



SB324/HB970 **OPPOSE**

SB 324 and HB 970 seek to prohibit the disclosure of membership in (read: donations to) a 501(c)(3) organization. In doing so, the bills upend 40+ years of FOIA policy by redefining what is/is not a public record.

VCOG strongly opposes these bills.

These bills are a version of a model bill being promoted by Americans for Prosperity in response to a Supreme Court case AFP was involved in. Similar bills passed last year in Tennessee and one is being considered this year in Florida.

The Supreme Court case was a First Amendment case – specifically freedom of association – and was focused on the compelled disclosure of donor information *to the California Attorney General*.¹ A reasonable response to this case would be a proposal that addresses compelled disclosure *to a Virginia agency*. **But this legislation goes far beyond that idea and shuts down access to any information about a person who interacts or transacts business with any of Virginia’s public universities, state agencies, local governments and school districts.**

Line 57 changes the longstanding definition of “public record” under FOIA by adding that a public record does not include “personal information” as defined in §2.2-3801, which is the Government Data Collection and Dissemination Practices Act, a law concerned with government collection and maintenance of data and data systems.

The GDCDPA definition of “personal information” is very broad. It includes many elements that are already prohibited from disclosure by other statutes (e.g., Social Security numbers) or that may be exempt by a FOIA exemption (e.g., “employment record”).

However, the definition also includes information that currently must be disclosed by FOIA because it relates to the transaction of public business. The definition includes information that “describes, locates or indexes anything about an individual,” which would include names, addresses, basic contact information – information that is currently publicly available in court records, registration data for any number of services, contact information for government employees, building inspection reports and much, much more.

The GDCDPA definition of “personal information” also includes information about political ideology, photographs and membership in any activity, thus impacting voter registration records, photos used in the parks and recreation catalog or public university athletic team photos, respectively.

¹ *Americans for Prosperity Foundation v. Bonta*, July 1, 2021: https://www.supremecourt.gov/opinions/20pdf/19-251_p86b.pdf



There is no discretion with this change. The proposed legislation says this information is not a public record. The cost of a FOIA request would skyrocket when agencies would be forced to redact all of this “personal information” out of public records.

The weight of redaction would also be heavy on every single FOIA officer who – if some piece of personal information was mistakenly released instead of removed – could be subject to 90 days in jail and/or a \$1,000 fine.

The supposed intent of this bill is to protect donors’ First Amendment rights of free association by having to disclose which non-profits they contribute to. That is a narrow issue and one that VCOG does not take a position on (VCOG is a 501(c)(3)). But that is not this bill: this bill destroys nearly 50 years of understanding of what is considered a public record in Virginia. It cannot stand.

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



GDCDPA definition of “personal information”	Impact
SSN	Prohibited from disclosure by other state law
Driver's License number	Prohibited from disclosure by federal law
Agency-issued identification number	Would impact ability to distinguish among employees
Student identification number	May be withheld under federal law or FOIA exemption
Real or personal property holdings derived from tax returns	Prohibited from disclosure by Virginia Tax Code
Education	May be withheld under federal law or FOIA exemption
Financial transactions	Would impact records related to fees collected or paid to recreation programs, boat registration,
Medical history	Prohibited from disclosure by state/federal law
Ancestry	Would impact anti-nepotism laws, as well as ordinary records that may happen to note a person’s parent/ child/spouse
Religion	Would impact applications by churches to hold services in public buildings
Political ideology	Would impact records available from the registrars
Criminal records	Criminal histories prohibited from disclosure by state law
Employment record	May be withheld under FOIA exemption
Fingerprints	May be withheld under FOIA exemptions for personnel and criminal investigations
Voiceprints	May be withheld under FOIA exemptions for personnel and criminal investigations
Photographs	Would impact school sports photos, employee service awards, library book donation promotions, etc.
Things done by or to such individual	Would impact literally everything
Membership in an organization or activity	Would impact records related to membership in athletic booster clubs, police ride-along programs, adult softball leagues, election officers
PROPOSED: Membership in a IRC § 501(c)	Many foundations that support universities and other public bodies are 501(c) organizations.