



# COMMONWEALTH of VIRGINIA

Office of the Attorney General

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The Honorable Ray S. Campbell, Jr.  
Clerk of the Circuit Court for Caroline County  
Post Office Box 309  
Bowling Green, Virginia 22427

Dear Mr. Campbell:

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

## Issues Presented

You inquire regarding the duties of the clerk of court pursuant to recent amendments to § 18.2-308(D) of the *Code of Virginia*, which prohibits the disclosure of certain information related to concealed handgun permits. You specifically inquire as to the effective date of the amendment. You also ask whether the amendment applies to applications and orders processed prior to the effective date of the enactment. You inquire similarly whether the prohibition encompasses references to orders granting applications that are recorded in "Order Books." Finally, you ask whether the clerk must take measures to comply with the new provisions despite the General Assembly's decision to not allocate funds to the clerk for this purpose.

## Response

It is my opinion that the amendments to § 18.2-308(D) took effect on July 1, 2013. It is further my opinion that beginning on July 1, 2013, the clerk of court must withhold from public disclosure the applicant's name and other information contained in all concealed handgun permit applications and orders, including those filed prior to the effective date. It is further my opinion that the clerk must withhold from public disclosure court orders issuing such permits, whether they are maintained electronically or in "Order Books." Finally, it is my opinion that the clerk is required to comply with this statute irrespective of receiving any funding from the General Assembly.

## Applicable Law and Discussion

During its 2013 session, the General Assembly amended § 18.2-308(D) of the *Code of Virginia* to require that "[t]he clerk of court shall withhold from public disclosure the applicant's name and any other information contained in a permit application or any order issuing a concealed handgun permit, except that such information shall not be withheld from any law-enforcement officer acting in the performance of his official duties."<sup>1</sup>

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<sup>1</sup> 2013 Va. Acts ch. 659, to be recodified as the new VA. CODE ANN. § 18.2-308.02.

You first inquire as to the effective date of this amendment. “All laws enacted at a regular session ... shall take effect on the first day of July following the adjournment of the session of the General Assembly at which they were enacted, unless a subsequent date is specified.”<sup>2</sup> The amendment to § 18.2-308(D) was approved during the 2013 General Assembly regular session, and it contains no provision setting forth another effective date. I therefore conclude that the amendment became effective on July 1, 2013.

To respond to your next two inquiries, I rely on basic principles of statutory construction. Accordingly, “[i]n deciding the meaning of the statute, we must consider the plain language that the General Assembly employed in enacting the statute.”<sup>3</sup> “[W]e determine the General Assembly’s intent from the words contained in the statute[,]”<sup>4</sup> and “[w]e ‘assume that the legislature chose, with care, the words it used when it enacted the relevant statute.’”<sup>5</sup>

Beginning July 1, 2013, the amendment to § 18.2-308(D) imposes a duty on the clerk to withhold certain information pertaining to concealed weapon permits.<sup>6</sup> Although this duty is prospective, the plain language of the statute does not place any limits on this duty based on filing or issuing dates. Rather, the statute evidences the General Assembly’s intent to prohibit public access to all applications and orders as of July 1, 2013, irrespective of the application date or the date of entry. If the General Assembly had intended to limit application of the amendment to only new orders and applications, it would have provided for such in the language of the statute.<sup>7</sup> Accordingly, it is my opinion the clerk of court must withhold from public disclosure the applicant’s name and other information contained in all concealed handgun permit applications and orders issuing such permits, including those applications and orders filed prior to July 1, 2013.

You also inquire whether the clerk must withhold from disclosure references to orders issuing permits when such references are contained in the clerk’s “Order Books.” You relate the usual practice is to file the order in the clerk’s “Civil Book” or “Miscellaneous Book” (the “Order Books”), which may be maintained electronically or on paper, and are accessible to the public. The plain text of the statute expressly prohibits disclosure of “*information contained* in a permit application or any order issuing a concealed handgun permit.”<sup>8</sup> The prohibition is not limited to the permits and orders themselves. Thus, the clerk must not permit disclosure of such information, regardless of where it is filed. It would defeat the purpose of the amendment if this information were to be publicly available in the clerk’s “Order Books.” I therefore

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<sup>2</sup> VA. CONST. art. IV, § 13; *accord* VA. CODE ANN. § 1-214(A) (2011).

<sup>3</sup> 2011 Op. Va. Att’y Gen. 18, 19 (quoting *Haslip v. S. Heritage Ins. Co.*, 254 Va. 265, 268, 492 S.E.2d 135, 137).

<sup>4</sup> *Williams v. Commonwealth*, 265 Va. 268, 271, 576 S.E.2d 468, 470 (2003) (citing *Vaughn, Inc. v. Beck*, 262 Va. 673, 677, 554 S.E.2d 88, 90 (2001); *Thomas v. Commonwealth*, 256 Va. 38, 41, 501 S.E.2d 391, 393 (1998)).

<sup>5</sup> *Alger v. Commonwealth*, 267 Va. 255, 261, 590 S.E.2d 563, 566 (2004) (quoting *Barr v. Town & Country Props., Inc.*, 240 Va. 292, 295, 396 S.E.2d 672, 674 (1990)).

<sup>6</sup> Section 1-238 (2011) (“‘Reenacted,’ . . . means that the changes enacted to a section of the Code of Virginia or an act of the General Assembly are in addition to the existing substantive provisions in that section or act, and are effective prospectively unless the bill expressly provides that such changes are effective retroactively on a specific date.”); *see also* 2002 Op. Va. Att’y Gen. 273, 276.

<sup>7</sup> *Compare* 2013 Va. Acts ch. 659, *with* VA. CODE ANN. § 32.1-267(F) (2011) (“marriage licenses filed on and after July 1, 1997,” which disclose a social security number or control number, “shall not be available for general public inspection in the offices of clerks of the circuit courts”). *Cf.* 2012 Op. Va. Att’y Gen. 84, 86 (explaining that because the General Assembly provided for the charge of returned check fees only in criminal cases, a court could not charge such a fee in civil cases).

<sup>8</sup> 2013 Va. Acts ch. 659 (emphasis added).

conclude that to the extent information contained in an "Order Book" references the name or other information of an individual subject to such an order, such reference must be withheld from the public.<sup>9</sup>

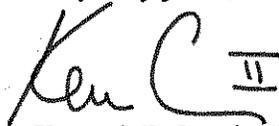
Finally, you ask whether the clerk of court is required to comply with the statute even though the General Assembly has not allocated funds for that purpose. The duties of the office are prescribed by the General Assembly and include keeping records of the proceedings in circuit court, providing access to such records, and maintaining and purging records.<sup>10</sup> Section 18.2-308(D), as amended, is a general law imposing a statutory duty on the clerk to maintain records in a certain manner. Requiring clerks of court to withhold this information without appropriating funds does not exceed the authority of the General Assembly because the authority of the General Assembly extends to all subjects of legislation not otherwise forbidden or restricted.<sup>11</sup> The Clerk of Court, as a constitutional officer, must abide by the law and his oath of office, which requires him "faithfully and impartially discharge all the duties incumbent upon [him] as [Clerk of Court] . . . ." <sup>12</sup> Consequently, the clerk must comply with the statute notwithstanding the non-allocation of funds.

### Conclusion

Accordingly, it is my opinion that the amendment to § 18.2-308(D) took effect on July 1, 2013. It is further my opinion that beginning on July 1, 2013, the clerk of court must withhold from public disclosure the applicant's name and other information contained in all concealed handgun permits. It is further my opinion that the clerk must withhold from public disclosure court orders issuing such permits, whether they are maintained electronically or in "Order Books." Finally, it is my opinion that the clerk is required to comply with this statute even though the General Assembly did not appropriate funds for this task.<sup>13</sup>

With kindest regards, I am

Very truly yours,



Kenneth T. Cuccinelli, II  
Attorney General

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<sup>9</sup> Redaction of certain information contained within an Order Book does not result in a retroactive application of the statute. Rather, it is consistent with the clerk's prospective duty, beginning on July 1, 2013, to withhold this information from the public.

<sup>10</sup> See, e.g., VA. CODE ANN. §§ 17.1-200 through 17.1-295 (2010 & Supp. 2012).

<sup>11</sup> See VA. CONST. art. IV, § 14. "[T]he Virginia Constitution 'is not a grant of legislative powers to the General Assembly, but is a restraining instrument only, and, except as to matters ceded to the federal government, the legislative powers of the General Assembly are without limit.'" 2009 Op. Va. Att'y Gen. 178, 180 (quoting *Harrison v. Day*, 201 Va. 386, 396, 111 S.E.2d 504, 511.) There is no constitutional provision prohibiting the General Assembly from requiring clerks to withhold information in this manner.

<sup>12</sup> VA. CONST. art. II, § 7.

<sup>13</sup> The clerk, as a constitutional officer, may choose the means by which he fulfills his duties unless the General Assembly has limited his discretion. See, e.g., 2010 Op. Va. Att'y Gen. 92, 92; 2010 Op. Va. Att'y Gen. 17, 18; 2003 Op. Va. Att'y Gen. 60, 60-61. As you suggest, the amendments to § 18.2-308(D) do not specify the manner in which the clerk is to ensure the information is withheld from public disclosure. Accordingly, although you specifically inquire whether the legislation requires you to perform certain redactions, I do not address that explicit issue here; rather I conclude only that the information subject to the amendment, as discussed above, must be withheld.