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Code of Virginia, Title 42.1 Chapter 7 Virginia Public Records Act - Appendix A

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Sec. 42.1-76. Legislative intent; title of chapter.

- The General Assembly intends by this chapter to establish a single body of law applicable to all public officers and employees on the subject of public records management and preservation and to ensure that the procedures used to manage and preserve public records will be uniform throughout the Commonwealth.

This chapter may be cited as the Virginia Public Records Act.

Sec. 42.1-77. Definitions.

- As used in this chapter:

"Agency" means all boards, commissions, departments, divisions, institutions, authorities, or parts thereof, of the Commonwealth or its political subdivisions and includes the offices of constitutional officers.

"Archival quality" means a quality of reproduction consistent with established standards specified by state and national agencies and organizations responsible for establishing such standards, such as the Association for Information and Image Management, the American Standards Association, and the National Bureau of Standards.

"Board" means the State Library Board.

"Council" means the State Public Records Advisory Council.

"Custodian" means the public official in charge of an office having public records.

"Data" means symbols, or representations, of facts or ideas that can be communicated, interpreted, or processed by manual or automated means.

"Database" means a set of data, consisting of one file or a group of integrated files, maintained as an information system managed by a database management system.

"Database Management System" means a set of software programs that controls the organization, storage and retrieval of data in a database. It also controls the security and integrity of the database.

"Electronic Record" means any information that is recorded in machine readable form.

"Electronic Records System" means any information system that produces, processes, or stores records by using a computer. Also called an automated information system.

"Information System" means the organized collection, processing, transmission, and dissemination of information in accordance with defined procedures, whether automated or manual.

"Librarian of Virginia" means the Librarian of Virginia or his designated representative.

"Public Official" means all persons holding any office created by the [Constitution of Virginia](#) or by any act of the General Assembly, the Governor and all other officers of the executive branch of the state government, and all other officers, heads, presidents or chairmen of boards, commissions, departments, and agencies of the state government or its political subdivisions.

"Public Record" means recorded information that document a transaction or activity by or with any public officer, agency or employee of state government or its political subdivisions. Regardless of physical form or characteristic, the recorded information is a public record if it is produced, collected, received or retained in pursuance of law or in connection with the transaction of public business.

The medium on which such information is recorded may be, but is not limited to paper, film, magnetic, optical or solid state devices which can store electronic signals, tapes, mylar, linen, silk or vellum. The general types of records may be, but are not limited to books, papers, letters, documents, printouts, photographs, films, tapes, microfiche, microfilm, photostats, sound recordings, maps, drawings, and any representations held in computer memory.

Nonrecord materials, meaning reference books and exhibit materials made or acquired and preserved solely for reference use or exhibition purposes, extra copies of documents preserved only for convenience or reference, and stocks of publications, shall not be included within the definition of public records as used in this chapter.

"Archival records" means all noncurrent records of continuing and enduring value useful to the citizens of the Commonwealth and necessary to the administrative functions of public agencies in the conduct of services and activities mandated by law. In appraisal of public records deemed archival, the terms "administrative," "legal," "fiscal," and "historical" shall be defined as:

1. "Administrative value": Records shall be deemed of administrative value if they have continuing utility in the operation of an agency.

2. "Legal value": Records shall be deemed of legal value when they document actions taken in the protection and proving of legal or civil rights and obligations of individuals and agencies.
3. "Fiscal value": Records shall be deemed of fiscal value so long as they are needed to document and verify financial authorizations, obligations and transactions.
- 4 "Historical value": Records shall be deemed of historical value when they contain unique information, regardless of age, which provides understanding of some aspect of the government and promotes the development of an informed and enlightened citizenry.

"Medical records" means the documentation of health care services, whether physical or mental, rendered by direct or indirect patient-provider interaction which is used as a mechanism for tracking the patient's health care status. Medical records may be technologically stored by computerized or other electronic process, or through microfilm or other similar photographic form or chemical process. Notwithstanding the authority provided by this definition to store medical records on microfilm or other similar photographic form or chemical process, prescription dispensing records maintained in or on behalf of any pharmacy registered or permitted in Virginia shall only be stored in compliance with Sections [54.1-3410](#), [54.1-3411](#) and [54.1-3412](#).

"Official Records" means public records.

"Persons under a disability" means persons so defined under subsection A of [8.01-229](#).

"Preservation" means maintaining archival records in their original physical form by stabilizing them chemically or strengthening them physically to ensure their survival as long as possible in their original form. It also means the reformatting of written, printed, electronic or visual archival information to extend the life of the information.

"Retention and Disposition Schedule" means an approved timetable stating the retention time period and disposition action of records series.

"Software Programs" mean the written specifications used to operate an electronic records system as well as the documentation describing implementation strategies.

Sec. 42.1-78. Confidentiality safeguarded.

- Any records made confidential by law shall be so treated. Records which by law are required to be closed to the public shall not be deemed to be made open to the public under the provisions of this chapter. Records in the custody of the Library of Virginia which are required to be closed to the public shall be open for public access 100 years after the date of creation of the record. No provision of this chapter shall be construed to authorize or require the opening of any records ordered to be sealed by a court. All records deposited in the archives that are not made confidential by law shall be open to public access.

Sec. 42.1-79. Records management function vested in Board; State Library Board to be official custodian; State Archivist.

- The archival and records management function shall be vested in the State Library Board. The State Library Board shall be the official custodian and trustee for the Commonwealth of all public records of whatever kind which are transferred to it from any public office of the Commonwealth or any political subdivision thereof. As the Commonwealth's official repository of public records, the Library of Virginia shall assume administrative control of such records on behalf of the Commonwealth.

The Librarian of Virginia shall name a State Archivist who shall perform such functions as the Librarian of Virginia assigns.

Sec. 42.1-79.1. Retention and disposition of medical records.

- The medical records of all persons not under a disability shall be retained by all public agencies acting as custodians of medical records for ten years following the last date of treatment or contact. Such agencies shall retain the medical records of minors and persons under a disability for a minimum of five years following the age of majority or the removal of the disability, or ten years following the last date of treatment or contact, whichever comes later. Such agencies shall retain the medical records of deceased persons for a minimum of five years following the date of death.

Agencies of the Commonwealth which generate medical records shall notify patients at time of discharge the specific retention period that applies to their records. Such agencies shall be encouraged to destroy such medical records upon expiration of the required retention period. Such agencies may, at their discretion, retain summaries of destroyed medical records.

Medical records submitted to the Library of Virginia for retention and disposition in accordance with the terms of this section are presumed to be inactive. It shall be the duty of the originating agency to (i) designate medical records of minors, persons under a disability, or deceased persons prior to submission to the Library of Virginia for retention and disposition, and (ii) to make a verifiable attempt to notify patients that their records will be destroyed after the appropriate retention period. Unless notified otherwise by the originating agency, the Librarian of Virginia shall begin to count the required retention period from the first date of submission. Prior to destroying any medical records, the Librarian of Virginia or his designee shall notify the originating agency that the retention period has run out and that, unless the agency reclaims the medical records, the records will be destroyed.

No employee of the Library of Virginia or any agency acting in accordance with the terms of this section shall be liable, civilly or criminally, for the destruction of medical records.

The provisions of this section shall not supersede the provisions of Sec. [16.1-306](#) or any other laws of this Commonwealth pertaining to the retention and disposition of records generated by agencies other than those agencies originating medical records.

Sec. 42.1-80. State Public Records Advisory Council continued; members; chairman and vice-chairman; compensation.

- The State Public Records Advisory Council is continued. The Council shall consist of twelve members. The Council membership shall include the Secretary of the Commonwealth, the Librarian of Virginia, the Attorney General, the State Health Commissioner, the Commonwealth Transportation Commissioner, the Director of the Department of Information Technology, the Auditor of Public Accounts, the Executive Secretary of the Supreme Court, the Director of the Council on Information Management, or their designated representatives and three members to be appointed by the Governor from the Commonwealth at large. The gubernatorial appointments shall include two clerks of courts of record and a member of a local governing body. Those members appointed by the Governor shall remain members of the Council for a term coincident with that of the Governor making the appointment, or until their successors are appointed and qualified. The Council shall elect annually from its membership a chairman and vice-chairman. Members of the Council shall receive no compensation for their services but shall be paid their reasonable and necessary expenses incurred in the performance of their duties.

Sec. 42.1-81. Powers and responsibilities of Council.

- The Council shall propose to the State Library Board rules, regulations, and standards, not inconsistent with law, for the purpose of establishing uniform guidelines for the management and preservation of public records throughout the Commonwealth. The Council shall have the power to appoint such subcommittees and advisory bodies as it deems advisable. The Council shall be assisted in the execution of its responsibilities by the Librarian of Virginia.

Sec. 42.1-82. Duties and powers of Library Board.

- The State Library Board shall with the advice of the Council:

1. Issue regulations designed to facilitate the creation, preservation, storage, filing, reformatting, management, and destruction of public records by all agencies. Such regulations shall establish procedures for records management containing recommendations for the retention, disposal or other disposition of public records; procedures for the physical destruction or other disposition of public records proposed for disposal; and standards for the reproduction of records by photocopy or microphotography processes with the view to the disposal of the original records. Such standards shall relate to the quality of film used, preparation of the records for filming, proper identification of the records so that any individual document or series of documents can be located on the film with reasonable facility and that the copies contain all significant record detail, to the end that the photographic or microphotographic copies shall be of archival quality.

2. Issue regulations specifying permissible qualities of paper, ink, and other materials to be used by agencies for public record purposes. The Board shall determine the specifications for and shall select and make available to all agencies lists of approved papers, photographic materials, ink, or other writing materials for archival public records, and only those approved may be purchased for use in the making of such records. These regulations and specifications shall also apply to clerks of courts of record.

3. Provide assistance to agencies in determining what records no longer have administrative, legal, fiscal, or historical value and should be destroyed or disposed of in another manner. Each public official having in his custody official records shall assist the Board in the preparation of an inventory of all public records in his custody and in preparing a suggested schedule for retention and disposition of such records. No land or personal property book shall be destroyed without being first offered to the Library of Virginia for preservation.

All records created prior to the Constitution of 1902 that are declared archival may be transferred to the archives.

Sec. 42.1-83. Program for inventorying, scheduling, microfilming records; records of counties, cities and towns; storage of records.

- The State Library Board shall formulate and execute a program to inventory, schedule, and microfilm official records of counties, cities and towns which it determines have permanent value and to provide safe storage for microfilm copies of such records, and to give advice and assistance to local officials in their programs for creating, preserving, filing and making available public records in their custody.

Original archival public records shall be either stored in the Library of Virginia or in the locality at the decision of the local officials responsible for maintaining public records. Original archival public records shall be returned to the locality upon the written request of the local officials responsible for maintaining local public records. Microfilm shall be stored in the Library of Virginia but the use thereof shall be subject to the control of the local officials responsible for maintaining local public records.

Sec. 42.1-84. Same; records of agencies and subdivisions not covered under Sec. [42.1-83](#).

- The State Library Board may formulate and execute a program of inventorying, repairing, and microfilming for security purposes the public records of the agencies and subdivisions not covered under the program established under Sec. 42.1-83 which it determines have permanent value, and of providing safe storage of microfilm copies of such records.

Sec. 42.1-85. Duties of Librarian of Virginia; agencies to cooperate; agencies to designate records officer.

- The Librarian of Virginia shall administer a records management program for the application of efficient and economical management methods to the creation, utilization, maintenance, retention, preservation, and disposal of public records consistent with rules, regulations, or standards promulgated by the State Library Board, including operations of a records center or centers. It shall be the duty of the Librarian of Virginia to establish procedures and techniques for the effective management of public records, to make continuing surveys of paper work operations, and to recommend improvements in current records management practices, including the use of space, equipment, and supplies employed in creating, maintaining and servicing records.

It shall be the duty of any agency with public records to cooperate with the Librarian of Virginia in conducting surveys and to establish and maintain an active, continuing program for the economical and efficient management of the records of such agency.

Each state agency and political subdivision of this Commonwealth shall designate as many as appropriate, but at least one, records officer to serve as a liaison to the Library of Virginia for the purposes of implementing and overseeing a records management program, and coordinating legal disposition, including destruction of obsolete records. Designation of state agency records officers shall be by the respective agency head. Designation of a records officer for political subdivisions shall be by the governing body or chief administrative official of the political subdivision.

Sec. 42.1-86. Program to select and preserve important records; availability to public; security copies.

- In cooperation with the head of each agency, the Librarian of Virginia shall establish and maintain a program for the selection and preservation of public records considered essential to the operation of government and for the protection of the rights and interests of persons. He shall provide for preserving, classifying, arranging and indexing so that such records are made available to the public and shall make security copies or designate as security copies existing copies of such essential public records. Security copies shall be of archival quality and shall be made by photographic, photostatic, microfilm, microcard, miniature photographic, or other process which accurately reproduces and forms a durable medium. Security copies shall have the same force and effect for all purposes as the original record and shall be as admissible in evidence as the original record whether the original record is in existence or not. Security copies shall be preserved in the place and manner prescribed by the State Library Board and the Governor. Public records deemed unnecessary for the transaction of the business of any agency, yet deemed to be of administrative, legal, fiscal

or historical value, may be transferred with the consent of the Librarian of Virginia to the custody of the Library of Virginia.

Sec. 42.1-86.1. Disposition of public records.

- No agency shall destroy or discard public records without a retention and disposition schedule approved by the Librarian of Virginia as provided in Sec. [42.1-82](#). No agency shall sell or give away public records.

Sec. 42.1-87. Where records kept; duties of agencies; repair, etc., of record books; agency heads not divested of certain authority.

- Custodians of archival public records shall keep them in fire-resistant environmentally controlled, physically secure rooms designed to ensure proper preservation and in such arrangement as to be easily accessible. Current public records should be kept in the buildings in which they are ordinarily used. It shall be the duty of each agency to cooperate with the Library of Virginia in complying with rules and regulations promulgated by the Board. Each agency shall establish and maintain an active and continuing program for the economic and efficient management of records.

Each agency shall develop and implement a program for the management of records created, received, maintained, used, or stored on electronic media. Each agency shall schedule the retention and disposition of all electronic records, as well as related access documentation and indexes and shall ensure the implementation of their provisions in accordance with procedures established under Sec. [42.1-82](#). Procedures governing access to electronic records shall be in accordance with the Virginia Freedom of Information Act, the Virginia Privacy Protection Act, the Intellectual Property Act and any other provision of law as may be applicable and shall be enumerated in the retention and disposition schedule.

Record books should be copied or repaired, renovated or rebound if worn, mutilated, damaged or difficult to read. Whenever the public records of any public official are in need of repair, restoration or rebinding, a judge of the court of record or the head of such agency or political subdivision of the Commonwealth may authorize that the records in need of repair be removed from the building or office in which such records are ordinarily kept, for the length of time necessary to repair, restore or rebind them, provided such restoration and rebinding preserves the records without loss or damage to them. Before any restoration or repair work is initiated, a treatment proposal from the contractor shall be submitted and reviewed in consultation with the Library of Virginia. Any public official who causes a record book to be copied shall attest it and shall certify an oath that it is an accurate copy of the original book. The copy shall then have the force of the original.

Nothing in this chapter shall be construed to divest agency heads of the authority to determine the nature and form of the records required in the administration of their several departments or to compel the removal of records deemed necessary by them in the performance of their statutory duty. Whenever legislation affecting public records management and preservation is under consideration, the Library of Virginia shall critique the proposal and advise on the effects of its implementation.

Sec. 42.1-88. Custodians to deliver all records at expiration of term; penalty for noncompliance.

- Any custodian of any public records shall, at the expiration of his term of office, appointment or employment, deliver to his successor, or, if there be none, to The Library of Virginia, all books, writings, letters, documents, public records, or other information, recorded on any medium kept or received by him in the transaction of his official business; and any such person who shall refuse or neglect for a period of ten days after a request is made in writing by the successor or Librarian of Virginia to deliver the public records as herein required shall be guilty of a Class 3 misdemeanor.

Sec. 42.1-89. Petition and court order for return of public records not in authorized possession.

- The Librarian of Virginia or his designated representative such as the State Archivist or any public official who is the custodian of public records in the possession of a person or agency not authorized by the custodian or by law to possess such public records shall petition the circuit court in the city or county in which the person holding such records resides or in which the materials in issue, or any part thereof, are located for the return of such records. The court shall order such public records be delivered to the petitioner upon finding that the materials in issue are public records and that such public records are in the possession of a person not authorized by the custodian of the public records or by law to possess such public records. If the order of delivery does not receive compliance, the plaintiff shall request that the court enforce such order through its contempt power and procedures.

Sec. 42.1-90. Seizure of public records not in authorized possession.

- A. At any time after the filing of the petition set out in Sec. [42.1-89](#), or contemporaneous with such filing, the person seeking the return of the public records may by ex parte petition request the judge or the court in which the action was filed to issue an order directed at the sheriff or other proper officer, as the case may be, commanding him to seize the materials which are the subject of the action and deliver the same to the court under the circumstances hereinafter set forth.

B. The judge aforesaid shall issue an order of seizure upon receipt of an affidavit from the petitioner which alleges that the material at issue may be sold, secreted, removed out of this Commonwealth or otherwise disposed of so as not to be forthcoming to answer the final judgment of the court respecting the same; or that such property may be destroyed or materially damaged or injured if permitted to remain out of the petitioner's possession.

C. The aforementioned order of seizure shall issue without notice to the respondent and without the posting of any bond or other security by the petitioner.

Sec. 42.1-91. Development of disaster plan.

- The Library of Virginia shall develop a plan to ensure preservation of public records in the event of disaster or emergency as defined in Sec. [44-146.16](#). This plan shall be coordinated with the Department of Emergency Services and copies shall be distributed to all agency heads. The personnel of the Library shall be responsible for coordinating emergency recovery operations when public records are affected. Each agency shall insure that a plan for the protection and recovery of public records is included in their comprehensive disaster plan.

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