



COMMONWEALTH of VIRGINIA

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The Honorable Dave Nutter
Member, House of Delegates
P.O. Box 1344
Christiansburg, Virginia 24068

Dear Delegate Nutter:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issue Presented

You ask whether the Department of State Police, in response to a request under The Freedom of Information Act, may release the names and addresses of all persons who have received concealed carry handgun permits pursuant to § 18.2-308.

Response

It is my opinion that the Department of State Police possesses the discretionary authority to release the names of concealed carry handgun permittees, including other associated personal information, pursuant to a request under The Virginia Freedom of Information Act. However, since such list of permittees will include names and other personal information of crime victims and witnesses, it is my opinion that the identities and locations of these persons should be protected in the interest of public safety. The Department has the responsibility to refrain from releasing sensitive personal information when the interests of public safety demand discretion. Further, it is my opinion that the express language of § 18.2-308(K) limits the use of concealed carry permit information to law-enforcement personnel for investigative purposes.

Background

You relate that the Department of State Police has received certain requests under The Virginia Freedom of Information Act¹ ("FOIA") from media outlets and other organizations seeking records containing the names and addresses of persons possessing concealed carry handgun permits. You state that the release of such information may violate other state laws. Therefore, you seek clarification regarding the legality of the release of such information.

¹VA. CODE ANN. tit. 2.2, ch. 27, §§ 2.2-3700 to 2.2-3714 (2005 & Supp. 2006).

Applicable Law and Discussion

Section 18.2-308 is the statute under which private citizens meeting certain qualifications may obtain permits to carry concealed handguns. Section 18.2-308(K) provides that, once a permit has been issued, the Department of State Police “shall enter the permittee’s name and description in the Virginia Criminal Information Network so that the permit’s existence and current status will be made known to law-enforcement personnel accessing the Network for investigative purposes.” Thus, § 18.2-308(K) requires that the Department maintain a list of concealed carry permittees in the Virginia Criminal Information Network² (“VCIN”), specifically for purposes of investigation by law-enforcement personnel.

Section 2.2-3700(B) of FOIA mandates that “[a]ll public records and meetings shall be presumed open, unless an exemption is properly invoked.” However, FOIA grants the Department of State Police the discretion to disclose or withhold certain information in appropriate situations. For example, FOIA does not mandate that the Department release the “identity of any victim, witness or undercover officer, or investigative techniques or procedures,”³ “[r]eports submitted in confidence to ... state and local law-enforcement agencies,”⁴ or “[p]ersonal information, as defined in § 2.2-3801.”⁵

Although FOIA does not contain a specific exemption for information related to concealed carry permittees, it is clear that the Department of State Police accumulates and uses the concealed carry permittee information expressly for investigative purposes.⁶ Further, there is clear statutory guidance that provides the Department with discretion regarding release of “personal information” and information sensitive to public safety.⁷ The record of registration under § 18.2-308, including the permittee’s address, is among the data included by the General Assembly as personal information. A plain reading of the definition of “personal information” indicates that the address of a concealed carry permittee would fall within such definition because it “describes” and “locates” him with particularity.⁸

The Department of State Police is not required to release information related to the identities of crime victims, witnesses, undercover officers, or the personal information of any person.⁹ In some

²The Network currently is recognized as the communication system required by § 52-12. See 2006 Op. Va. Att’y Gen. 157, 158 (forthcoming May 2007), available at <http://www.vaag.com/OPINIONS/2006opns/04-085-Flaherty.pdf>; Virginia Criminal Information Network website at http://www.vsp.state.va.us/CJIS_VGIN.shtm (last visited April 4, 2007).

³Section 2.2-3706(D) (Supp. 2006).

⁴Section 2.2-3706(F)(3).

⁵Section 2.2-3705.1(10) (2005): FOIA adopts by reference the definition of “personal information” from § 2.2-3801. *Id.* Section 2.2-3801(2) defines “personal information” as “all information that *describes, locates or indexes anything about an individual* including his real or personal property holdings derived from tax returns, and his education, financial transactions, medical history, ancestry, religion, political ideology, criminal or employment record, or that affords a basis for inferring personal characteristics, such as finger and voice prints, photographs, or things done by or to such individual; and *the record of his presence, registration, or membership in an organization or activity, or admission to an institution.*” (Emphasis added.).

⁶See VA. CODE ANN. § 18.2-308(K) (Supp. 2006).

⁷See *supra* notes 3-5.

⁸Section 2.2-3801(2) (defining “personal information”); see also § 2.2-3705.1(10) (adopting definition of personal information in § 2.2-3801).

⁹See *supra* notes 3-5.

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circumstances, such information is contained among the Department's comprehensive list of concealed carry permittees. A list of permittees ("permit list") generated by the Department and released pursuant to FOIA likely will include identifiers of crime victims or witnesses.¹⁰ The release of such personal information of a crime victim or witness potentially jeopardizes his safety and privacy, as well as the safety of the community in which he lives.¹¹

In determining whether FOIA requires permit list disclosure, notwithstanding the express limits placed on permit lists by other *Code* sections, general rules of statutory interpretation should be applied. "[W]hen one statute speaks to a subject in a general way and another deals with a part of the same subject in a more specific manner, the two should be harmonized if possible, and where they conflict, the latter prevails."¹² Section 18.2-308 governs the specific subject of concealed carry permits and information required for the VCIN database and its authorized use. Section 18.2-308(K) specifically provides that the information related to concealed carry permittees required to be entered in VCIN is for law-enforcement personnel to access for "investigative purposes." Reconciling the specific provisions of § 18.2-308(K) with the apparent conflict with FOIA's disclosure requirement,¹³ it is my opinion that the § 18.2-308(K) provides a specific exception to FOIA for information related to concealed carry permittees.

Conclusion

Accordingly, it is my opinion that the Department of State Police possesses the discretionary authority to release the names of concealed carry handgun permittees, including other associated personal information, pursuant to a request under The Virginia Freedom of Information Act. However, since such list of permittees will include names and other personal information of crime victims and witnesses, it is my opinion that the identities and locations of these persons should be protected in the interest of public safety. The Department has the responsibility to refrain from releasing sensitive personal information when the interests of public safety demand discretion. Further, it is my opinion that the express language of § 18.2-308(K) limits the use of concealed carry permit information to law-enforcement personnel for investigative purposes.

Thank you for letting me be of service to you.

Sincerely,



Robert F. McDonnell

3:831; 1:941/07-027

¹⁰Section 2.2-3706(D) of FOIA contemplates issues related to identification of victims and witnesses and defers to the judgment of the Department regarding disclosure.

¹¹In FOIA, the General Assembly specifically has provided local law enforcement with an exemption from releasing certain information "where the release of such information would jeopardize the safety or privacy of any person." Section 2.2-3706(G)(1).

¹²Thomas v. Commonwealth, 244 Va. 1, 22-23, 419 S.E.2d 606, 618 (1992) (quoting Va. Nat'l Bank v. Harris, 220 Va. 336, 340, 257 S.E.2d 867, 870 (1979)).

¹³Section 2.2-3700(B) (2005).