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SENATE BILL NO. 200

Offered January 12, 2022

Prefiled January 10, 2022

A BILL to amend and reenact §§ 2.2-3705.3 and 32.1-163.3 of the Code of Virginia, relating to the Virginia Freedom of Information Act; record exclusions; administrative investigations; onsite sewage complaints.

Patron—Hashmi

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-3705.3 and 32.1-163.3 of the Code of Virginia are amended and reenacted as follows:

§ 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

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59 respect to an investigation or audit conducted pursuant to § 15.2-825; or (vii) the auditors, appointed by
60 the local governing body of any county, city, or town or a school board, who by charter, ordinance, or
61 statute have responsibility for conducting an investigation of any officer, department, or program of such
62 body. Information contained in completed investigations shall be disclosed in a form that does not reveal
63 the identity of the complainants or persons supplying information to investigators. Unless disclosure is
64 excluded by this subdivision, the information disclosed shall include the agency involved, the identity of
65 the person who is the subject of the complaint, the nature of the complaint, and the actions taken to
66 resolve the complaint. If an investigation does not lead to corrective action, the identity of the person
67 who is the subject of the complaint may be released only with the consent of the subject person. Local
68 governing bodies shall adopt guidelines to govern the disclosure required by this subdivision.

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

73 9. Records of active investigations being conducted by the Department of Criminal Justice Services
74 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.),
75 and Article 12 (§ 9.1-186 et seq.) of Chapter 1 of Title 9.1.

76 10. Information furnished to or prepared by the Board of Education pursuant to subsection D of
77 § 22.1-253.13:3 in connection with the review or investigation of any alleged breach in security,
78 unauthorized alteration, or improper administration of tests by local school board employees responsible
79 for the distribution or administration of the tests. However, this section shall not prohibit the disclosure
80 of such information to (i) a local school board or division superintendent for the purpose of permitting
81 such board or superintendent to consider or to take personnel action with regard to an employee or (ii)
82 any requester, after the conclusion of a review or investigation, in a form that (a) does not reveal the
83 identity of any person making a complaint or supplying information to the Board on a confidential basis
84 and (b) does not compromise the security of any test mandated by the Board.

85 11. Information contained in (i) an application for licensure or renewal of a license for teachers and
86 other school personnel, including transcripts or other documents submitted in support of an application,
87 and (ii) an active investigation conducted by or for the Board of Education related to the denial,
88 suspension, cancellation, revocation, or reinstatement of teacher and other school personnel licenses
89 including investigator notes and other correspondence and information, furnished in confidence with
90 respect to such investigation. However, this subdivision shall not prohibit the disclosure of such (a)
91 application information to the applicant at his own expense or (b) investigation information to a local
92 school board or division superintendent for the purpose of permitting such board or superintendent to
93 consider or to take personnel action with regard to an employee. Information contained in completed
94 investigations shall be disclosed in a form that does not reveal the identity of any complainant or person
95 supplying information to investigators. The completed investigation information disclosed shall include
96 information regarding the school or facility involved, the identity of the person who was the subject of
97 the complaint, the nature of the complaint, and the actions taken to resolve the complaint. If an
98 investigation fails to support a complaint or does not lead to corrective action, the identity of the person
99 who was the subject of the complaint may be released only with the consent of the subject person. No
100 personally identifiable information regarding a current or former student shall be released except as
101 permitted by state or federal law.

102 12. Information provided in confidence and related to an investigation by the Attorney General under
103 Article 1 (§ 3.2-4200 et seq.) or Article 3 (§ 3.2-4204 et seq.) of Chapter 42 of Title 3.2, Article 10 (§
104 18.2-246.6 et seq.) of Chapter 6 or Chapter 13 (§ 18.2-512 et seq.) of Title 18.2, or Article 1
105 (§ 58.1-1000) of Chapter 10 of Title 58.1. However, information related to an investigation that has been
106 inactive for more than six months shall, upon request, be disclosed provided such disclosure is not
107 otherwise prohibited by law and does not reveal the identity of charging parties, complainants, persons
108 supplying information, witnesses, or other individuals involved in the investigation.

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

111 14. *Records of active investigations and the names, addresses, and telephone numbers of*
112 *complainants furnished in confidence with respect to an active investigation of onsite sewage complaints*
113 *made to the Department of Health or the Department of Environmental Quality. However, nothing in*
114 *this subdivision shall prevent the release of information taken from inactive investigations so long as*
115 *such information does not reveal the identity of the parties involved or other persons supplying*
116 *information.*

117 **§ 32.1-163.3. Identities of persons making certain reports to remain confidential.**

118 The identity of any person making a report of an alleged violation of any provision of this article or
119 any regulation of the Board of Health relating to sewage disposal shall be confidential. However, the
120 identity of such person may be disclosed (i) to the Commissioner, the members of the Board and

121 personnel of the Department in the performance of their duties; (ii) ~~when the identity is included in~~
122 ~~materials which are the subject of a request for information pursuant to the Virginia Freedom of~~
123 ~~Information Act, Chapter 37 (§ 2.2-3700 et seq.) of Title 2.2; (iii) when the matter reported is the~~
124 subject of a hearing conducted by the State Health Department Sewage Handling and Disposal Appeal
125 Review Board; or ~~(iv)~~ (iii) when the matter reported is the subject of litigation.

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