



SB 200 **CHANGES REQUESTED** (See page 2)

SB 200 creates an exemption from the mandatory disclosure provisions of FOIA for the records of active investigations and the names, addresses, and telephone numbers of complainants furnished in confidence with respect to an active investigation of onsite sewage complaints made to the Department of Health or the Department of Environmental Quality.

The bill goes on to add that nothing in this subdivision shall prevent the release of information taken from inactive investigations. However, it also limits that disclosure by saying that the identity of the parties involved or other persons supplying information is not revealed.

FOIA exemptions should be narrowly tailored to protect only that information that serves a government need and does not cover more information than absolutely necessary. The proposed exemption appears to be patterned after other FOIA exemptions (namely § 2.2-3705.3(3) and § 2.2-3705.3(5)). Nonetheless, as written, the exemption goes too far.

While VCOG appreciates the attempt at protecting "active" investigations from disclosure but allowing keeping "inactive" cases to be released, there is no guidance as to what constitutes active/inactive. In 2022, when enacting § 2.2-3706.1 for criminal investigative records, the legislature defined the difference between the two buckets of records.

Secondly, it is unclear what "information" would be released from these inactive files. FOIA talks in terms of "records" not "information." So it is unclear what records collected during the "active" phase would qualify as "information" in the inactive phase.

Finally, VCOG is uncomfortable keeping the identities of both parties exempt. There is public value in knowing who the bad actors are on both sides of the incident. Is someone a repeat offender in violating sewage regulations? Or, is someone a repeat offender at making unfounded complaints? Neither deserve blanket immunity from identification. Protecting their identities waters down the effectiveness of the complaint and investigation process.

VCOG offers the following substitution



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14. Investigative notes, correspondence and information furnished in confidence, and records otherwise exempted by this chapter or any Virginia statute, including names, address and telephone numbers of the complainants, provided to or produced by or for the Department of Health or the Department of Environmental Quality during an investigations of onsite sewage complaints. Records of completed investigations, including any final determinations, shall be disclosed in a form that does not reveal the identify of the complainants or persons supplying information under a promise of confidentiality to investigators.

Thank you for your time and attention.

Please contact Megan Rhyne (540-353-8264 or mrhyne@opengovva.org) with questions.