

# VIRGINIA ACTS OF ASSEMBLY -- 1994 SESSION

## CHAPTER 955

*An Act to amend and reenact §§ 42.1-77, 42.1-79.1, 42.1-80, 42.1-82, 42.1-83, 42.1-87, and 42.1-91 of the Code of Virginia, relating to the Virginia Public Records Act.*

[H 1401]

Approved April 20, 1994

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 42.1-77, 42.1-79.1, 42.1-80, 42.1-82, 42.1-83, 42.1-87, and 42.1-91 of the Code of Virginia are amended and reenacted as follows:**

§ 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, and is 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.*

"State Librarian" means the State Librarian 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 records" means, but is not limited to, 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 electronically recorded data, made or received in pursuance of law or in connection with the transaction of public business by any agency or employee of state government or its political subdivisions.~~

*"Public record" means recorded information that documents a transaction or activity by or with any public officer, agency or employee of the 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.

*"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" means the written specifications used to operate an electronic records system as well as the documentation describing implementation strategies.*

§ 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 State Library and Archives 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 State Library and Archives 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 State Librarian shall begin to count the required retention period from the first date of submission. Prior to destroying any medical records, the State Librarian 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 State Library and Archives 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 § 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.

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

The State Public Records Advisory Council is continued. The ~~Advisory~~ Council shall consist of ~~eleven~~ twelve members. The ~~Advisory~~ Council membership shall include the Secretary of the Commonwealth, the State Librarian, 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 ~~Advisory~~ Council for a term coincident with that of the Governor making the appointment, or until their successors are appointed and qualified. The ~~Advisory~~ Council shall elect annually from its membership a chairman and vice-chairman. Members of the ~~Advisory~~ Council shall receive no compensation for their services but shall be paid their reasonable and necessary expenses incurred in the performance of their duties.

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

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

1. Issue regulations to facilitate the creation, preservation, storage, filing, ~~microfilming, 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, ~~typewriter ribbons, carbon papers, stamping pads,~~ or other writing ~~devices materials~~ for different classes of 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 State Library and Archives for preservation.

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

§ 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, ~~and 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.

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

§ 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 ~~fireproof safes, vaults or 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 State Library and Archives 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 § 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 rebound 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 State Library and Archives.* 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 State Library and Archives shall review the proposal and advise the General Assembly on the effects of its proposed implementation.*

§ 42.1-91. Development of disaster plan.

The State Library and Archives shall develop a plan to ensure preservation of public records in the event of disaster or emergency as defined in § 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 ensure that a plan for the protection and recovery of public records is included in its comprehensive disaster plan.*