

ADMINISTRATION OF GOVERNMENT GENERALLY: VIRGINIA FREEDOM OF INFORMATION ACT — PRIVACY PROTECTION ACT OF 1976.

TAXATION: GENERAL PROVISIONS OF TITLE 58.1 (SECRECY OF INFORMATION) — LOCAL OFFICERS - COMMISSIONERS OF THE REVENUE.

Freedom of Information Act does not require office of commissioner of revenue to copy personal property book. Records custodian may place burden for copying records on requester if custodian has no system or computer database available that is capable of producing copies. Act expressly grants citizens right to copy official records required by law to be open for inspection. Because electronic system for producing copies of book does not exist does not prevent persons within commissioner's office or requester from making copies of book. Privacy Protection Act does not prohibit disclosure of personal information required to be disclosed under Freedom of Information Act. Only that information required by law to be entered in personal property book is subject to disclosure; other information relating to taxpayer's personal property is protected by secrecy requirements, unless some other authority permits its release.

The Honorable Joyce A. Fuller

Commissioner of the Revenue for Franklin County

June 1, 1999

You ask whether The Virginia Freedom of Information Act, §§ 2.1-340 through 2.1-346.1 of the *Code of Virginia*, requires that you, in addition to making the personal property book available for inspection, furnish a requester copies of the book if a data processing program capable of producing such copies is not presently in operation.

Section 2.1-342(A) requires that, "[e]xcept as otherwise specifically provided by law," official records must be open for inspection and copying by any citizen of the Commonwealth during the regular office hours of the custodian of the records. Prior opinions of the Attorney General conclude that the personal property book is a "public assessment book" not encompassed within the secrecy provisions of § 58.1-3 and is thus subject to disclosure under § 2.1-342(A).¹

If records are subject to disclosure, the custodian is to provide the requested records to the citizen within five work days from receipt of the request unless additional time is necessary.² Section 2.1-342(A) also permits "reasonable charges for the copying, search time and computer time expended in the supplying of such records."³ Public bodies are not required, however, to "create or prepare a particular requested record if it does not already exist" or to "convert an official record available in one form into another form at the request of the citizen."⁴

It is my opinion that, while § 2.1-342 allows your office to copy the personal property book and charge for the copying and, if necessary, to extend the five-day time limit for responding to the request, the section does not require that your office actually make the copies. Rather, in stating that official records are to be "open to inspection and copying by any citizens of the Commonwealth,"⁵ the statute suggests that the custodian of the records may place the burden for copying the records on the citizen making the request if the custodian has no system or computer database available that is capable of producing the copies.⁶

The Virginia Freedom of Information Act does not, however, permit you to refuse a request for "copies" of the personal property book on the grounds that the request would require you "to create or prepare a particular requested record"⁷ that does not already exist. The requested document in this instance is the personal property book, a record that clearly exists. Section 2.1-

342(A) expressly grants citizens not only the right to inspect official records but also the right to copy the records. That an electronic system for producing copies of the book does not exist does not prevent persons within your office or the requester himself from making copies of the book.⁸

You ask also whether § 2.1-378(9), a portion of the Privacy Protection Act of 1976,⁹ would prohibit your providing copies of the personal property book, even if a program existed to provide the copies. Section 2.1-378(9) states the General Assembly's finding that there be "a clearly prescribed procedure to prevent personal information collected for one purpose from being used for another purpose." You express your concern that the information contained in the personal property book is collected for tax purposes and that distribution to the public for other uses would be inconsistent with this legislative finding.

The Privacy Protection Act requires that agencies maintaining systems that include personal information shall "[c]ollect, maintain, use, and disseminate only that personal information permitted or required by law to be so collected, maintained, used, or disseminated."¹⁰ Prior opinions of the Attorney General conclude that the legislature clearly does not intend the Privacy Protection Act to prohibit the disclosure of personal information required by law to be disclosed under The Freedom of Information Act.¹¹ The distribution of copies of the personal property book thus is not inconsistent with the legislative finding stated in § 2.1-378(9).¹²

Finally, you ask whether documents in your office containing information that will ultimately be included in the personal property book, such as personal property forms, may be released under The Freedom of Information Act without violating the secrecy provisions of § 58.1-3.¹³ If the form is a personal property tax return, it is specifically exempt from disclosure under § 2.1-342(B)(3). As to other personal property documents that you may have in your possession, it is my opinion that if the documents contain only "[m]atters required by law to be entered"¹⁴ in the personal property book, they are not protected by the secrecy requirement of § 58.1-3, notwithstanding the fact that the information has not yet been transferred to the book.

To the extent, however, that the documents contain information respecting "the transactions, property, including personal property, income or business of any person, firm or corporation"¹⁵ that is not required to be entered in the personal property book, the forms would be protected by the secrecy requirement of § 58.1-3. Pursuant to § 58.1-3115, the personal property book is to contain only the name, address and amount of the assessment. Accordingly, as prior opinions of the Attorney General conclude, other information relating to the taxpayer's personal property is subject to the secrecy provisions of § 58.1-3 unless some other authority would permit its release.¹⁶

¹See Op. Va. Att'y Gen.: 1993 at 221, 223; 1985-1986 at 312; 1973-1974 at 412; 1964-1965 at 282; 1951-1952 at 158. Although § 2.1-342(B)(22) specifically excludes from disclosure the documents "specified in § 58.1-3," § 58.1-3(A)(1) provides that this exclusion does not apply to "[m]atters required by law to be entered on any public assessment roll or book."

²See § 2.1-342(A) (allowing seven additional days for requests "practically impossible" to satisfy within five days (§ 2.1-342(A)(4)), and authorizing ^{court} to grant additional period for extraordinary volume of records).

³See also § 58.1-3122.1 (permitting commissioner of revenue to charge no more than 50¢ per page for photocopying papers or records upon request of taxpayer).

⁴Section 2.1-342(A).

⁵Section 2.1-342(A) (emphasis added).

⁶If a computer database containing the information exists, it must be made available to the public at a reasonable cost. See § 2.1-342(A). If you choose to require the requester to make the copies, you must, of course, have reasonable facilities available within your office for the requester to copy the book.

⁷Section 2.1-342(A).

⁸That you are not required to "convert an official record available in one form into another form at the request of the citizen" likewise would not apply to requests for copies of official records. Section 2.1-342(A). Moreover, even in instances in which the custodian is under no statutory obligation to provide records in the form requested, The Virginia Freedom of Information Act requires that "[t]he public body shall make reasonable efforts to reach an agreement with the requester concerning the production of the records requested." Section 2.1-342(A).

⁹Sections 2.1-377 to 2.1-386.

¹⁰Section 2.1-380(1) (emphasis added).

¹¹See Op. Va. Att'y Gen.: 1983-1984 at 314; 1982-1983 at 727, 728; 1978-1979 at 313, 313; 1977-1978 at 309.

¹²You state that you believe the requester intends to use the information to solicit business from the owners of personal property. No provision of The Virginia Freedom of Information Act permits the custodian of the personal property book to deny access on the basis of a citizen's intended use of the information in the book.

¹³While you do not describe the type of personal property forms that you may have in your possession, I assume for purposes of this opinion that the forms would constitute "official records" open for inspection or copying under § 2.1-342(A), unless otherwise specifically provided by law. Section 2.1-341 defines "official records" as "all written or printed books, papers, letters, documents, maps and tapes, photographs, films, sound recordings, reports or other material, regardless of physical form or characteristics, prepared, owned, or in the possession of a public body or any employee or officer of a public body in the transaction of public business."

¹⁴Section 58.1-3(A)(1).

¹⁵Section 58.1-3(A).

¹⁶See Op. Va. Att'y Gen.: 1993, *supra* note 1, at 224 (information provided by taxpayers from which official makes assessment is not subject to disclosure, notwithstanding that amount of assessment shown on personal property book); 1991 at 250, 251 (commissioner may not disclose master property tax files to department of social services); 1985-1986, *supra* note 1, at 313 (type of personal property owned by taxpayer is not required to be recorded in personal property book and thus is subject to secrecy provisions of § 58.1-3); 1981-1982 at 380, 381 (itemized listing shown on personal property tax return or tax bill, but not on personal property book, is not to be disclosed); see also Op. Va. Att'y Gen.: 1991 at 13, 16 (§ 2.1-342 guarantees access to existing documents, rather than to information contained in documents; section does not require custodian of documents to extract information from documents); *id.* at 9, 11 (§ 2.1-342 guarantees access only to existing written documents and other physical records; it does not require creation of list that does not already exist). While § 2.1-342(A) permits generally the deletion of exempt portions of requested records otherwise subject to disclosure, no prior

opinions interpret this authority to override the secrecy provisions of § 58.1-3 in connection with personal property information. A real estate assessment officer may, however, delete information protected under § 58.1-3 in complying with § 58.1-3331 regarding the disclosure to a taxpayer of real estate appraisal cards. See 1986-1987 Op. Va. Att'y Gen. 283, 285; see also 1993 Op. Va. Att'y Gen., *supra* note 1, at 225 (disclosure under § 58.1-3331 may be made only to taxpayer to whose property that information relates).