

Appendix F - Sealing Court Records/Confidentiality Considerations

Sealed Records

“Sealed” records are not open to anyone and are made available only by court order. The sealed records, if feasible, should physically remain in the court file. Some records are ordered to be sealed by the Court and others are required by statute.

Certain records and documents, both criminal and civil in nature, are required by statute to be sealed when filed in the clerk’s office or upon the performance of a specified act. The Court may order other documents, records, exhibits, etc. to be sealed during the pendency of a case or during the course of a hearing or trial. While the Code of Virginia specifies numerous instances where the court or the clerk is required to seal a particular record, it does not provide procedures for accomplishing that act.

There is a difference between “sealed” records and “confidential” records. Sealed records are placed in an envelope that is sealed making the envelope unable to be opened except by court order. Confidential records do not have to be physically sealed but may be simply placed in an envelope and made unavailable for inspection. Certain confidential records, such as juvenile appeals, are unavailable for inspection except to certain parties as designated by statute. See below for further information on confidentiality.

Unlike an expunged record, most “sealed” records remain a part of the file and, if feasible, should physically remain in the court file. After placing the record(s) in a plain envelope, the envelope should be sealed by tape or other adhesive and the following statement should be typed in a visible location on the outside of the envelope, “Sealed record to be opened only upon order of the Circuit Court of _____”. The style of the case should also be typed on the envelope, particularly if the sealed record is too large to be placed in the court file. It is possible that one file may contain numerous sealed records, one or more of which may be ordered to be opened at a later date. To assist in locating a specific sealed record, a general description of the contents or some identifying number should also be written on the outside of the envelope, i.e., “separation agreement”, “presentence report”, “psychological evaluation”, etc. If the court has ordered the record sealed, attach a copy of such order to the outside of the envelope. Original of such order is placed in the file.

Note: Form CC-1075, SEALED DOCUMENTS ENVELOPE may also be used.

In all cases, access to sealed records is available only through Court order. <https://law.lis.virginia.gov/vacodepopularnames/virginia-freedom-of-information-act/> states that all official records shall be open to inspection “except as otherwise specifically provided by law...” [Va. Code § 2.2-3704 (A)] and

<https://law.lis.virginia.gov/vacodepopularnames/virginia-public-records-act/> specifies “no provision of [that Act] shall be construed to authorize or require the opening of any records ordered to be sealed by a Court” ([Va. Code § 42.1-78](#)). [Virginia Code §§ 9.1-177.1](#) and [19.2-299](#) identifies who has access to certain sealed records without a court order.

The Code specifies that the following records either must be sealed when they are filed with the Court or may be sealed by Order of the Court.

Note: some of the following involve matters sealed by the court in certain cases.

Change of Name - Va. Code § 8.01-217

If the applicant shall show cause to believe that in the event his change of name should become a public record, a serious threat to the health or safety of the applicant or his immediate family would exist, the chief judge of the circuit court may waive the requirement that the application be under oath or the court may order the record sealed and direct the clerk not to spread and index any orders entered in the cause, and shall not transmit a certified copy to the [State Registrar of Vital Records](#) or the [Central Criminal Records Exchange](#).

Divorce - [Va. Code § 20-124](#)

Upon motion of either party, the court may order the entire record or any agreement of the parties to be sealed. Thereafter, it is to be opened only to the parties, their attorneys or any person the court, in its discretion, decides has a proper interest in the case.

Uniform Child Custody Jurisdiction and Enforcement Act - Information to be submitted to the Court - [Va. Code § 20-146.20](#)

In a child custody proceeding, each party, in its first pleading or in an attached affidavit, shall give information, if reasonably ascertainable, under oath as to the child’s present address or whereabouts, the places where the child has lived during the past five years, and the names and present addresses of the persons with whom the child has lived during that period.

If a party alleges in an affidavit or a pleading under oath that the health, safety, or liberty of a party or child would be jeopardized by disclosure of identifying information, the information shall be sealed and may not be disclosed to the other party or the public unless the court orders the disclosure to be made after a hearing in which the court takes into consideration the health, safety, or liberty of the party or child.

Records of Judicial Officers – [Rule 11:3](#)

Records of judicial officers are not publicly accessible and include, but are not limited to (i) memoranda, notes, or drafts prepared by or under the direction of any judicial officer that relate to the adjudication, resolution, or disposition of any past, present, or future case, controversy, or legal issue, (ii) legal research and analysis prepared or circulated by judicial officers or court personnel, (iii) written communications or discussions relating to procedural, administrative, or legal issues that have or may come before any judicial officer, (iv) information entered into and maintained in an electronic system used to create and issue judicial process, (v) subject to applicable state and federal laws and policies, personnel information concerning identifiable individuals, (vi) telephone numbers, telephone records and email addresses for justices and judges, (vii) documents or information that would compromise the safety of judicial officers, court personnel, jurors, or the public, or jeopardize the integrity of judicial facilities or any information technology or recordkeeping systems, (viii) communications among court personnel and judicial officers, and communications among judicial officers, (ix) legal documents created or received by magistrates that have not been filed with the appropriate clerk of court, and (x) records, documents, information, data or other items that are sealed, confidential, privileged, or otherwise protected by federal or state law, common law, court rule, or court order.

Criminal History Records - [Va. Code § 9.1-134](#)

The Criminal Justice Services Board is authorized to “adopt procedures reasonably designed (i) to insure prompt sealing or purging of criminal history record information when required by state or federal statute, regulation or court order, and (ii) to permit opening of sealed information under conditions authorized by law.”

Exhibits

See Attorney General opinion to Judge Sweeny dated 11/13/87 (1987-88, page 255; “...if exhibits are offered into evidence, even though the court may deny their admission into evidence, they become a part of the court’s record and are “public records” generally subject to disclosure under § 17-43.” “if the exhibits are not offered into evidence but are merely offered for identification purposes, they do not become public records subject to disclosure under § 17-43.”

Expungements - [Va. Code § 19.2-392.3](#)

It shall be unlawful for any person having or acquiring access to an expunged court or police record to open or review it or to disclose to another person any information from it without an order from the court

which ordered the record expunged. For step-by-step procedures for handling expungements, see *Criminal Manual*, “Post Sentencing” chapter.

Presentence Reports - [Va. Code § 19.2-299 \(A\)](#)

Reports filed by the probation officer are to be sealed upon entry of the final order and made available only by court order. These reports are also exempt from the Virginia Freedom of Information Act. [Va. Code § 9.1-177.1](#).

The defense attorney is provided with a copy of the report five days before sentencing to give counsel the opportunity to review it with the defendant and to prepare a response, if needed, to items contained in the report.

Counsel representing a person who has been convicted of a crime for which a presentence report was prepared by a probation officer may be provided a copy of the report, without a court order, when the convicted person is pursuing a post-conviction remedy. [Va. Code §§ 9.1-177.1](#) and [19.2-299](#).

Presentence Mental Evaluation of Sex Offenders - [Va. Code § 19.2-301](#)

The examiner’s report shall be confidential, except as needed for the prosecution or defense of an offense or for assessment by the Attorney General for civil commitment. It shall be sealed once the sentencing order is entered. The defendant is required to return to the court his copy of the report at the conclusion of sentencing.

Pretrial and Community-based Probation Records - [Va. Code §§ 9.1-177.1, 19.2-299](#)

Any investigation report prepared by a local probation officer is confidential and is exempt from the <https://law.lis.virginia.gov/vacodepopularnames/virginia-freedom-of-information-act/>. Such reports shall be filed as a part of the case record. Such reports shall be made available only by court order and shall be sealed upon final order by the court; except that such reports shall be available upon request to (i) any criminal justice agency, as defined in [Va. Code § 9.1-101](#), of this or any other state or of the United States; (ii) any agency where the accused is referred for assessment or treatment; or (iii) counsel for the person who is the subject of the report.

Counsel representing a person who has been convicted of a crime for which a presentence report was prepared by a probation officer may be provided a copy of the report, without a court order, when the convicted person is pursuing a post-conviction remedy.

Mental, Psychological and/or Psychiatric Documents - [Va. Code § 2.2-3704 \(A\)](#)

Any evaluation or report of this type should be placed in an envelope with attached notice on the outside of the envelope.

A competency evaluation report ordered by and submitted to a court, pursuant to [Va. Code § 19.21-169.1](#), which is not sealed by court order, is open to inspection under [Va. Code § 17.1-208](#). See Attorney General Opinion to Schaefer, dated 2/25/09 (2009, page S-14); Competency evaluation report that was ordered by and submitted to court as part of court's record is open to inspection, provided such report is not sealed by court order.

Victim Impact Statement - [Va. Code § 19.2-299.1](#)

This statement, like a presentence report, is confidential and shall be sealed upon entry of the sentencing order. It is not admissible in any civil proceeding for damages arising out of acts upon which the conviction was based but may be used by the [Virginia Workers' Compensation Commission](#) when making a determination on claims by victims of crimes pursuant to [Va. Code § 19.2-368.1](#) et seq.

Request of Confidentiality of Victim - [Va. Code § 19.2-11.2](#) (Form DC-301, [REQUEST FOR CONFIDENTIALITY](#))

Upon request of any crime victim, neither a law-enforcement agency, the Commonwealth's attorney, a court nor the [Department of Corrections](#), nor any employee of them, may disclose, except among themselves, the residential address, telephone number, or place of employment of the victim or a member of the victim's family, except to the extent that disclosure is (i) of the site of the crime, (ii) required by law or [Rules of the Supreme Court](#), (iii) necessary for law-enforcement purposes, or (iv) permitted by the court for good cause.

Except with the written consent of the victim, a law-enforcement agency may not disclose to the public information which directly or indirectly identifies the victim of a crime involving any sexual assault or abuse, except to the extent that disclosure is (i) of the site of the crime, (ii) required by law, (iii) necessary for law-enforcement purposes, or (iv) permitted by the court for good cause.

Special Grand Jury - [Va. Code § 19.2-212](#)

The foreman of the special grand jury shall seal all the notes, tapes and

transcripts of the special grand jury proceedings at the conclusion of the investigation. The records are to be placed in a sealed container, dated and delivered to the court for safekeeping. The Court, on motion of the Attorney for the Commonwealth or a witness subsequently prosecuted for perjury, shall grant access to both of them to the testimony given before the special grand jury by that defendant. If no prosecution for perjury is initiated within three years from the special grand jury's report, the sealed container shall be destroyed.

Special Grand Jury Report - [Va. Code § 19.2-213](#)

The report of the special grand jury filed with the court at the conclusion of its investigation and deliberations shall be sealed and opened only by order of the court.

Election Material - [Va. Code § 24.2-668](#)

After ascertaining the results and before adjourning, the electoral officers shall put the pollbooks, the duplicate statements of results, and any printed inspection and return sheets in the envelopes provided by the State Board. The officers shall seal the envelopes and direct them to the clerk of the circuit court for the county or city, by noon on the day following the election. The local electoral board may direct that the officers of election, in lieu of conveying the materials to the clerk of the circuit court, shall convey the materials to the principal office of the general registrar on the night of the election or the morning following the election as the board directs, and the registrar shall secure and retain the materials in his office and shall convey to the clerk of the circuit court by noon of the day following the ascertainment of the results of the election, and the general registrar shall retain for public inspection on copy of the statement of results.

The clerk shall retain custody of the pollbooks, paper ballots, and other electronic materials until the time has expired for initiating a recount, contest or other proceedings in which the materials may be needed as evidence. The clerk shall (i) secure all pollbooks, paper ballots and other election materials in sealed boxes; (ii) place all of the sealed boxes in a vault or room not open to the public or to anyone other than the clerk and his staff; (iii) cause such vault or room to be securely locked except when access is necessary for the clerk and his staff; and (iv) upon the initiation of a recount, certify that these security measures have been taken in whatever form is deemed appropriate by the chief judge.

After that time, the clerk shall deliver the pollbooks to the general registrar.

The clerk shall retain the statement of results and any printed inspection and return sheets for two years and may then destroy them.

Voting Machine Keys - [Va. Code § 24.2-659](#)

The keys to each voting machine/device are to be placed in a certified and sealed envelope by the officers of election and delivered to the clerk by noon on the day following the election. They are to be opened only by court order or request of the [State Board of Elections](#) or electoral board. The sealed envelopes are to be returned to the electoral board fifteen days after the ascertainment of the results of the election or at a designated time after a recount.

Affidavit for Search Warrant - [Va. Code § 19.2-54](#)

An affidavit preliminary to issuance of search warrant shall be certified by the officer who issues such warrant and delivered by such officer or other officer authorized to certify such warrants to the clerk of the circuit court of the county or city wherein the search is made within seven days after the issuance of such warrant and shall by such clerk be preserved as a record and shall at all times be subject to inspection by the public after the warrant that is the subject of the affidavit has been executed or 15 days after issuance of the warrant, whichever is earlier; however such affidavit, any warrant issued pursuant thereto, any return made thereon, and any order sealing the affidavit, warrant, or return may be temporarily sealed for a specific period of time by the appropriate court upon application of the attorney for the Commonwealth for good cause shown in an ex parte hearing.

Search Warrant for Tracking Device - [Va. Code § 19.2-56.2](#)

All affidavits, search warrants and inventories filed pursuant to this code section shall be sealed. Only a court order can authorize the unsealing of these documents.

Wiretaps, Intercepted Communications - [Va. Code § 19.2-68 \(F\)](#)

Applications made for wiretaps or interceptions and the orders granting or denying those applications shall be sealed. Custody of those documents shall be wherever the judge directs. They must be held for ten years and can be destroyed after that period only upon order of the court.

The recording or resume stemming from the court order granting interception is to be turned over to the court and sealed immediately upon expiration of the period outlined in the order. The court retains custody of

the recordings or resume for a period of ten years from the date of the order and they may be destroyed after that date upon order of the court.

Pen Register or Trap and Trace Device - [Va. Code § 19.2-70.2 \(D\)\(1\)](#)

An order authorizing or approving the installation and use of a pen register or a trap and trace device shall direct that the order and application be sealed until otherwise ordered by the court.

Health Records - [Va. Code § 32.1-127.1:03](#)

Any party filing a request for a subpoena duces tecum or causing such a subpoena to be issued for an individual's medical records shall include a Notice to Providers in the same part of the request where the provider is directed where and when to return the records. The notice is to indicate that the records are to be delivered in a sealed envelope. Attached to the sealed envelope will be a cover letter to the clerk of court which states that confidential health care records are enclosed and are to be held under seal pending the court's ruling on the motion to quash the subpoena. The sealed envelope and the cover letter shall be placed in an outer envelope or package for transmittal to the court.

Health care providers shall provide a copy of all records as required by a subpoena duces tecum or court order for such medical records. If the health care entity has actual receipt of notice that a motion to quash the subpoena has been filed or if the health care entity files a motion to quash the subpoena for health records, then the health care entity shall produce the health records, in a securely sealed envelope, to the clerk of the court or administrative agency issuing the subpoena or in whose court or administrative agency the action is pending. The court or administrative agency shall place the health records under seal until a determination is made regarding the motion to quash. The securely sealed envelope shall only be opened on order of the judge or administrative agency. In the event the court or administrative agency grants the motion to quash, the health records shall be returned to the health care entity in the same sealed envelope in which they were delivered to the court or administrative agency. In the event that a judge or administrative agency orders the sealed envelope to be opened to review the health records in camera, a copy of the order shall accompany any health records returned to the health care entity. The health records returned to the health care entity shall be in a securely sealed envelope.

Discovery from a Subpoena Duces Tecum - [Rule 3A:12](#)

The press and public do not have the right to access any documents that have been produced through a subpoena duces tecum in a criminal case which have not been entered into evidence. If the documents are introduced into evidence during a pretrial hearing or during trial, then they become “judicial records” and the right of access is created. Such documents are open to counsel of record for viewing at any stage of the case unless otherwise prohibited by court order.

If an order is entered quashing or limiting access to documents from a subpoena duces tecum, place the original order in the criminal case file, and place a copy of such order on the outside of the envelope containing the documents.

Public Safety Employees; Testing for blood-borne pathogens - [Va. Code § 32.1-45.2 \(E\)](#)

If the court finds by a preponderance of the evidence that an exposure prone incident has occurred, it shall order testing for hepatitis B or C virus and human immunodeficiency virus and disclosure of the test results. The hearing shall be held in camera as soon as practicable after the petition is filed. The record shall be sealed.

Disciplinary proceedings against attorney - [Va. Code § 54.1-3936](#)

Papers filed with the Court pursuant to an ex parte application by Bar Counsel or the chairman of a district committee of the [Virginia State Bar](#) against an attorney who is suspected of engaging in any activity which is unlawful or in violation of the Virginia Code of Professional Responsibility and which will result in loss of property of one or more of his/her clients or any other person shall be sealed.

A complaint, and all other related papers, filed with the Court seeking an injunction prohibiting the withdrawal of an attorney's deposits or the appointment of a receiver for funds under the control of an attorney who is suspected of engaging in an unlawful activity shall be sealed until such time as the Court acts.

Statement of Facts - Subpoena Duces Tecum for Financial Records - [Va. Code §§ 18.2-246.2](#) and [19.2-10.1](#)

The statement of facts documenting the reasons the records or information are sought will be sealed upon issuance of the subpoena duces tecum upon motion of the Commonwealth's Attorney, and the use of such records or information is limited to the investigation and legitimate law-enforcement purposes. At the end of the investigation the records or information may be sealed.

Confidentiality Considerations

The vast majority of records filed in the clerk's office are not confidential and are accessible to the public. Virginia courts are not bound by many of the restrictions imposed on governmental agencies, including the Government Data Collections and Dissemination Practices Act ([Va. Code § 2.2-3802](#)), and court personnel should be conscious of the public's right to gain access to most records and documents on file in the clerk's office.

However, while the provisions of the <https://law.lis.virginia.gov/vacodepopularnames/virginia-freedom-of-information-act/> do apply to circuit court clerks' offices, there are certain documents, records and, in fact, entire cases that are statutorily classified as confidential and exempt from disclosure. The Code of Virginia specifies that some confidential records are to be sealed at certain stages during the proceedings of a case and remain a part of the file (presentence reports, victim impact statements, etc.), however most "confidential" records are not physically sealed but simply removed from public access and made unavailable for inspection.

The following records are considered confidential and not accessible to the public:

Addendums in Divorce Cases - [Va. Code § 20-121.03](#)

Any petition, pleading, motion, order, or decree, including any agreements of the parties or transcripts, shall not contain the social security number of any party or of any minor child of any party, or any financial information of any party that provides identifying account numbers for specific assets, liabilities, accounts, or credit cards. Such information if required by law to be provided to a governmental agency or required to be recorded for the benefit or convenience of the parties, shall be contained in a separate addendum filed by the attorney or party which shall be incorporated by reference into the petition, pleading, motion, agreement, order or decree. Such separate addendum shall be used to distribute the information only as required by law. Such addendum shall otherwise be made available only to the parties, their attorneys, and to such other persons as the court in its discretion may allow. [Form CC-1426, ADDENDUM FOR PROTECTED IDENTIFYING INFORMATION – CONFIDENTIAL](#), should be utilized.

Adoptions - [Va. Code § 63.2-1246](#)

Nonidentifying information from an adoption file "shall not be open to inspection, or to be copied, by anyone other than the adopted person, if eighteen years of age or over, or licensed or authorized child-placing agencies providing services to the child or the adoptive parents, except upon order of a circuit court entered upon good cause shown." If either of

the adoptive parents is living when the adult adopted person applies to inspect the file, the home study of the adoptive parents shall not be made available for inspection unless the adoptive parent or parents give written permission for disclosure. The exceptions to the prohibition of disclosure are enumerated in subsections C, D and E of [Va. Code § 63.2-1247](#) (a physician states that critical medical, psychological or genetic information must be conveyed to the parties; at least one adoptive parent and one biological parent agree to allow the exchange of nonidentifying information and pictures and; in certain parental placement adoptions executed on or after July 1, 1994.)

No identifying information from such adoption file shall be disclosed, open to inspection or made available to be copied except as provided in subsection A, B and E of [Va. Code § 63.2-1247](#) or upon application of the adopted person, if eighteen years of age or over, to the [Commissioner of the Department of Social Services](#), who shall designate the person or agency which made the investigation required by [Va. Code §§ 63.2-1221, 63.2-1208, 63.2-1238](#) or [63.2-1212](#) to attempt to locate and advise the biological family of the application.

The attorney for the Commonwealth and the probation officer shall have direct access to the defendant's juvenile court delinquency records maintained in an electronic format by the court for the strictly limited purposes of preparing a presentence report, preparing discretionary sentencing guidelines or preparing for any transfer or sentencing hearing. [Va. Code § 16.1-305](#).

Adoptions (foreign) - Issuance of birth certificates for children adopted in the Commonwealth and from foreign countries - [Va. Code § 63.2-1220](#)

Adoptive parents who are residents of the Commonwealth may petition the circuit court in the city or county where they reside for a report of adoption when the adoptive parents are seeking a Virginia certificate of birth for a child adopted in a foreign country that has post-adoption reporting requirements and with whom the United States has diplomatic relations.

No identifying information from such adoption file shall be disclosed, open to inspection or made available to be copied except as provided in [Va. Code § 63.2-1247](#)

Judicial Complaints - [Va. Code § 17.1-107](#)

Complaints made to the Chief Justice of the Supreme Court regarding a circuit court judge who may be holding any matter, claim, motion, issue, or

case under advisement for an unreasonable length of time, “shall be absolutely privileged, and the name of the complaint shall not be disclosed without his [her] consent.”

Note: This Code Section does not contemplate any such petition to the circuit court. Inquiry would be made to the Supreme Court of Virginia.

Judicial Inquiry and Review Commission - [Va. Code §§ 17.1-913, 2.2-3705.7](#)

All papers filed with and proceedings before the [Judicial Inquiry and Review Commission](#) are confidential. However, a judge under investigation “or any person authorized by him, may divulge information pertaining to a complaint filed against such judge as may be necessary for the judge to investigate the allegations in the complaint.” Ethical advice given to a judge by an attorney employed by the Commission and any attendant records shall remain confidential. However, the Commission may share such advice, without identifying the judge, with the judicial ethics advisory committee established by the Supreme Court.

[Virginia Code § 2.2-3705.7](#) exempts the Commission from the Freedom of Information Act.

Juvenile court records - Title 16.1, Chapter 11, Article 12

[Virginia Code § 16.1-307](#) states that in the circuit court proceedings on appeals from the Juvenile and Domestic Relations Court, “the clerk of the court shall preserve all records connected with the proceedings in files separate from other files and records of the court as provided in § [16.1-302](#)”, i.e., separate dockets, files, indices and order books which are not accessible to the public. The exceptions to this rule ([Va. Code § 16.1-302 \(B\)](#)) are (1) cases involving support pursuant to [Va. Code § 20-61](#); (2) cases involving criminal offenses committed by adults which are commenced on a warrant charging an offense described in Title 19.2; and (3) cases involving civil commitments of adults pursuant to Title 37.2.

a. Child or Spousal Support

In any child or spousal support case appealed to the circuit court, the case files shall be open for inspection only as provided by [Va. Code § 16.1-305.01](#).

All child support and spousal support case files, whether physical or digital, shall be open for inspection only to the following:

- The judge, court officials, and clerk or deputy clerk assigned to

serve the court in which the case is pending or to which the case is transferred pursuant to court order;

- Any party to the case;
- Attorney of record to the case; and
- The Department of Social Services and the Division of Child Support Enforcement.

Any other person, agency, or institution having a legitimate interest in such case files or the work of the court, by order of the court, may inspect the case files.

b. Children in Need of Services, Children in Need of Supervision, Neglected and Abused Children, Delinquent Children

Any person, agency, or institution that may inspect juvenile case files pursuant to subdivisions A1 through A4 of [Va. Code § 16.1-305](#) shall be authorized to have copies made of such records, subject to any restrictions, conditions, or prohibitions that the court may impose.

c. Appeal of denial of petition filed by juvenile authorizing a physician to perform an abortion without notice

The clerk should treat this as a matter of deep confidentiality. [Va. Code § 16.1-241 \(W\)](#). See "Suits/Action Types A-B" this manual for detailed procedures in processing these appeals.

d. Certified cases from J&DR (Juvenile charged with a felony)

In cases where a juvenile is charged with committing a felony and the J&DR court judge has certified the case to the circuit court for the juvenile to be tried as an adult pursuant to [Va. Code § 16.1-269.1](#), the clerk should treat the case as a juvenile appeal (confidential file, index, etc.) until an Indictment is returned by the Grand Jury. At that point the confidential nature of the case ceases and the case assumes the status of any other circuit court criminal case. The juvenile case number previously assigned to that case should be deleted and the case should be assigned a criminal case number and it should be filed and indexed as any other adult criminal case. If the juvenile is subsequently convicted, the clerk should send a copy of the conviction order to the J&DR clerk.

Information on Protective Orders - [Va. Code §§ 16.1-253, 16.1-253.1, 16.1-253.4, 16.1-279.1, 17.1-272](#)

The residential address, telephone number and place of employment of a person protected by a protective order shall not be disclosed, unless it is

required by law or is necessary for law-enforcement purposes. In addition, no fee shall be charged for filing or serving a protective order. Finally, law enforcement agencies shall enter certain information regarding the protective order, upon receipt, into the [Virginia Criminal Information Network System](#) (VCIN). Currently, that information is to be entered “as soon as practicable.”

Note: Protective orders have had the sensitive information removed from the order and placed on a non-disclosure addendum (DC-621, [NON-DISCLOSURE ADDENDUM](#)) that will be used for service purposes but otherwise maintained in a confidential area.

Probate Tax Return - [Va. Code § 58.1-1714](#)

At the time a will is offered for probate or the grant of administration is sought, and when the value of the estate exceeds \$15,000, a return must be made by the proponent of the will or the person requesting the grant of administration and filed with the clerk stating the estimated value of real estate and personal property owned solely by the decedent at the time of death.

The information contained on the probate tax return is “entitled” to the privilege accorded by [Va. Code § 58.1-3](#) even though a detailed listing of the estate is to be subsequently recorded on the estate inventory, which is not a confidential document.

Wills Lodged for Safekeeping - [Va. Code § 64.2-409](#)

The clerk shall carefully preserve the envelope containing the will unopened until it is returned to the testator or his nominee in his lifetime upon his request in writing therefor or until the death of the testator. Should such will be returned in the testator’s lifetime as herein before provided and later returned to the clerk it shall be considered as a separate lodging under the provisions of this section.

Photographs/X-Rays in child abuse cases - [Va. Code § 63.2-1520](#)

The court, in its discretion, may impose confidentiality restrictions on photographs and x-rays of children introduced as evidence in suspected child abuse cases.

Military Discharge Certificates and Reports of Separation - [Va. Code § 17.1-265](#)

Discharge certificates and reports of separation from active military duty which are recorded with the clerk of circuit court shall be open for

inspection and copying only by

- The subject of the record;
- The duly qualified conservator or guardian of the subject of the record;
- The duly qualified executor or administrator of the estate of the subject of the record, if deceased, or, in the event no executor or administrator has qualified, the next of kin of the deceased subject;
- An attorney, attorney-in-fact, or other agent or representative of any of the persons described in subdivision 1, 2 or 3, acting pursuant to a written power of attorney or other written authorization; or
- A duly authorized representative of an agency or instrumentality of federal, state, or local government seeking the record in the ordinary course of performing its official duties.

Under the circumstances in which time is of the essence, including but not limited to, requests for copies of records attendant to the making of funeral arrangements or arrangements for medical care, the clerk, in ascertaining whether a person seeking access to discharge certificates or reports of separation from active duty is qualified to do so pursuant to this section, may rely upon the sworn statement of the requestor made in person before the clerk or his deputy.

The clerk may permit access to discharge certificates or reports of separation from active duty of deceased persons for bona fide genealogical or other research purposes.

Note:

- Sworn statements of requestors should be placed in a file for this purpose. It is also suggested that copies of authorizing documents be kept to document the reason the court allowed the record to be copied.
- Induction records are not mentioned in this Code section.

Marriage License and Register - [Va. Code § 32.1-267](#)

Applications for marriage licenses filed on and after July 1, 1997, and marriage registers recording such applications, which have not been configured to prevent disclosure of the social security number or control number required pursuant to the provisions of subsection B of this section shall not be available for general public inspection in the offices of clerks of

the circuit courts. The clerk shall make such applications and registers available for inspection only (i) upon the order of the circuit court within which such application was made or register is maintained, (ii) pursuant to a lawful subpoena duces tecum issued to the clerk, (iii) upon the written authorization of either of the applicants, or (iv) upon the request of a law-enforcement officer or duly authorized representative of the DCSE in the course of performing his official duties. Nothing in this subsection shall be construed to restrict public access to marriage licenses or to prohibit the clerk from making available to the public applications for marriage licenses and marriage registers stored in any electronic medium or other format that permits the blocking of the field containing the social security or control number required pursuant to the provisions of subsection B of this section, so long as access to such number is blocked.

See Attorney General opinion to Carol Black, dated 3/25/02 (2002, page 182); which states that although the Office of the Attorney General is “unable to comment on the practicability of devising a method by which marriage licenses processed and imaged since 1997 may be changed to comply with the nondisclosure requirements” the General Assembly “intends that social security numbers required for a person to obtain a marriage license not be disclosed to the general public, and that this applies retroactively to all marriage licenses filed on and after July 1, 1997.”

Money Under Control of Court; held by Clerk - [Va. Code § 8.01-600](#) and General Receiver - [Va. Code § 8.01-582](#)

Orders creating funds pursuant to these sections shall include information necessary to make prudent investment and disbursement decisions. The orders shall include, except when it is unreasonable, the proposed dates of periodic and final disbursements. Prior to the entry of the order, the beneficiary or his representative shall file an affidavit with the court providing the beneficiary's name, date of birth, address and social security number. The affidavit shall be maintained under seal by the clerk unless otherwise ordered by the court, and the information therein shall be used solely for the purposes of financial management and reporting.

Set-Off Debt Collection - [Va. Code § 58.1-533](#)

The information obtained from the [Department of Taxation](#) pursuant to collection efforts in the Set-Off Debt Collection program shall be used only for debt collection purposes and “any person employed by, or formerly employed by, a claimant agency who discloses such information for any other purpose” shall be penalized pursuant to the provisions of [Va. Code § 58.1-3](#).

Victim Impact Statement - [Va. Code § 19.2-299.1](#)

Like the presentence report, a victim impact statement “shall be kept confidential and shall be sealed upon entry of the sentencing order.” See additional information under “Sealed Records.”

Restitution Victim Contact Information [Va. Code § 19.2-305.1](#)

At the time of sentencing, the court shall enter the amount of restitution to be repaid by the defendant, the date by which all restitution is to be paid, the terms and conditions of such repayment, and the victim's name and contact information, including the victim's home address, telephone number, and email address, on a form prescribed by the Office of the Executive Secretary of the Supreme Court of Virginia. A copy of the form, excluding contact information for the victim, shall be provided to the defendant at sentencing. A copy of the form shall be provided to the attorney for the Commonwealth and to the victim, his agent, or his estate upon request and free of charge. Except as provided in this section or otherwise required by law, the victim's contact information shall be confidential, and the clerk shall not disclose such confidential information to any person.

Master Jury and Jury Trial List (Archer and Johnson v. Mayes, 213 Va. 633 and [Prieto v. Commonwealth](#), 283 Va. 142)

The Virginia Supreme Court ruled in the 1973 case of Archer and Johnson v. Mayes, that the master “jury list is not an ‘official record’ within the intent and meaning of the provisions of the Freedom of Information Act. Thus the right of access to official records allowed under the Freedom of Information Act does not include jury lists.”

The appellants asserted that the jury list was a “state document” that all citizens should be permitted to view and examine. The Court disagreed stating that a judge could, in his/her discretion, permit examination of the list, but it could not be inferred that the jury list was open for inspection to members of the bar or private citizens without “assigning good and sufficient reasons therefor.” The Court further stated “the proper administration of justice requires that the jury list be kept secret until the jurors are drawn for service, unless good cause can be shown. The jury list is in no sense a public record to be exposed to the general public. Exposure of the list to the public could lead to tampering or harassment of potential jurors and seriously affect their impartiality and the proper administration of justice.”

In the 2012 case of *Prieto v. Commonwealth*, the Virginia Supreme Court upheld and cited its prior decision about the confidentiality of the jury list, going on to include that the good cause standard is appropriate for the release of both a current and expired jury list.

Jury questionnaires are also not a public record. See *Juror Lists* for further information

Note: Even when good cause is shown, the inspection of the list shall be permitted only under the ‘watchful eye’ of the court and copying or photostating the list is not to be permitted.

Exception: Upon request, the clerk or sheriff shall make available to all counsel of record in that case, a copy of the jury panel to be used for the trial of the case 3 full business days before the trial. [Va. Code § 8.01-353](#).

The court may, upon motion of either party or its own motion, and for good cause shown, issue an order regulating the disclosure of the name and home address of a juror who has been impaneled in a **criminal** trial to any person, other than to counsel for either party or a pro se defendant. Additional personal information of a juror who has been impaneled in a criminal case shall be released only to the counsel for the defendant, a pro se defendant, and the attorney for the Commonwealth. The court may, upon motion of either party or its own motion, and for good cause shown, issue an order authorizing the disclosure of any additional personal information of a juror to any other person.

Additional “personal information” means any information other than name and home address collected by the court, clerk, or jury commissioner at any time about a person who is selected to sit on a criminal jury and includes, but is not limited to, a juror’s age, occupation, business address, telephone numbers, email addresses, and any other identifying information that would assist another in locating or contacting the juror. [Va. Code §19.2-263.3](#).

See Attorney General Opinion to Hall, dated 9/17/97, (1997,page 27); Circuit court clerk may not release information contained on master jury list or jury commissioner’s questionnaires regarding potential jurors to law enforcement or Department of Motor Vehicles authorities without circuit court judge having determined that good cause has been shown by such authorities for obtaining such information.

Grand Jury List

[Virginia Code §19.2-194](#) requires that the Judge or Judges are to make a list of potential grand jurors, and deliver this list to the clerk of the circuit court. The Clerk holds this list, until time the judge directs names to be selected for service. The list is not a public record, and not subject to inspection and copying under [Va. Code §17.2-208](#). When the names are selected from the list and reproduced on a writ of venire facias, this creates a record of the court that could be subject to [Va. Code §17.1-208](#). This writ, however, is subject to amendment up to the day of court service, depending on the present availability or ability of the grand juror to serve. Although there are no statutory requirements for the grand jury list to be confidential, it is recommended that the Judge make a determination to release the names. At the very least, the identity of grand jurors should not be released until they have served, to protect jurors from outside influences that may rise to the level of jury tampering.

Term Jury List

[Virginia Code § 8.01-351](#) directs the clerk to make and list of the names of each potential juror for a term of court and have it available for inspection by counsel in any case to be tried by a jury during the term. This list is not available for copying unless a court finds good cause to permit it. It is not available for inspection or copying by the public at all. *See Attorney General Opinion to Small, dated 6/3/16. Only counsel of record has the right to view a term jury list. Copying of the list by counsel is permitted only by leave of court upon a showing of good cause.*

Passport Information (Passport Agent's Reference Guide - Passport Services)

The Privacy Act of 1974 protects information obtained from or in a connection with a passport application. Clerks should not give such information to anyone except the applicant (or, in the case of a minor, the parent or guardian). Other persons or organizations requesting information about a passport applicant should contact: [Passport Services](#).

Medical Examiners Reports - [Va. Code § 32.1-283](#)

Reports and findings of the Medical Examiner shall be confidential and shall not under any circumstances be disclosed or made available for discovery pursuant to a court subpoena or otherwise, except as provided in [Va. Code § 32.1-283](#). Nothing shall prohibit the [Chief Medical Examiner](#) from releasing the cause or manner of death, or prohibit disclosure of reports or findings to the parties in a criminal case.

