



COMMONWEALTH of VIRGINIA

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The Honorable Jacqueline C. Smith
Clerk of the Prince William Circuit Court
9311 Lee Avenue
Third Floor
Manassas, VA 20110

Dear Ms. Smith:

The Supreme Court of Virginia recognizes that construction of the Constitution and statutes of the Commonwealth by the Attorney General under the provisions of § 2.2-505 of the Code of Virginia “is of the most persuasive character and is entitled to due consideration.”¹ The same status and weight, however, are not afforded informal opinions and advice rendered by deputy and assistant attorneys general. The views expressed herein do not constitute an Opinion of the Attorney General under the provisions of § 2.2-505. Consequently, this response to your inquiry represents only the individual view of one of the counsel to the Attorney General.²

Issue Presented

You ask whether a circuit court clerk may provide members of the press with secure remote access to nonconfidential court records. You additionally ask whether such access may be granted under § 17.1-293, which permits a circuit court to provide: “. . . secure remote access to nonconfidential court records . . . to members in good standing with the Virginia State Bar and their authorized agents, pro hac vice attorneys . . . and such governmental agencies as authorized by the Clerk.”

¹ Barber v. City of Danville, 149 Va. 418, 424 (1928); *see also* City of Va. Beach v. Va. Rest. Ass’n, Inc., 231 Va. 130, 135 (1986); Bd. of Supvrs. v. Marshall, 215 Va. 756, 762 (1975).

² *See* VA. CODE ANN. § 2.2-501 (permitting Attorney General to appoint such assistant Attorneys General as may be necessary). This and all other citations to the Code of Virginia herein are from the electronic version of the Code on LexisNexis and are current through the 2021 Regular Session of the General Assembly and Acts 2021 Sp. Sess. I, cc. 55, 56, 78, 82, 110, 117, 118, 171, 216, 220 and 243.

Applicable Law and Discussion

Section 17.1-293 generally prohibits any circuit court clerk from publishing documents containing certain private information on the internet.³ Section 17.1-293(E)(7) states that this prohibition does not apply when a clerk provides “secure remote access to nonconfidential court records,” restricted to “members in good standing with the Virginia State Bar and their authorized agents, pro hac vice attorneys authorized by the court for purposes of the practice of law, and such governmental agencies as authorized by the clerk.”⁴ As elected constitutional officers, each circuit court clerk determines how to facilitate the access contemplated by § 17.1-293(E)(7) in his or her jurisdiction.⁵ The Office of the Executive Secretary of the Supreme Court of Virginia (OES) has developed a system, known as Office of the Court Remote Access (OCRA), that a substantial majority of jurisdictions have adopted to provide remote access to nonconfidential documents. I understand that the Prince William County Circuit Court Clerk’s Office is one such jurisdiction.

You advise that, in your opinion, this statute is silent as to the question of whether a circuit court clerk may provide members of the press remote access to nonconfidential court records. The Code of Virginia, however, specifically grants circuit court clerks this authority in § 17.1-225. This section provides:

The clerk of the circuit court of any county or city may provide remote access, including Internet access, to all nonconfidential court records on an automated case management or other system maintained by his office and described in § 17.1-242. The clerk shall be responsible for insuring that proper security measures are implemented and maintained to prevent remote access users from obtaining any data that are confidential under this Code and to prevent the modification or destruction of any records by remote access users. For purposes of this section, remote access users are those individuals who are not employees of the clerk’s office. Secure remote access to land records shall be governed by § 17.1-294.⁶

Section 17.1-225 clearly allows circuit court clerks to operate and maintain their own systems of secure, remote access to nonconfidential court records. The Code is additionally careful to define “remote access users” as “those individuals who are not employees of the clerk’s office.”⁷ Thus, members of the press would have access to such a system.

However, § 17.1-293 restricts the information that members of the public, including the press, may remotely access to only those documents containing non-private information. Systems like OCRA, which provide remote access to documents that may include social security numbers, dates of birth, or financial account numbers, must be restricted to officers of the court pursuant to § 17.1-293(E)(7). Any system providing access to the public pursuant to § 17.1-225 must redact this type of private information or exclude the relevant documents. The Code does not permit remote access by the public to nonconfidential documents available on OCRA pursuant to § 17.1-293(E)(7). Nonconfidential

³ VA. CODE ANN. § 17.1-293.

⁴ VA. CODE ANN. § 17.1-293(E)(7).

⁵ Virginia Office of the Executive Secretary, Memorandum on statewide electronic filing procedures (Nov. 20, 2018).

⁶ VA. CODE ANN. § 17.1-225.

⁷ *Id.*

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documents that do not contain private information could be remotely accessed via some other system pursuant to § 17.1-225.

Conclusion

Accordingly, it is my view that the Code of Virginia grants circuit court clerks the ability to provide secure remote access to nonconfidential court records to members of the general public under § 17.1-225. Under this section, circuit court clerks may operate and maintain systems of secure remote access, but they must prevent remote access users from obtaining private information. Because systems like OCRA, however, exist in part to facilitate access by officers of the court to protected private information pursuant to § 17.1-293(E)(7), circuit court clerks cannot grant the general public remote access to nonconfidential documents through OCRA.

Very truly yours,

Robert B. McEntee, III

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