

PUBLIC RECORDS ACT

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**REPORT OF THE
VIRGINIA ADVISORY LEGISLATIVE COUNCIL**

To

THE GOVERNOR

And

THE GENERAL ASSEMBLY OF VIRGINIA



House Document No. 21

**COMMONWEALTH OF VIRGINIA
Department of Purchases and Supply
Richmond
1976**

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PUBLIC RECORDS ACT

Report of the

Virginia Advisory Legislative Council

To

The Governor and the General Assembly of Virginia

Richmond, Virginia

December, 1975

To: Honorable Mills E. Godwin, Jr., Governor of Virginia

And

The General Assembly of Virginia

INTRODUCTION

The 1975 Report of the VALC on a Public Records Act concluded that further study toward the development of comprehensive records management legislation be conducted. To that end the General Assembly passed House Joint Resolution No. 183, as follows:

HOUSE JOINT RESOLUTION NO. 183

Continuing the Virginia Advisory Legislative Council's study of a Public Records Act for the Commonwealth.

WHEREAS, the 1973 and 1974 General Assemblies recognized the duty of the Legislature to modernize the Code of Virginia to preserve the Commonwealth's public records for the administration of government and the study of its history and to protect the access of the public to such records without endangering the safety of the documents by directing the Virginia Advisory Legislative Council to study the desirability of a Public Records Act; and

WHEREAS, the Virginia Advisory Legislative Council has made an exhaustive study and has concluded that a carefully drafted omnibus Public Records Act would be beneficial to the Commonwealth; and

WHEREAS, the Council concludes that additional time for research and study is necessary to formulate a workable legislative design; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring,

That the Virginia Advisory Legislative Council is hereby directed to continue its study of public records preservation, the present provisions dealing with public records, and proposals for new provisions. All agencies of the State shall assist the Council in its study. The Council shall complete its study and submit its report to the Governor and the General Assembly not later than November one, nineteen hundred seventy-five.

The Council continued its study committee with Lewis A. McMurrin, Jr. of Newport News as Chairman; David F. Thornton of Salem as Vice Chairman; Charles B. Cross, Jr. of Chesapeake; Walther B. Fidler of Sharps; W. Franklin Gooding of Fairfax; W. Moscoe Huntley of Richmond; Louis H. Manarin of Richmond; and, C. Hardaway Marks of Hopewell. The Division of Legislative Services, represented by Denton Roberts and Constance Sprouse, provided staff support and facilities for the Committee.

REVIEW OF PREVIOUS COUNCIL RECOMMENDATIONS

During the 1975 General Assembly Session, certain recommendations made by the Council were adopted. They concerned: an expanded definition of public records enlarging the Commonwealth's records management program, the replevin of public records, and the replacement of the marginal release system for recording deeds of trust and liens with a system utilizing recorded certificates of satisfaction and partial satisfaction. These recommendations, introduced as House Bills 1248, 1244 and 1245 respectively, were passed and signed by the Governor. They are now Chapters 370, 180 and 469 of the 1975 Acts of Assembly.

The final recommendation of the Council was the further study and development of a comprehensive public records act. Several professionals in the field of records management were consulted, including: Dr. Charles Lee, Director, South Carolina Department of Archives and History; Carroll Hart, Director, Department of Archives and History, Georgia; Senator Robert Williams, Director, Division of Archives, History and Records Management, Florida; Dr. H. G. Jones, Curator, North Carolina Collection, University of North Carolina; and, Dr. Thornton Mitchell, State Archivist, North Carolina. Each discussed the several different approaches taken by their states in providing a comprehensive public records management program. Their candid remarks and critical comments were of great assistance in the development of the Council's recommendation. The Virginia State Library Board also rendered assistance to the Council in its study by presenting to the Council a legislative proposal for the development of a public records management program.

RECOMMENDATION

After serious study of the several approaches recommended, the Council has developed an approach it believes best serves the needs of the Commonwealth and its subdivisions. This approach will develop a systematic and efficient system for the management and safekeeping of all public records. The Council's legislative proposal is incorporated herein as Appendix I of this report.

DISCUSSION OF RECOMMENDATION

As noted in the previous reports of the Council, a Public Records Act would assure the preservation of Virginia's heritage through the retrieval of archival quality records as well as result in substantial cost savings to the State through efficient records management.

The Council, recognizing that the creation of another independent State agency would be burdensome and costly, has placed the program within the present administrative structure. The State Library Board is vested with the State's archival and records management function.

Further provisions of the recommended legislation are as follows:

An advisory committee to the State Library Board, consisting of State agency heads, clerks of court, and local government officials, is established for the purpose of proposing guidelines for the State's public records management program.

The State Library Board is given ultimate authority to prescribe rules and regulations for the creation, storage, management and destruction of public records. Schedules, standards and procedures for the creation and disposition of such records shall be adopted by the Board. Agencies of the State shall be assisted by the Board in determining which records have historical, administrative, legal or fiscal value for archival purposes.

Public officials are to notify the Library as to the public records in their custody. These records shall be scheduled for disposition in accordance with the regulations prescribed by the Board.

A program for inventorying, scheduling and microfilming local records is to be continued under the guidance of the Board. Local custodians shall have the option of storing such records in the Library or in the locality to which they belong. These records, as well as other public records, are subject to the control placed upon them by the custodian even if such records are housed in the Library or some other designated records center.

A program for inventorying, repairing and microfilming records shall be formulated by the Library Board for security of State and local public records which have permanent value.

The State Librarian is designated the administrator of the Public Records Act. Consistent with the rules and regulations adopted by the Library Board, the State Librarian shall establish procedures for effective records management and recommend improvements in records management practices. State agencies are given the duty to cooperate with the State Librarian in establishing and maintaining programs for the management of the records of the agencies. A State Archivist shall be named by the Library Board, serving at its pleasure, and performing such functions as it requires.

A program for selecting and maintaining records of archival quality or records considered essential to the functions of government and for the protection of the rights of individuals shall be established. Such program shall include maintaining records consistent with certain standards to reproduce these records in archival quality. These reproductions shall be considered admissible evidence. Public records no longer used in conducting government business but deemed to be of administrative, legal, fiscal or historical value may be transferred to the custody of the State Library upon the Librarian's consent.

The duties of custodians to protect and preserve public records, to maintain them for public use, and to comply with the Public Records Act are set forth. A method for the repair and reconstruction of damaged records is prescribed. Such reconstructed or copied public records shall be certified by certain officials to attest their accuracy for use in place of the original. No agency head shall be divested of his authority to determine what records are necessary in the performance of his statutory duty.

The replevin sections enacted during the 1974 Session along with the current section dealing with the Library Board's power to establish a management program for the records of localities are included in the draft as a "housekeeping" measure to place all pertinent sections in one chapter of the Code. Certain sections are repealed because they are either surplusage in light of the act or in conflict with its provisions. Two sections of the Code, §§ 2.1-206 and 22-53.1, have not been suggested for repeal or inclusion into the comprehensive legislation by the Committee at this time. These sections relating to the records of the Comptroller and the State Board of Education should be retained until the State Library Board has their scheduling process completed to provide for the continuous management of these records.

The described programs and duties have been seriously studied and evaluated by the Council. The Council concludes that a comprehensive Public Records Act would be extremely beneficial to the Commonwealth. It would insure the consistent preservation of Virginia's heritage. Virginia's public records have been neglected in the past and important papers have either been destroyed or passed from State ownership. The Commonwealth can no longer afford the loss of important documents or the retention of unimportant documents. Additionally, the result of such programs will be substantial cost savings due to the more efficient creation, storage and destruction of public records.

The Council firmly believes that ultimately the State's records management ills can only be effectively remedied through the adoption of the comprehensive records management legislation presented herein. The Council recommends that the General Assembly enact this legislation to preserve the Commonwealth's heritage and bring about more efficient management of public records.

Respectfully submitted,

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Willard J. Moody, Chairman

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Edward E. Lane, Vice Chairman

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Lawrence Douglas Wilder

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A Bill to amend the Code of Virginia by adding in Title 42.1 a chapter numbered 7, consisting of sections numbered 42.1-76 through 42.1-90, and to repeal §§ 2.1-9, 2.1-10, 30-28.20, 33.1-17, 42.1-20 through 42.1-29.2, as severally amended, of the Code of Virginia, establishing the Virginia Public Records Act; penalties for certain violations.

Whereas, the records of the State and its political subdivisions are so interrelated and interdependent that the decision as to what records are retained or destroyed is a matter of Statewide public policy; and

Whereas, the interest and concern of citizens in public records recognizes no jurisdictional boundaries; and

Whereas, local and State programs are becoming increasingly interagency and intergovernmental and consequently the Commonwealth and its political subdivisions have a responsibility to ensure the systematic and efficient management and safekeeping of all public records, whether current or noncurrent, and to ensure the preservation of public records of value for administrative, legal, fiscal and historical purposes; now, therefore,

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 42.1 a chapter numbered 7, consisting of sections numbered 42.1-76 through 42.1-90, as follows:

Chapter 7.

Virginia Public Records Act.

§ 42.1-76. Intention; title of chapter.—The General Assembly intends by this act 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 State.

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

§ 42.1-77. Definitions.—As used in this chapter:

A. “Agency” shall mean all boards, commissions, departments, divisions, institutions, authorities, or parts thereof, of the State or its political subdivisions.

B. “Archival quality” shall mean a quality of reproduction consistent with reproduction standards specified by the National Micrographics Association, American Standards Association or National Bureau of Standards.

C. “Board” shall mean the State Library Board.

D. “Committee” shall mean the State Public Records Advisory Committee

E. "Custodian" shall mean the public official in charge of an office having public records.

F. "State Librarian" shall mean the State Librarian or his designated representative.

G. "Public official" shall mean 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.

H. "Public records" shall mean all written books, papers, letters, documents, photographs, tapes, microfiche, microfilm, photostats, sound recordings, maps, other documentary materials or information in any recording medium regardless of physical form or characteristics, including data processing devices and computers, made or received in pursuance of law or in connection with the transaction of public business by any agency of the State government or its political subdivisions.

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.

§ 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.

§ 42.1-79. Archival and records management function; administration; State Archivist.—The archival and records management function shall be vested in the State Library Board. The State Library shall be the official custodian and trustee for the State of all public records of whatever kind which are transferred to it from any public office of the State or any political subdivision thereof.

The State Librarian shall be responsible for the proper administration of public records.

The State Library Board shall name a State Archivist who shall perform such functions as the State Library Board assigns.

§ 42.1-80. Advisory Committee.—There is hereby created a State Public Records Advisory Committee. The Committee shall consist of nine members. The committee membership shall include the Secretary of Administration and Finance, the State Librarian, the State Health Commissioner, the State Highway and Transportation Commissioner, the Director of the Division of Automated Data Processing, the Auditor of Public Accounts, or their designated representatives and three members to be appointed by the Governor from the State 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 Committee for a term coincident with that of the Governor making the appointment, or until their successors shall be appointed and qualified. The Committee shall elect annually from its membership a chairman and vice-chairman. Members of the Committee shall receive no compensation for their services but shall be paid their reasonable and necessary expenses incurred in the performance of their duties.

§ 42.1-81. Committee's responsibilities; appointment of advisory bodies; assistance of the State Librarian.—The Committee shall have responsibility for proposing 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 State. The Committee shall have the power to appoint such subcommittees and advisory bodies as it deems advisable. The Committee shall be assisted in the execution of its responsibilities by the State Librarian.

§ 42.1-82. Duties and powers of the Library Board.—The State Library Board shall with the advice of the Committee:

A. Issue regulations designed to facilitate the creation, preservation, storage, filing, microfilming, 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.

B. 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, typewriter ribbons, carbon papers, stamping pads or other writing devices for different classes of public records, and only those approved may be purchased for use in the making of such records.

C. 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 records shall be disposed of by any agency of the State unless the approval of the State Librarian is first obtained. No land or personal property book shall be destroyed.

§ 42.1-83. Program for inventorying, scheduling and microfilming records of localities.—The State Library Board shall formulate and execute a program to inventory, schedule, and microfilm official records of counties and cities 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.

Any original records shall be either stored in the State Library or in the locality at the decision of the local officials responsible for maintaining public records. Any original records shall be returned to the locality upon the written demand of the local officials responsible for maintaining local public records. Microfilm shall be stored in the State Library but the use thereof shall be subject to the control of the local officials responsible for maintaining local public records.

§ 42.1-84. Inventorying, repairing and microfilming records.—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 § 42.1-83 which it determines have permanent value, and of providing safe storage of microfilm copies of such records.

§ 42.1-85. Duties and powers of State Librarian; cooperation of agencies.—The State Librarian 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 State Librarian 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 State Librarian in conducting surveys and to establish and maintain an active, continuing program for the economical and efficient management of the records of such agency.

§ 42.1-86. Program to select and preserve important records; availability to public; security copies.—In cooperation with the head of each agency, the State Librarian 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 or cause to be made security copies or designate as security copies existing copies of such essential public records. Security copies shall be of archival quality and such copies made by photographic, photostatic, microfilm, microcard, miniature photographic, or other process which accurately reproduces and forms a durable medium and 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. Such security copies shall be preserved in such place and manner of safekeeping as prescribed by the State Library Board and provided by the Governor. Those 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 State Librarian to the custody of the State Library.

§ 42.1-87. Duties of custodians of public records and agencies; record books copies; certification; agency heads not divested of authority.—Custodians of public records shall keep them in fireproof safes; vaults or in 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 State Library 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.

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 State 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. 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.

§ 42.1-88. Succession of custodians; 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 State Library, 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 State Librarian to deliver the public records as herein required shall be guilty of a Class 3 misdemeanor.

§ 42.1-89. Petition and court order for return of public records not in authorized possession.—The State Librarian 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.

§ 42.1-90. Seizure of public records not in authorized possession.—A. At any time after the filing of the petition set out in § 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 State 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.

2. That §§ 2.1-9, 2.1-10, 30-28.20, 33.1-17, 42.1-20 through 42.1-29.2, as severally amended, of the Code of Virginia are repealed.

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