entity:

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

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

(3) Stating the reasons why protection is necessary.

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

Except as specifically provided in subdivision 11 a, nothing in this subdivision shall be construed to authorize the withholding of (a) procurement records as required by § [33.2-1820](#) or [56-575.17](#); (b) information concerning the terms

and conditions of any interim or comprehensive agreement, service contract, lease, partnership, or any agreement of any kind entered into by the responsible public entity and the private entity; (c) information concerning the terms and conditions of any financing arrangement that involves the use of any public funds; or (d) information concerning the performance of any private entity developing or operating a qualifying transportation facility or a qualifying project.

For the purposes of this subdivision, the terms "affected jurisdiction," "affected local jurisdiction," "comprehensive agreement," "interim agreement," "qualifying project," "qualifying transportation facility," "responsible public entity," and "private entity" shall mean the same as those terms are defined in the Public-Private Transportation Act of 1995 (§ [33.2-1800](#) et seq.) or in the Public-Private Education Facilities and Infrastructure Act of 2002 (§ [56-575.1](#) et seq.).

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

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

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

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

14. Information of a proprietary or confidential nature furnished by a supplier or manufacturer of charitable gaming supplies to the Department of Agriculture and Consumer Services (i) pursuant to subsection E of § [18.2-340.34](#) and (ii) pursuant to regulations promulgated by the Charitable Gaming Board related to approval of electronic and mechanical equipment.

15. Information related to Virginia apple producer sales provided to the Virginia State Apple Board pursuant to § [3.2-1215](#).

16. Trade secrets submitted by CMRS providers as defined in § [56-484.12](#) to the former Wireless Carrier E-911 Cost Recovery Subcommittee created pursuant to former § [56-484.15](#), relating to the provision of wireless E-911 service.

17. Information relating to a grant or loan application, or accompanying a grant or loan application, to the Commonwealth Health Research Board pursuant to Chapter 5.3 (§ [32.1-162.23](#) et seq.) of Title 32.1 if disclosure of such information would (i) reveal proprietary business or research-related information produced or collected by the applicant in the conduct of or as a result of study or research on medical, rehabilitative, scientific, technical, technological, or scholarly issues, when such information has not been publicly released, published, copyrighted, or patented, and (ii) be harmful to the competitive position of the applicant.

18. Confidential proprietary information and trade secrets developed and held by a local public body (i) providing telecommunication services pursuant to § [56-265.4:4](#) and (ii) providing cable television services pursuant to Article 1.1 (§ [15.2-2108.2](#) et seq.) of Chapter 21 of Title 15.2 if disclosure of such information would be harmful to the competitive position of the locality.

In order for confidential proprietary information or trade secrets to be excluded from the provisions of this chapter, the locality in writing shall (a) invoke the protections of this subdivision, (b) identify with specificity the information for which protection is sought, and (c) state the reasons why protection is necessary. However, the exemption provided by this subdivision shall not apply to any authority created pursuant to the BVU Authority Act (§ [15.2-7200](#) et seq.).

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

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

21. Information of a proprietary or confidential nature disclosed by a carrier to the State Health Commissioner pursuant to §§ [32.1-276.5:1](#) and [32.1-276.7:1](#).

22. Trade secrets, including, but not limited to, financial information, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise, and revenue and cost projections supplied by a private or nongovernmental entity to the State Inspector General for the purpose of an audit, special investigation, or any study requested by the Office of the State Inspector General in accordance with law.

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

- a. Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;
- b. Identifying with specificity the data or other materials for which protection is sought; and
- c. Stating the reasons why protection is necessary.

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

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

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

- a. Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;
- b. Identifying with specificity the data, information or other materials for which protection is sought; and

c. Stating the reasons why protection is necessary.

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

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

b. Information provided by a private entity to the Commercial Space Flight Authority if disclosure of such information would (i) reveal (a) trade secrets of the private entity; (b) financial information of the private entity, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise; or (c) other information submitted by the private entity and (ii) adversely affect the financial interest or bargaining position of the Authority or private entity.

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

- (1) Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;
- (2) Identifying with specificity the data or other materials for which protection is sought; and
- (3) Stating the reasons why protection is necessary.

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

25. Information of a proprietary nature furnished by an agricultural landowner or operator to the Department of Conservation and Recreation, the Department of Environmental Quality, the Department of Agriculture and Consumer Services, or any political subdivision, agency, or board of the Commonwealth pursuant to §§ [10.1-104.7](#), [10.1-104.8](#), and [10.1-104.9](#), other than when required as part of a state or federal regulatory enforcement action.

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

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

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

- a. Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;
- b. Identifying with specificity the data or other materials for which protection is sought; and
- c. Stating the reasons why protection is necessary.

28. Information relating to a grant, loan, or investment application, or accompanying a grant, loan, or investment application, submitted to the Commonwealth of Virginia Innovation Partnership Authority (the Authority) established

pursuant to Article 11 (§ [2.2-2351](#) et seq.) of Chapter 22, an advisory committee of the Authority, or any other entity designated by the Authority to review such applications, to the extent that such records would (i) reveal (a) trade secrets; (b) financial information of a party to a grant, loan, or investment application that is not a public body, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise; or (c) research-related information produced or collected by a party to the application in the conduct of or as a result of study or research on medical, rehabilitative, scientific, technical, technological, or scholarly issues, when such information has not been publicly released, published, copyrighted, or patented, and (ii) be harmful to the competitive position of a party to a grant, loan, or investment application; and memoranda, staff evaluations, or other information prepared by the Authority or its staff, or a reviewing entity designated by the Authority, exclusively for the evaluation of grant, loan, or investment applications, including any scoring or prioritization documents prepared for and forwarded to the Authority.

29. Proprietary information, voluntarily provided by a private business pursuant to a promise of confidentiality from a public body, used by the public body for a solar services or carbon sequestration agreement, where disclosure of such information would (i) reveal (a) trade secrets of the private business; (b) financial information of the private business, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise; or (c) other information submitted by the private business and (ii) adversely affect the financial interest or bargaining position of the public body or private business.

In order for the information specified in clauses (i)(a), (b), and (c) to be excluded from the provisions of this chapter, the private business shall make a written request to the public body:

- a. Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;
- b. Identifying with specificity the data or other materials for which protection is sought; and
- c. Stating the reasons why protection is necessary.

30. Information contained in engineering and construction drawings and plans submitted for the sole purpose of complying with the Building Code in obtaining a building permit if disclosure of such information would identify specific trade secrets or other information that 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.

31. Trade secrets, including, but not limited to, financial information, including balance sheets and financial statements that are not generally available to the public through regulatory disclosure or otherwise, and revenue and cost projections supplied by a private or nongovernmental entity to the Virginia Department of Transportation for the purpose of an audit, special investigation, or any study requested by the Virginia Department of Transportation in accordance with law.

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

- a. Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;
- b. Identifying with specificity the data or other materials for which protection is sought; and
- c. Stating the reasons why protection is necessary.

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

32. Information related to a grant application, or accompanying a grant application, submitted to the Department of Housing and Community Development that would (i) reveal (a) trade secrets, (b) financial information of a grant applicant that is not a public body, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise, or (c) research-related information produced or collected by the applicant in the conduct of or as a result of study or research on medical, rehabilitative, scientific, technical,

technological, or scholarly issues, when such information has not been publicly released, published, copyrighted, or patented, and (ii) be harmful to the competitive position of the applicant. The exclusion provided by this subdivision shall only apply to grants administered by the Department, the Director of the Department, or pursuant to § [36-139](#), Article 26 (§ [2.2-2484](#) et seq.) of Chapter 24, or the Virginia Telecommunication Initiative as authorized by the appropriations act.

In order for the information submitted by the applicant and specified in this subdivision to be excluded from the provisions of this chapter, the applicant shall make a written request to the Department:

- a. Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;
- b. Identifying with specificity the data, information, or other materials for which protection is sought; and
- c. Stating the reasons why protection is necessary.

The Department shall determine whether the requested exclusion from disclosure is necessary to protect the trade secrets or confidential proprietary information of the applicant. The Department shall make a written determination of the nature and scope of the protection to be afforded by it under this subdivision.

33. Financial and proprietary records submitted with a loan application to a locality for the preservation or construction of affordable housing that is related to a competitive application to be submitted to either the U.S. Department of Housing and Urban Development (HUD) or the Virginia Housing Development Authority (VHDA), when the release of such records would adversely affect the bargaining or competitive position of the applicant. Such records shall not be withheld after they have been made public by HUD or VHDA.

34. Information of a proprietary or confidential nature disclosed by a health carrier or pharmacy benefits manager pursuant to § [38.2-3407.15:6](#), a wholesale distributor pursuant to § [54.1-3436.1](#), or a manufacturer pursuant to § [54.1-3442.02](#).

1999, cc. [485](#), [518](#), [703](#), [726](#), [793](#), [849](#), [852](#), [867](#), [868](#), [881](#), § 2.1-342.01; 2000, cc. [66](#), [237](#), [382](#), [400](#), [430](#), [583](#), [589](#), [592](#), [594](#), [618](#), [632](#), [657](#), [720](#), [932](#), [933](#), [947](#), [1006](#), [1064](#); 2001, cc. [288](#), [518](#), [844](#), § 2.2-3705; 2002, cc. [87](#), [155](#), [242](#), [393](#), [478](#), [481](#), [499](#), [522](#), [571](#), [572](#), [633](#), [655](#), [715](#), [798](#), [830](#); 2003, cc. [274](#), [307](#), [327](#), [332](#), [358](#), [704](#), [801](#), [884](#), [891](#), [893](#), [897](#), [968](#); 2004, cc. [593](#), [690](#); 2005, cc. [258](#), [411](#); 2006, cc. [73](#), [76](#), [467](#), [831](#), [921](#), [936](#); 2006, Sp. Sess. I, c. [1](#); 2007, cc. [374](#), [693](#); 2008, cc. [71](#), [102](#), [266](#), [387](#), [633](#), [689](#), [736](#), [743](#); 2009, cc. [246](#), [311](#), [325](#), [765](#), [810](#), [869](#); 2010, cc. [310](#), [808](#); 2011, cc. [541](#), [781](#), [798](#), [871](#); 2012, cc. [693](#), [709](#); 2013, cc. [54](#), [482](#), [574](#); 2015, cc. [696](#), [697](#); 2016, cc. [620](#), [716](#), [724](#), [725](#), [775](#); 2017, cc. [662](#), [737](#), [778](#), [796](#), [816](#); 2018, cc. [470](#), [532](#), [533](#); 2019, cc. [358](#), [629](#); 2020, cc. [72](#), [79](#), [1164](#), [1169](#); 2021, Sp. Sess. I, cc. [298](#), [304](#), [532](#).

This section has more than one version with varying effective dates. Scroll down to see all versions.

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

The following information contained in a public record is excluded from the mandatory disclosure provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law. Redaction of information excluded under this section from a public record shall be conducted in accordance with § [2.2-3704.01](#).

1. State income, business, and estate tax returns, personal property tax returns, and confidential records held pursuant to § [58.1-3](#).
2. Working papers and correspondence of the Office of the Governor, the Lieutenant Governor, or the Attorney General; the members of the General Assembly, the Division of Legislative Services, or the Clerks of the House of Delegates or the Senate of Virginia; the mayor or chief executive officer of any political subdivision of the Commonwealth; or the president or other chief executive officer of any public institution of higher education in the Commonwealth. However, no information that is otherwise open to inspection under this chapter shall be deemed excluded by virtue of the fact that it has been attached to or incorporated within any working paper or correspondence. Further, information publicly

available or not otherwise subject to an exclusion under this chapter or other provision of law that has been aggregated, combined, or changed in format without substantive analysis or revision shall not be deemed working papers. Nothing in this subdivision shall be construed to authorize the withholding of any resumes or applications submitted by persons who are appointed by the Governor pursuant to § [2.2-106](#) or [2.2-107](#).

As used in this subdivision:

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

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

"Working papers" means those records prepared by or for a public official identified in this subdivision for his personal or deliberative use.

3. Information contained in library records that can be used to identify (i) both (a) any library patron who has borrowed or accessed material or resources from a library and (b) the material or resources such patron borrowed or accessed or (ii) any library patron under 18 years of age. For the purposes of clause (ii), access shall not be denied to the parent, including a noncustodial parent, or guardian of such library patron.

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

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

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

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

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

9. Information regarding the siting of hazardous waste facilities, except as provided in § [10.1-1441](#), if disclosure of such information would have a detrimental effect upon the negotiating position of a governing body or on the establishment of the terms, conditions, and provisions of the siting agreement.

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

11. Memoranda, graphics, video or audio tapes, production models, data, and information of a proprietary nature produced by or for or collected by or for the Virginia Lottery relating to matters of a specific lottery game design, development, production, operation, ticket price, prize structure, manner of selecting the winning ticket, manner of payment of prizes to holders of winning tickets, frequency of drawings or selections of winning tickets, odds of winning, advertising, or marketing, where such information not been publicly released, published, copyrighted, or patented. Whether released, published, or copyrighted, all game-related information shall be subject to public disclosure under this chapter upon the first day of sales for the specific lottery game to which it pertains.

12. Information held by the Virginia Retirement System, acting pursuant to § [51.1-124.30](#), or a local retirement system, acting pursuant to § [51.1-803](#), or by a local finance board or board of trustees of a trust established by one or more local public bodies to invest funds for post-retirement benefits other than pensions, acting pursuant to Article 8 (§ [15.2-1544](#) et seq.) of Chapter 15 of Title 15.2, or by the board of visitors of the University of Virginia, acting pursuant to § [23.1-2210](#), or by the board of visitors of The College of William and Mary in Virginia, acting pursuant to § [23.1-2803](#), or by the Virginia College Savings Plan, acting pursuant to § [23.1-704](#), relating to the acquisition, holding, or disposition of a security or other ownership interest in an entity, where such security or ownership interest is not traded on a governmentally regulated securities exchange, if disclosure of such information would (i) reveal confidential analyses prepared for the board of visitors of the University of Virginia, prepared for the board of visitors of The College of William and Mary in Virginia, prepared by the retirement system, a local finance board or board of trustees, or the Virginia College Savings Plan, or provided to the retirement system, a local finance board or board of trustees, or the Virginia College Savings Plan under a promise of confidentiality of the future value of such ownership interest or the future financial performance of the entity and (ii) have an adverse effect on the value of the investment to be acquired, held, or disposed of by the retirement system, a local finance board or board of trustees, the board of visitors of the University of Virginia, the board of visitors of The College of William and Mary in Virginia, or the Virginia College Savings Plan. Nothing in this subdivision shall be construed to prevent the disclosure of information relating to the identity of any investment held, the amount invested, or the present value of such investment.

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

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

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

16. Information related to the operation of toll facilities that identifies an individual, vehicle, or travel itinerary, including vehicle identification data or vehicle enforcement system information; video or photographic images; Social Security or

other identification numbers appearing on driver's licenses; credit card or bank account data; home addresses; phone numbers; or records of the date or time of toll facility use.

17. Information held by the Virginia Lottery pertaining to (i) the social security number, tax identification number, state sales tax number, home address and telephone number, personal and lottery banking account and transit numbers of a retailer, and financial information regarding the nonlottery operations of specific retail locations and (ii) individual lottery winners, except that a winner's name, hometown, and amount won shall be disclosed. If the value of the prize won by the winner exceeds \$10 million, the information described in clause (ii) shall not be disclosed unless the winner consents in writing to such disclosure.

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

19. Information pertaining to the planning, scheduling, and performance of examinations of holder records pursuant to the Virginia Disposition of Unclaimed Property Act (§ [55.1-2500](#) et seq.) prepared by or for the State Treasurer or his agents or employees or persons employed to perform an audit or examination of holder records.

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

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

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

23. Information held by the Judicial Inquiry and Review Commission made confidential by § [17.1-913](#).

24. Information held by the Virginia Retirement System acting pursuant to § [51.1-124.30](#), a local retirement system acting pursuant to § [51.1-803](#) (hereinafter collectively referred to as the retirement system), or the Virginia College Savings Plan, acting pursuant to § [23.1-704](#) relating to:

- a. Internal deliberations of or decisions by the retirement system or the Virginia College Savings Plan on the pursuit of particular investment strategies, or the selection or termination of investment managers, prior to the execution of such investment strategies or the selection or termination of such managers, if disclosure of such information would have an adverse impact on the financial interest of the retirement system or the Virginia College Savings Plan; and
- b. Trade secrets provided by a private entity to the retirement system or the Virginia College Savings Plan if disclosure of such records would have an adverse impact on the financial interest of the retirement system or the Virginia College Savings Plan.

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

- (1) Invoking such exclusion prior to or upon submission of the data or other materials for which protection from disclosure is sought;
- (2) Identifying with specificity the data or other materials for which protection is sought; and
- (3) Stating the reasons why protection is necessary.

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

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

25. Information held by the Department of Corrections made confidential by former § [53.1-233](#).

26. Information maintained by the Department of the Treasury or participants in the Local Government Investment Pool (§ [2.2-4600](#) et seq.) and required to be provided by such participants to the Department to establish accounts in accordance with § [2.2-4602](#).

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

28. Information maintained in connection with fundraising activities by the Veterans Services Foundation pursuant to § [2.2-2716](#) that reveal the address, electronic mail address, facsimile or telephone number, social security number or other identification number appearing on a driver's license or other document issued under Chapter 3 (§ [46.2-300](#) et seq.) of Title 46.2 or the comparable law of another jurisdiction, or credit card or bank account data of identifiable donors, except that access shall not be denied to the person who is the subject of the information. Nothing in this subdivision, however, shall be construed to prevent the disclosure of information relating to the amount, date, purpose, and terms of the pledge or donation or the identity of the donor, unless the donor has requested anonymity in connection with or as a condition of making a pledge or donation. The exclusion provided by this subdivision shall not apply to protect from disclosure (i) the identities of sponsors providing grants to or contracting with the foundation for the performance of services or other work or (ii) the terms and conditions of such grants or contracts.

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

30. Information provided to the Department of Aviation by other entities of the Commonwealth in connection with the operation of aircraft where the information would not be subject to disclosure by the entity providing the information. The entity providing the information to the Department of Aviation shall identify the specific information to be protected and the applicable provision of this chapter that excludes the information from mandatory disclosure.

31. Information created or maintained by or on the behalf of the judicial performance evaluation program related to an evaluation of any individual justice or judge made confidential by § [17.1-100](#).

32. Information reflecting the substance of meetings in which (i) individual sexual assault cases are discussed by any sexual assault response team established pursuant to § [15.2-1627.4](#), (ii) individual child abuse or neglect cases or sex offenses involving a child are discussed by multidisciplinary child sexual abuse response teams established pursuant to § [15.2-1627.5](#), or (iii) individual cases of abuse, neglect, or exploitation of adults as defined in § [63.2-1603](#) are discussed by multidisciplinary teams established pursuant to §§ [15.2-1627.5](#) and [63.2-1605](#). The findings of any such team may be disclosed or published in statistical or other aggregated form that does not disclose the identity of specific individuals.

33. Information contained in the strategic plan, marketing plan, or operational plan prepared by the Virginia Economic Development Partnership Authority pursuant to § [2.2-2237.1](#) regarding target companies, specific allocation of resources and staff for marketing activities, and specific marketing activities that would reveal to the Commonwealth's competitors

for economic development projects the strategies intended to be deployed by the Commonwealth, thereby adversely affecting the financial interest of the Commonwealth. The executive summaries of the strategic plan, marketing plan, and operational plan shall not be redacted or withheld pursuant to this subdivision.

34. Information discussed in a closed session of the Physical Therapy Compact Commission or the Executive Board or other committees of the Commission for purposes set forth in subsection E of § 54.1-3491.

35. Information held by the Commonwealth of Virginia Innovation Partnership Authority (the Authority), an advisory committee of the Authority, or any other entity designated by the Authority, relating to (i) internal deliberations of or decisions by the Authority on the pursuit of particular investment strategies prior to the execution of such investment strategies and (ii) trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), provided by a private entity to the Authority, if such disclosure of records pursuant to clause (i) or (ii) would have an adverse impact on the financial interest of the Authority or a private entity.

36. Personal information provided to or obtained by the Virginia Lottery in connection with the voluntary exclusion program administered pursuant to § 58.1-4015.1.

37. Personal information provided to or obtained by the Virginia Lottery concerning the identity of any person reporting prohibited conduct pursuant to § 58.1-4043.

1999, cc. [485](#), [518](#), [703](#), [726](#), [793](#), [849](#), [852](#), [867](#), [868](#), [881](#), § 2.1-342.01; 2000, cc. [66](#), [237](#), [382](#), [400](#), [430](#), [583](#), [589](#), [592](#), [594](#), [618](#), [632](#), [657](#), [720](#), [932](#), [933](#), [947](#), [1006](#), [1064](#); 2001, cc. [288](#), [518](#), [844](#), § 2.2-3705; 2002, cc. [87](#), [155](#), [242](#), [393](#), [478](#), [481](#), [499](#), [522](#), [571](#), [572](#), [633](#), [655](#), [715](#), [798](#), [830](#); 2003, cc. [274](#), [307](#), [327](#), [332](#), [358](#), [704](#), [801](#), [884](#), [891](#), [893](#), [897](#), [968](#); 2004, cc. [426](#), [690](#), [832](#); 2005, cc. [165](#), [508](#); 2007, cc. [406](#), [652](#), [660](#), [737](#), [739](#); 2008, cc. [16](#), [739](#); 2009, cc. [223](#), [827](#), [845](#); 2010, c. [300](#); 2011, cc. [827](#), [867](#); 2012, c. [726](#); 2013, cc. [199](#), [481](#), [554](#), [574](#); 2014, cc. [225](#), [808](#); 2015, cc. [38](#), [137](#), [549](#), [730](#); 2016, cc. [550](#), [620](#), [716](#), [729](#); 2017, cc. [587](#), [642](#), [778](#), [804](#), [824](#); 2018, cc. [58](#), [141](#); 2019, cc. [163](#), [170](#), [247](#), [300](#), [358](#), [729](#), [775](#); 2020, cc. [70](#), [587](#), [1164](#), [1169](#), [1218](#), [1227](#), [1246](#), [1256](#); 2021, Sp. Sess. I, cc. [344](#), [345](#).

§ 2.2-3705.8. Limitation on record exclusions

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

1999, cc. [485](#), [518](#), [703](#), [726](#), [793](#), [849](#), [852](#), [867](#), [868](#), [881](#), § 2.1-342.01; 2000, cc. [66](#), [237](#), [382](#), [400](#), [430](#), [583](#), [589](#), [592](#), [594](#), [618](#), [632](#), [657](#), [720](#), [932](#), [933](#), [947](#), [1006](#), [1064](#); 2001, cc. [288](#), [518](#), [844](#), § 2.2-3705; 2002, cc. [87](#), [155](#), [242](#), [393](#), [478](#), [481](#), [499](#), [522](#), [571](#), [572](#), [633](#), [655](#), [715](#), [798](#), [830](#); 2003, cc. [274](#), [307](#), [327](#), [332](#), [358](#), [704](#), [801](#), [884](#), [891](#), [893](#), [897](#), [968](#); 2004, c. [690](#); 2017, c. [778](#).

§ 2.2-3706. Disclosure of law-enforcement and criminal records; limitations

A. Records required to be released. All public bodies engaged in criminal law-enforcement activities shall provide the following records when requested in accordance with the provisions of this chapter:

1. Adult arrestee photographs taken during the initial intake following the arrest and as part of the routine booking procedure, except when necessary to avoid jeopardizing an investigation in felony cases until such time as the release of the photograph will no longer jeopardize the investigation;
2. Information relative to the identity of any individual, other than a juvenile, who is arrested and charged, and the status of the charge or arrest; and
3. Records of completed unattended death investigations to the parent or spouse of the decedent or, if there is no living parent or spouse, to the most immediate family member of the decedent, provided the person is not a person of interest or a suspect. For the purposes of this subdivision, "unattended death" means a death determined to be a suicide, accidental or natural death where no criminal charges will be initiated, and "immediate family" means the decedent's personal representative or, if no personal representative has qualified, the decedent's next of kin in order of intestate succession as set forth in § [64.2-200](#).

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

1. Criminal investigative files, defined as any documents and information, including complaints, court orders, memoranda, notes, diagrams, maps, photographs, correspondence, reports, witness statements, and evidence, relating to a criminal investigation or prosecution not required to be disclosed in accordance with § [2.2-3706.1](#);
2. Reports submitted in confidence to (i) state and local law-enforcement agencies, (ii) investigators authorized pursuant to Chapter 3.2 (§ [2.2-307](#) et seq.), and (iii) campus police departments of public institutions of higher education established pursuant to Article 3 (§ [23.1-809](#) et seq.) of Chapter 8 of Title 23.1;
3. 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;
4. All records of persons imprisoned in penal institutions in the Commonwealth provided such records relate to the imprisonment;
5. 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;
6. All records of adult persons under (i) investigation or supervision by a local pretrial services agency in accordance with Article 5 (§ [19.2-152.2](#) et seq.) of Chapter 9 of Title 19.2; (ii) investigation, probation supervision, or monitoring by a local community-based probation services agency in accordance with Article 9 (§ [9.1-173](#) et seq.) of Chapter 1 of Title 9.1; or (iii) investigation or supervision by state probation and parole services in accordance with Article 2 (§ [53.1-141](#) et seq.) of Chapter 4 of Title 53.1;
7. Records of a law-enforcement agency to the extent that they disclose the telephone numbers for cellular telephones, pagers, or comparable portable communication devices provided to its personnel for use in the performance of their official duties;
8. Those portions of any records containing information related to undercover operations or protective details that would reveal the staffing, logistics, or tactical plans of such undercover operations or protective details. Nothing in this subdivision shall operate to allow the withholding of information concerning the overall costs or expenses associated with undercover operations or protective details;
9. Records of (i) background investigations of applicants for law-enforcement agency employment, (ii) administrative investigations relating to allegations of wrongdoing by employees of a law-enforcement agency, and (iii) other administrative investigations conducted by law-enforcement agencies that are made confidential by law;
10. The identity of any victim, witness, or undercover officer, or investigative techniques or procedures. However, the identity of any victim or witness shall be withheld if disclosure is prohibited or restricted under § [19.2-11.2](#); and
11. Records of the Sex Offender and Crimes Against Minors Registry maintained by the Department of State Police pursuant to Chapter 9 (§ [9.1-900](#) et seq.) of Title 9.1, including information obtained from state, local, and regional officials, except to the extent that information is required to be posted on the Internet pursuant to § [9.1-913](#).

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

D. Noncriminal records. Public bodies (i) engaged in emergency medical services, (ii) engaged in fire protection services, (iii) engaged in criminal law-enforcement activities, or (iv) engaged in processing calls for service or other communications to an emergency 911 system or any other equivalent reporting system may withhold those portions of noncriminal incident or other noncriminal investigative reports or materials that contain identifying information of a personal, medical, or financial nature where the release of such information would jeopardize the safety or privacy of any person. Access to personnel records of persons employed by a law-enforcement agency shall be governed by the provisions of subdivision B 9 of this section and subdivision 1 of § [2.2-3705.1](#), as applicable.

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

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

1999, cc. [703](#), [726](#), § 2.1-342.2; 2000, c. [227](#); 2001, c. [844](#); 2002, cc. [393](#), [715](#), [769](#), [830](#); 2004, cc. [685](#), [735](#); 2006, cc. [857](#), [914](#); 2007, c. [133](#); 2010, c. [627](#); 2011, cc. [798](#), [871](#); 2013, c. [695](#); 2016, cc. [184](#), [546](#); 2017, c. [828](#); 2018, c. [48](#); 2021, Sp. Sess. I, c. [483](#).

§ 2.2-3706.1. Disclosure of law-enforcement records; criminal incident information and certain criminal investigative files; limitations

A. For purposes of this section:

"Immediate family" means the decedent's personal representative or, if no personal representative has qualified, the decedent's next of kin in order of intestate succession as set forth in § [64.2-200](#).

"Ongoing" refers to a case in which the prosecution has not been finally adjudicated, the investigation continues to gather evidence for a possible future criminal case, and such case would be jeopardized by the premature release of evidence.

B. All public bodies engaged in criminal law-enforcement activities shall provide the following records and information when requested in accordance with the provisions of this chapter:

1. Criminal incident information relating to felony offenses contained in any report, notes, electronic communication, or other document, including filings through an incident-based reporting system, which shall include:

- a. A general description of the criminal activity reported;
- b. The date and time the alleged crime was committed;
- c. The general location where the alleged crime was committed;
- d. The identity of the investigating officer or other point of contact;
- e. A description of any injuries suffered or property damaged or stolen; and
- f. Any diagrams related to the alleged crime or the location where the alleged crime was committed, except that any diagrams described in subdivision 14 of § [2.2-3705.2](#) and information therein shall be excluded from mandatory disclosure, but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law.

A verbal response as agreed to by the requester and the public body is sufficient to satisfy the requirements of this subdivision 1; and

2. Criminal investigative files, defined as any documents and information, including complaints, court orders, memoranda, notes, initial incident reports, filings through any incident-based reporting system, diagrams, maps, photographs, correspondence, reports, witness statements, or evidence, relating to a criminal investigation or proceeding that is not ongoing.

C. The provisions of subsection B shall not apply if the release of such information:

1. Would interfere with a particular ongoing criminal investigation or proceeding in a particularly identifiable manner;
2. Would deprive a person of a right to a fair trial or an impartial adjudication;
3. Would constitute an unwarranted invasion of personal privacy;

4. Would disclose (i) the identity of a confidential source or (ii) in the case of a record compiled by a law-enforcement agency in the course of a criminal investigation, information furnished only by a confidential source;
5. Would disclose law-enforcement investigative techniques and procedures, if such disclosure could reasonably be expected to risk circumvention of the law; or
6. Would endanger the life or physical safety of any individual.

Nothing in this subsection shall be construed to authorize the withholding of those portions of such information that are unlikely to cause any effect listed herein.

D. Nothing in this section shall prohibit the disclosure of current anonymized, aggregate location and demographic data collected pursuant to § [52-30.2](#) or similar data documenting law-enforcement officer encounters with members of the public.

No photographic, audio, video, or other record depicting a victim or allowing for a victim to be readily identified, except for transcripts of recorded interviews between a victim and law enforcement, shall be released pursuant to subdivision B 2 to anyone except (i) the victim; (ii) members of the immediate family of the victim, if the victim is deceased; or (iii) the parent or guardian of the victim, if the victim is a minor.

E. In the event of a conflict between this section as it relates to requests made under this section and other provisions of law, the other provisions of law, including court sealing orders, that restrict disclosure of criminal investigative files, as defined in subsection B, shall control.

2021, Sp. Sess. I, c. [483](#).

The chapters of the acts of assembly referenced in the historical citation at the end of this section(s) may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

Code of Virginia
Title 54.1. Professions and Occupations
Chapter 1. General Provisions

§ 54.1-108. Disclosure of official records.

Official records of the Department of Professional and Occupational Regulation or the Department of Health Professions or any board named in this title shall be subject to the disclosure provisions of the Virginia Freedom of Information Act (§ [2.2-3700](#) et seq.), except for the following:

1. Examination questions, papers, booklets, and answer sheets, which may be disclosed at the discretion of the board administering or causing to be administered such examinations.
2. Applications for admission to examinations or for licensure, certification, registration, or permitting and the scoring records maintained by any board or by the Departments on individuals or applicants. However, this material may be made available during normal working hours for copying by the subject individual or applicant at his expense at the office of the Department or board that possesses the material.
3. Records of active investigations being conducted by the Departments or any board.

1979, c. 408, § 54-1.41; 1982, c. 207; 1988, c. 765; 1993, c. 499; 2017, c. [423](#).

Code of Virginia
 Title 55.1. Property and Conveyances
 Subtitle IV. Common Interest Communities
 Chapter 18. Property Owners' Association Act
 Article 1. General Provisions
 Article 3. Operation and Management of Association

§ 55.1-1807. Statement of lot owner rights

Every lot owner who is a member in good standing of a property owners' association shall have the following rights:

1. The right of access to all books and records kept by or on behalf of the association according to and subject to the provisions of § [55.1-1815](#), including records of all financial transactions;
2. The right to cast a vote on any matter requiring a vote by the association's membership in proportion to the lot owner's ownership interest, unless the declaration provides otherwise;
3. The right to have notice of any meeting of the board of directors, to make a record of any such meeting by audio or visual means, and to participate in any such meeting in accordance with the provisions of subsection G of § [55.1-1815](#) and § [55.1-1816](#);
4. The right to have (i) notice of any proceeding conducted by the board of directors or other tribunal specified in the declaration against the lot owner to enforce any rule or regulation of the association and (ii) the opportunity to be heard and represented by counsel at such proceeding, as provided in § [55.1-1819](#), and the right of due process in the conduct of that hearing; and
5. The right to serve on the board of directors if duly elected and a member in good standing of the association, unless the declaration provides otherwise.

The rights enumerated in this section shall be enforceable by any such lot owner pursuant to the provisions of § [55.1-1828](#).

2015, c. [286](#), § 55-509.3:2; 2018, c. [663](#); 2019, c. [712](#).

§ 55.1-1815. Access to association records; association meetings; notice

A. The association shall keep detailed records of receipts and expenditures affecting the operation and administration of the association. All financial books and records shall be kept in accordance with generally accepted accounting practices.

B. Subject to the provisions of subsection C and so long as the request is for a proper purpose related to his membership in the association, all books and records kept by or on behalf of the association shall be available for examination and copying by a member in good standing or his authorized agent, including:

1. The association's membership list and addresses, which shall not be used for purposes of pecuniary gain or commercial solicitation; and
2. The actual salary of the six highest compensated employees of the association earning over \$75,000 and aggregate salary information of all other employees of the association; however, individual salary information shall not be available for examination and copying during the declarant control period.

Notwithstanding any provision of law to the contrary, this right of examination shall exist without reference to the duration of membership and may be exercised (i) only during reasonable business hours or at a mutually convenient time and location and (ii) upon five business days' written notice for an association managed by a common interest community manager and 10 business days' written notice for a self-managed association, which notice reasonably identifies the purpose for the request and the specific books and records of the association requested.

C. Books and records kept by or on behalf of an association may be withheld from inspection and copying to the extent that they concern:

1. Personnel matters relating to specific, identified persons or a person's medical records;
2. Contracts, leases, and other commercial transactions to purchase or provide goods or services, currently in or under negotiation;
3. Pending or probable litigation. For purposes of this subdivision, "probable litigation" means those instances where there has been a specific threat of litigation from a person or the legal counsel of such person;
4. Matters involving state or local administrative or other formal proceedings before a government tribunal for enforcement of the association documents or rules and regulations promulgated pursuant to § [55.1-1819](#);
5. Communications with legal counsel that relate to subdivisions 1 through 4 or that are protected by the attorney-client privilege or the attorney work product doctrine;
6. Disclosure of information in violation of law;
7. Meeting minutes or other confidential records of an executive session of the board of directors held in accordance with subsection C of § [55.1-1816](#);
8. Documentation, correspondence, or management or board reports compiled for or on behalf of the association or the board by its agents or committees for consideration by the board in executive session; or
9. Individual lot owner or member files, other than those of the requesting lot owner, including any individual lot owner's or member's files kept by or on behalf of the association.

D. Books and records kept by or on behalf of an association shall be withheld from inspection and copying in their entirety only to the extent that an exclusion from disclosure under subsection C applies to the entire content of such books and records. Otherwise, only those portions of the books and records containing information subject to an exclusion under subsection C may be withheld or redacted, and all portions of the books and records that are not so excluded shall be available for examination and copying, provided that the requesting member shall be responsible to the association for paying or reimbursing the association for any reasonable costs incurred by the association in responding to the request for the books and records and review for redaction of the same.

E. Prior to providing copies of any books and records to a member in good standing under this section, the association may impose and collect a charge, reflecting the reasonable costs of materials and labor, not to exceed the actual costs of such materials and labor. Charges may be imposed only in accordance with a cost schedule adopted by the board of directors in accordance with this subsection. The cost schedule shall (i) specify the charges for materials and labor, (ii) apply equally to all members in good standing, and (iii) be provided to such requesting member at the time the request is made.

F. Notwithstanding the provisions of subsections B and C, all books and records of the association, including individual salary information for all employees and payments to independent contractors, shall be available for examination and copying upon request by a member of the board of directors in the discharge of his duties as a director.

G. Meetings of the association shall be held in accordance with the provisions of the bylaws at least once each year after the formation of the association. The bylaws shall specify an officer or his agent who shall, at least 14 days in advance of any annual or regularly scheduled meeting and at least seven days in advance of any other meeting, send to each member notice of the time, place, and purposes of such meeting. In the event of cancellation of any annual meeting of the association at which directors are elected, the seven-day notice of any subsequent meeting scheduled to elect such directors shall include a statement that the meeting is scheduled for the purpose of the election of directors.

Notice shall be sent by United States mail to all members at the address of their respective lots unless the member has provided to such officer or his agent an address other than the address of the member's lot. In lieu of sending such notice by United States mail, notice may instead be (i) hand delivered by the officer or his agent, provided that the officer or his agent certifies in writing that notice was delivered to the member, or (ii) sent to the member by electronic mail, provided

that the member has elected to receive such notice by electronic mail and, in the event that such electronic mail is returned as undeliverable, notice is subsequently sent by United States mail. Except as provided in subdivision C 7, draft minutes of the board of directors shall be open for inspection and copying (a) within 60 days from the conclusion of the meeting to which such minutes appertain or (b) when such minutes are distributed to board members as part of an agenda package for the next meeting of the board of directors, whichever occurs first.

H. Unless expressly prohibited by the governing documents, a member may vote at a meeting of the association in person, by proxy, or by absentee ballot. Such voting may take place by electronic means, provided that the board of directors has adopted guidelines for such voting by electronic means. Members voting by absentee ballot or proxy shall be deemed to be present at the meeting for all purposes.

1989, c. 679, § 55-510; 1991, c. 667; 1992, cc. 69, 71; 1993, cc. 365, 827; 1999, cc. [594](#), [654](#), [1029](#); 2000, cc. [905](#), [1008](#); 2001, c. [419](#); 2003, c. [442](#); 2004, c. [193](#); 2007, c. [675](#); 2008, cc. [851](#), [871](#); 2009, c. [665](#); 2011, c. [361](#); 2013, c. [275](#); 2014, c. [207](#); 2018, c. [663](#); 2019, cc. [368](#), [712](#); 2020, c. [592](#); 2021, Sp. Sess. I, cc. [9](#), [494](#).

§ 55.1-1816. Meetings of the board of directors

A. All meetings of the board of directors, including any subcommittee or other committee of the board of directors, where the business of the association is discussed or transacted shall be open to all members of record. The board of directors shall not use work sessions or other informal gatherings of the board of directors to circumvent the open meeting requirements of this section. Minutes of the meetings of the board of directors shall be recorded and shall be available as provided in subsection B of § [55.1-1815](#).

B. Notice of the time, date, and place of each meeting of the board of directors or of any subcommittee or other committee of the board of directors shall be published where it is reasonably calculated to be available to a majority of the lot owners.

A lot owner may make a request to be notified on a continual basis of any such meetings. Such request shall be made at least once a year in writing and include the lot owner's name, address, zip code, and any email address as appropriate. Notice of the time, date, and place shall be sent to any lot owner requesting notice (i) by first-class mail or email in the case of meetings of the board of directors or (ii) by email in the case of meetings of any subcommittee or other committee of the board of directors.

Notice, reasonable under the circumstances, of special or emergency meetings shall be given contemporaneously with the notice provided to members of the association's board of directors or any subcommittee or other committee of the board of directors conducting the meeting.

Unless otherwise exempt as relating to an executive session pursuant to subsection C, at least one copy of all agenda packets and materials furnished to members of an association's board of directors or subcommittee or other committee of the board of directors for a meeting shall be made available for inspection by the membership of the association at the same time such documents are furnished to the members of the board of directors or any subcommittee or committee of the board of directors.

Any member may record any portion of a meeting that is required to be open. The board of directors or subcommittee or other committee of the board of directors conducting the meeting may adopt rules (a) governing the placement and use of equipment necessary for recording a meeting to prevent interference with the proceedings and (b) requiring the member recording the meeting to provide notice that the meeting is being recorded.

Except for the election of officers, voting by secret or written ballot in an open meeting shall be a violation of this chapter.

C. The board of directors or any subcommittee or other committee of the board of directors may (i) convene in executive session to consider personnel matters; (ii) consult with legal counsel; (iii) discuss and consider contracts, pending or probable litigation, and matters involving violations of the declaration or rules and regulations adopted pursuant to such declaration for which a member or his family members, tenants, guests, or other invitees are responsible; or (iv) discuss and consider the personal liability of members to the association, upon the affirmative vote in an open meeting to assemble in executive session. The motion shall state specifically the purpose for the executive session. Reference to the

motion and the stated purpose for the executive session shall be included in the minutes. The board of directors shall restrict the consideration of matters during such portions of meetings to only those purposes specifically exempted and stated in the motion. No contract, motion, or other action adopted, passed, or agreed to in executive session shall become effective unless the board of directors or subcommittee or other committee of the board of directors, following the executive session, reconvenes in open meeting and takes a vote on such contract, motion, or other action, which shall have its substance reasonably identified in the open meeting. The requirements of this section shall not require the disclosure of information in violation of law.

D. Subject to reasonable rules adopted by the board of directors, the board of directors shall provide a designated period during each meeting to allow members an opportunity to comment on any matter relating to the association. During a meeting at which the agenda is limited to specific topics or at a special meeting, the board of directors may limit the comments of members to the topics listed on the meeting agenda.

1999, c. [1029](#), § 55-510.1; 2000, c. [905](#); 2001, c. [715](#); 2003, c. [404](#); 2004, c. [333](#); 2005, c. [353](#); 2019, c. [712](#); 2021, Sp. Sess. I, cc. [9](#), [494](#).

The chapters of the acts of assembly referenced in the historical citation at the end of this section(s) may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

Code of Virginia

Title 55.1. Property and Conveyances

Subtitle IV. Common Interest Communities

Chapter 19. Virginia Condominium Act

Article 2. Creation, Alteration, and Termination of Condominiums

Article 3. Management of Condominium

§ 55.1-1939. Statement of unit owner rights

Every unit owner who is a member in good standing of a unit owners' association shall have the following rights:

1. The right of access to all books and records kept by or on behalf of the unit owners' association according to and subject to the provisions of § [55.1-1945](#), including records of all financial transactions;
2. The right to cast a vote on any matter requiring a vote by the unit owners' association membership in proportion to the unit owner's ownership interest, except to the extent that the condominium instruments provide otherwise;
3. The right to have notice of any meeting of the executive board, to make a record of such meetings by audio or visual means, and to participate in such meeting in accordance with the provisions of § [55.1-1949](#);
4. The right to have (i) notice of any proceeding conducted by the executive board or other tribunal specified in the condominium instruments against the unit owner to enforce any rule or regulation of the unit owners' association and (ii) the opportunity to be heard and represented by counsel at the proceeding, as provided in § [55.1-1959](#), and the right of due process in the conduct of that hearing; and
5. The right to serve on the executive board if duly elected and a member in good standing of the unit owners' association, except to the extent that the condominium instruments provide otherwise.

The rights enumerated in this section shall be enforceable by any unit owner pursuant to the provisions of § [55.1-1915](#).

2015, c. [286](#), § 55-79.72:3; 2019, c. [712](#).

§ 55.1-1945. Books, minutes, and records; inspection

A. The declarant, managing agent, unit owners' association, or person specified in the bylaws of the association shall keep detailed records of the receipts and expenditures affecting the operation and administration of the condominium and specifying the maintenance and repair expenses of the common elements and any other expenses incurred by or on behalf of the association. Subject to the provisions of subsections B, C, and E, upon request, any unit owner shall be provided a copy of such records and minutes. All financial books and records shall be kept in accordance with generally accepted accounting practices.

B. Subject to the provisions of subsection C, all books and records kept by or on behalf of the unit owners' association, including the unit owners' association membership list, and addresses and aggregate salary information of unit owners' association employees, shall be available for examination and copying by a unit owner in good standing or his authorized agent so long as the request is for a proper purpose related to his membership in the unit owners' association and not for pecuniary gain or commercial solicitation. Notwithstanding any provision of law to the contrary, this right of examination shall exist without reference to the duration of membership and may be exercised (i) only during reasonable business hours or at a mutually convenient time and location and (ii) upon five business days' written notice for a unit owner association managed by a common interest community manager and 10 business days' written notice for a self-managed unit owners' association, which notice shall reasonably identify the purpose for the request and the specific books and records of the unit owners' association requested.

C. Books and records kept by or on behalf of a unit owners' association may be withheld from examination or copying by unit owners and contract purchasers to the extent that they are drafts not yet incorporated into the books and records of the unit owners' association or if such books and records concern:

1. Personnel matters relating to specific, identified persons or a person's medical records;
2. Contracts, leases, and other commercial transactions to purchase or provide goods or services, currently in or under negotiation;
3. Pending or probable litigation. For purposes of this subdivision, "probable litigation" means those instances where there has been a specific threat of litigation from a person or the legal counsel of such person;
4. Matters involving state or local administrative or other formal proceedings before a government tribunal for enforcement of the condominium instruments or rules and regulations promulgated by the executive board;
5. Communications with legal counsel that relate to subdivisions 1 through 4 or that are protected by the attorney-client privilege or the attorney work product doctrine;
6. Disclosure of information in violation of law;
7. Meeting minutes or other confidential records of an executive session of the executive board held pursuant to subsection C of § [55.1-1949](#);
8. Documentation, correspondence or management or executive board reports compiled for or on behalf of the unit owners' association or the executive board by its agents or committees for consideration by the executive board in executive session; or
9. Individual unit owner or member files, other than those of the requesting unit owner, including any individual unit owner's files kept by or on behalf of the unit owners' association.

D. Books and records kept by or on behalf of a unit owners' association shall be withheld from examination and copying in their entirety only to the extent that an exclusion from disclosure under subsection C applies to the entire content of such books and records. Otherwise, only those portions of the books and records containing information subject to an exclusion under subsection C may be withheld or redacted, and all portions of the books and records that are not so excluded shall be available for examination and copying, provided that the requesting member shall be responsible to the association for paying or reimbursing the association for any reasonable costs incurred by the association in responding to the request for the books and records and review for redaction of the same.

E. Prior to providing copies of any books and records, the unit owners' association may impose and collect a charge, not to exceed the reasonable costs of materials and labor, incurred to provide such copies. Charges may be imposed only in accordance with a cost schedule adopted by the executive board in accordance with this subsection. The cost schedule shall (i) specify the charges for materials and labor, (ii) apply equally to all unit owners in good standing, and (iii) be provided to such requesting unit owner at the time the request is made.

1980, c. 738, § 55-79.74:1; 1985, c. 75; 1989, c. 57; 1990, c. 662; 1992, c. 72; 1994, c. [463](#); 1999, c. [594](#); 2000, cc. [906](#), [919](#); 2001, c. [419](#); 2011, cc. [334](#), [361](#), [605](#); 2014, c. [207](#); 2018, c. [663](#); 2019, c. [712](#); 2020, c. [592](#).

§ 55.1-1949. Meetings of unit owners' association and executive board

A. 1. Meetings of the unit owners' association shall be held in accordance with the provisions of the condominium instruments at least once each year after the formation of the association. The bylaws shall specify an officer or his agent who shall, at least 21 days in advance of any annual or regularly scheduled meeting and at least seven days in advance of any other meeting, send to each unit owner notice of the time, place, and purposes of such meeting. In the event of cancellation of any annual meeting of the unit owners' association at which directors are elected, the seven-day notice of any subsequent meeting scheduled to elect such directors shall include a statement that the meeting is scheduled for the purpose of the election of directors.

2. Notice shall be sent by United States mail to all unit owners of record at the address of their respective units, unless the unit owner has provided to such officer or his agent an address other than the address of the unit, or notice may be hand delivered by the officer or his agent, provided that the officer or his agent certifies in writing that notice was delivered to the person of the unit owner.

3. In lieu of delivering notice as specified in subdivision 2, such officer or his agent may send notice by electronic means if consented to by the unit owner to whom the notice is given, provided that the officer or his agent certifies in writing that notice was sent and, if such electronic mail was returned as undeliverable, notice was subsequently sent by United States mail.

B. 1. Except as otherwise provided in the condominium instruments, the provisions of this subsection shall apply to executive board meetings at which business of the unit owners' association is transacted or discussed. All meetings of the unit owners' association or the executive board, including any subcommittee or other committee of such association or board, shall be open to all unit owners of record. The executive board shall not use work sessions or other informal gatherings of the executive board to circumvent the open meeting requirements of this section. Minutes of the meetings of the executive board shall be recorded and shall be available as provided in § [55.1-1945](#).

2. Notice of the time, date, and place of each meeting of the executive board or of any subcommittee or other committee of the executive board, and of each meeting of a subcommittee or other committee of the unit owners' association, shall be published where it is reasonably calculated to be available to a majority of the unit owners.

A unit owner may make a request to be notified on a continual basis of any such meetings, which request shall be made at least once a year in writing and include the unit owners' name, address, zip code, and any email address as appropriate. Notice of the time, date, and place shall be sent to any unit owner requesting notice (i) by first-class mail or email in the case of meetings of the executive board or (ii) by email in the case of meetings of any subcommittee or other committee of the executive board or of a subcommittee or other committee of the unit owners' association.

Notice, reasonable under the circumstances, of special or emergency meetings shall be given contemporaneously with the notice provided to members of the (i) executive board or any subcommittee or other committee of such board or (ii) subcommittee or other committee of the unit owners' association conducting the meeting.

3. Unless otherwise exempt as relating to an executive session pursuant to subsection C, at least one copy of all agenda packets and materials furnished to members of the executive board or subcommittee or other committee of the executive board for a meeting shall be made available for inspection by the membership of the unit owners' association at the same time such documents are furnished to the members of the executive board.

4. Any unit owner may record any portion of a meeting required to be open. The executive board or subcommittee or other committee of the executive board conducting the meeting may adopt rules (i) governing the placement and use of equipment necessary for recording a meeting to prevent interference with the proceedings and (ii) requiring the unit owner recording the meeting to provide notice that the meeting is being recorded.

5. Voting by secret or written ballot in an open meeting is a violation of this chapter except for the election of officers.

C. The executive board or any subcommittee or other committee of the executive board may convene in executive session to consider personnel matters; consult with legal counsel; discuss and consider contracts, probable or pending litigation, and matters involving violations of the condominium instruments or rules and regulations promulgated pursuant to such condominium instruments for which a unit owner, his family members, tenants, guests, or other invitees are responsible; or discuss and consider the personal liability of unit owners to the unit owners' association, upon the affirmative vote in an open meeting to assemble in executive session. The motion shall state specifically the purpose for the executive session. Reference to the motion and the stated purpose for the executive session shall be included in the minutes. The executive board shall restrict the consideration of matters during such portions of meetings to only those purposes specifically exempted and stated in the motion. No contract, motion, or other action adopted, passed, or agreed to in executive session shall become effective unless the executive board or subcommittee or other committee of the executive board, following the executive session, reconvenes in open meeting and takes a vote on such contract, motion, or other action, which shall have its substance reasonably identified in the open meeting. The requirements of this section do not require the disclosure of information in violation of law.

D. Subject to reasonable rules adopted by the executive board, the executive board shall provide a designated period during each meeting to allow unit owners an opportunity to comment on any matter relating to the unit owners' association. During a meeting at which the agenda is limited to specific topics or at a special meeting, the executive board may limit the comments of unit owners to the topics listed on the meeting agenda.

1974, c. 416, § 55-79.75; 1978, c. 363; 1989, c. 58; 1990, c. 662; 1992, c. 72; 2000, c. [906](#); 2001, c. [715](#); 2003, cc. [404](#), [405](#), [442](#); 2005, c. [353](#); 2007, c. [675](#); 2013, c. [275](#); 2019, c. [712](#); 2021, Sp. Sess. I, cc. [9](#), [494](#).

The chapters of the acts of assembly referenced in the historical citation at the end of this section(s) may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

DRAFT AGENDA
Materials contained in this agenda are proposed topics for discussion
and are not to be construed as regulation or official Board opinion.
DRAFT AGENDA

Department of Planning and Budget 2022 Fiscal Impact Statement

1. Bill Number: SB693

House of Origin Introduced Substitute Engrossed
 Second House In Committee Substitute Enrolled

2. Patron: Petersen

3. Committee: Passed Senate

4. Title: Common interest communities; association complaint procedures.

5. Summary: Clarifies that audio and video recordings are considered records and shall be included with any final adverse decision provided by a complainant to the Common Interest Community Board.

6. Budget Amendment Necessary: Yes. Item 369, as Introduced.

7. Fiscal Impact Estimates: Preliminary.

7a. Expenditure Impact:

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Positions</i>	<i>Fund</i>	<i>Dollars</i>	<i>Positions</i>	<i>Fund</i>
2023	\$122,883	1	09222	\$117,883	1	02590
2024	\$115,625	1	09222	\$115,625	1	02590
2025	\$115,625	1	09222	\$115,625	1	02590
2026	\$115,625	1	09222	\$115,625	1	02590
2027	\$115,625	1	09222	\$115,625	1	02590
2028	\$115,625	1	09222	\$115,625	1	02590

8. Fiscal Implications: *This revised fiscal impact statement reflects updated impact estimates from the Department of Professional and Occupational Regulation (DPOR)*

This bill increases the administrative responsibilities of DPOR and the Office of the Common Interest Community Ombudsman by requiring that audio and video recordings be considered records as provided by a complainant when giving notice of a final adverse decision. Based on current volumes of complaints, DPOR estimates that approximately 50 complaints a year will include audio/video recordings of board and other meetings, interactions with board members, managers, and others, along with accompanying phone call records. DPOR estimates up to 3,000 hours a year of audio and video recordings will need to be reviewed from both the complaint perspective and to comply with the Freedom of Information Act (FOIA), and that additional nongeneral fund appropriation and positions will be required.

According to DPOR, due to privacy issues and potential liability resulting from the recordings becoming public record, especially recordings that could include private meetings

among private citizens, some of whom cannot be recorded due to their federal security positions, and other scenarios that the departments anticipates could compromise information security, many of the recordings may include information that will be required to be redacted. DPOR anticipates needing one pay band 4 classified position to allow for the review of recordings by the Ombudsman's Office. DPOR also anticipates needing one pay band 4 classified IT Specialist to review and potentially edit the recordings.

Based on the mid-point for the band 4 salary range, DPOR estimates that additional nongeneral fund appropriation in the amount of \$192,216 in FY2023 (assuming 23 pay periods) and \$201,700 annually beginning in FY2024, will be required for salary and benefits. Additionally, in FY2023, DPOR anticipates needing to purchase furniture and equipment for the new positions at an estimated one-time cost of \$14,000. Other operating costs beginning in FY2023 and recurring in future years include telephone, employee development, computer operating support, and supplies. These costs are estimated at \$29,550 each year. One position each would be required in Fund 02590 and 09222.

According to DPOR, the agency will need to establish a secure portal for submitting the audio or video recordings and add electronic storage capabilities to retain the recordings according to record retention policies and applicable privacy requirements. DOLI estimates the one-time cost of establishing the portal and additional electronic storage to be approximately \$5,000 in FY2023.

9. Specific Agency or Political Subdivisions Affected: Department of Professional and Occupational Regulation.

10. Technical Amendment Necessary: No.

11. Other Comments: None.

22104187D

SENATE BILL NO. 693

Offered January 20, 2022

A *BILL to amend and reenact § 54.1-2354.4 of the Code of Virginia, relating to common interest communities; association complaint procedures.*

Patron—Petersen

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:

1. That § 54.1-2354.4 of the Code of Virginia is amended and reenacted as follows:

§ 54.1-2354.4. Association complaint procedures; final adverse decisions.

A. The Board shall establish by regulation a requirement that each association shall establish reasonable procedures for the resolution of written complaints from the members of the association and other citizens. Each association shall adhere to the written procedures established pursuant to this subsection when resolving association member and citizen complaints. The procedures shall include the following:

1. A record of each complaint shall be maintained for no less than one year after the association acts upon the complaint.

2. Such association shall provide complaint forms or written procedures to be given to persons who wish to register written complaints. The forms or procedures shall include the address and telephone number of the association or its common interest community manager to which complaints shall be directed and the mailing address, telephone number, and electronic mailing address of the Office. The forms and written procedures shall include a clear and understandable description of the complainant's right to give notice of adverse decisions pursuant to this section.

B. A complainant may give notice to the Board of any final adverse decision in accordance with regulations promulgated by the Board. The notice shall be filed within 30 days of the final adverse decision, shall be in writing on forms prescribed by the Board, shall include copies of all records pertinent to the decision, *including any video or audio recordings*, and shall be accompanied by a \$25 filing fee. The fee shall be collected by the Director and paid directly into the state treasury and credited to the Common Interest Community Management Information Fund pursuant to § 54.1-2354.2. The Board may, for good cause shown, waive or refund the filing fee upon a finding that payment of the filing fee will cause undue financial hardship for the member. The Director shall provide a copy of the written notice to the association that made the final adverse decision.

C. The Director or his designee may request additional information concerning any notice of final adverse decision from the association that made the final adverse decision. The association shall provide such information to the Director within a reasonable time upon request. If the Director upon review determines that the final adverse decision may be in conflict with laws or regulations governing common interest communities or interpretations thereof by the Board, the Director may, in his sole discretion, provide the complainant and the association with information concerning such laws or regulations governing common interest communities or interpretations thereof by the Board. The determination of whether the final adverse decision may be in conflict with laws or regulations governing common interest communities or interpretations thereof by the Board shall be a matter within the sole discretion of the Director, whose decision is final and not subject to further review. The determination of the Director shall not be binding upon the complainant or the association that made the final adverse decision.

INTRODUCED

SB693

VIRGINIA ACTS OF ASSEMBLY -- 2022 SESSION

CHAPTER 244

An Act to direct the Common Interest Community Board to review the feasibility of allowing audio and video recordings to be submitted with a notice of final adverse decision; report.

[S 693]

Approved April 8, 2022

Be it enacted by the General Assembly of Virginia:

1. § 1. *That the Common Interest Community Board (the Board) shall review the feasibility of allowing audio and video recordings to be submitted with a notice of final adverse decision as a record pertinent to the decision in accordance with § 54.1-2354.4 of the Code of Virginia. In conducting its review, the Board shall (i) solicit and consider public comments; (ii) identify pertinent statutory and regulatory amendments necessary to allow for the submission of audio and video recordings in accordance with the provisions of this act; (iii) identify any impediments to the submission of audio and video recordings, including information technology limitations and compliance with the provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq. of the Code of Virginia) and other public records laws; and (iv) consider whether allowing the submission of audio and video recordings pursuant to the provisions of this act would assist the Common Interest Community Ombudsman in the performance of his duties with respect to any notice of final adverse decision.*

The Board shall report its findings and any legislative, regulatory, policy, or budgetary recommendations to the Secretary of Labor and the Chairmen of the House Committee on General Laws and the Senate Committee on General Laws and Technology on or before November 1, 2022.

OTHER BUSINESS

DRAFT AGENDA
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COMPLETE CONFLICT OF INTEREST
FORMS AND
TRAVEL VOUCHERS

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ADJOURN

Please return your document folders to Raven Custer

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