



COMMONWEALTH of VIRGINIA

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The Honorable Scott A. Surovell
Member, Senate of Virginia
Post Office Box 289
Mount Vernon, Virginia 22121

Dear Senator Surovell:

The Supreme Court of Virginia recognizes that construction of the Constitution and statutes of the Commonwealth by the Attorney General under § 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. This response to your inquiry represents only the individual views of one of the counsel to the Attorney General.²

Issue Presented

You ask what information may be redacted from local school board members’ Statement of Economic Interest forms, required to be filed under the State and Local Government Conflict of Interests Act³ (the “Conflicts Act”).

Background

The Conflicts Act requires certain officers and employees of state and local government to file disclosure statements of their economic financial interests as a condition of assuming office or employment, and at designated intervals during their term of service.⁴ The disclosures—known as statements of economic interest—must be made on forms prescribed by statute.⁵ They are maintained as public records in specified state and local offices, including, depending on the filer, the clerk’s office of a

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 (2014) (permitting the Attorney General to appoint such deputy and assistant attorneys general as may be necessary).

³ VA. CODE ANN. §§ 2.2-3100 to 2.2-3131 (2014 & Supp. 2015).

⁴ See §§ 2.2-3114 (2014 & Supp. 2015); 2.2-3114.1 (2014 & Supp. 2015); 2.2-3115 (2014 & Supp. 2015); 2.2-3116 (2014 & Supp. 2015); 2.2-3117 (2014 & Supp. 2015); 2.2-3118 (2014 & Supp. 2015); 2015 Va. Acts ch. 763 & 777, cl. 5.

⁵ VA. CODE ANN. § 2.2-3117.

locality or a school board,⁶ or the office of the Virginia Conflict of Interest and Ethics Advisory Council (the “Advisory Council”).⁶

You question whether a local school board clerk may legally redact from the locally-filed disclosure forms certain information, such as home address, telephone number, and names of family members,⁷ thereby withholding this information from the public.

Applicable Law and Discussion

A central principle governing analysis of this issue is that disclosure forms filed locally pursuant to the Conflicts Act are subject to different statutory requirements than forms filed at the state level with the Advisory Council,⁸ and the forms about which you inquire are locally filed. To the point, redaction of state-filed forms is different from redaction of locally-filed forms. Since your inquiry involves only locally-filed forms, I will limit my discussion to the laws governing those forms.

My initial observation is that nothing in the Conflicts Act authorizes redaction of locally-filed statements of economic interests. I do note that the Virginia Freedom of Information Act (“FOIA”) does permit redaction of certain documents, but not statements of economic interests.⁹ I find no exemption in FOIA that would authorize withholding a filer’s home address or telephone number,¹⁰ or the names of family members disclosed on the form. It would be incumbent on the custodian of records to identify a

⁶ See §§ 2.2-3114; 2.2-3114.1; 2.2-3115; 2.2-3116; 2.2-3117; 2.2-3118; and 2015 Va. Acts chs. 763 & 777, cl. 5.

⁷ The custodian took the position that only the first initial and last name of a filer’s minor children would be provided under FOIA.

⁸ Under the Conflicts Act, state filers submit their disclosure forms to the Virginia Conflict of Interest and Ethics Advisory Council (the “Advisory Council”). Legislation enacted by the General Assembly in 2015 provides that “[t]he Council shall . . . [r]edact from any document or form that is to be made available to the public any residential address, personal telephone number, or signature contained on that document or form.” Accordingly, redaction of a *state filer’s* residential address, personal telephone number, and signature is authorized and required for disclosure forms that must be filed with the Advisory Council. VA. CODE ANN. § 30-356(11); 2015 Va. Acts chs. 763 and 777, cl. 1, 4.

⁹ Section 2.2-3705.1(10), a part of FOIA, authorizes redaction of certain information, and it applies to all custodians of official records, including custodians of school board official records. It provides that “personal information, as defined in § 2.2-3801, including electronic mail addresses, furnished to a public body for the purpose of receiving electronic mail from the public body” are “excluded from the provisions of [FOIA].” Pursuant to this Section, FOIA shall not apply to “[p]ersonal information . . . including electronic mail addresses, *furnished to a public body for the purpose of receiving electronic mail from the public body*, provided that the electronic mail recipient has requested that the public body not disclose such information.” The critical limitation of this exemption is that it applies only when the covered information is furnished to the school board’s custodian of records for the purpose of receiving electronic mail. The facts under consideration involve the mandatory filing of a financial disclosure form, not a discretionary request to receive electronic mail. For this reason, I conclude that § 2.2-3705.1(10) does not authorize redacting the names of immediate family members or other personal information that FOIA requires to be disclosed.

¹⁰ It should be noted that the disclosure forms for local school board members do not require disclosure of the filer’s telephone number. See VA. CODE ANN. § 2.2-3117. However, if a disclosure form filed by a local school board member contains a telephone number, there is no authority to redact the telephone number when the form is produced pursuant to a valid FOIA request.

specific statutory basis supporting any claim of a right to redact information or otherwise to withhold records.¹¹

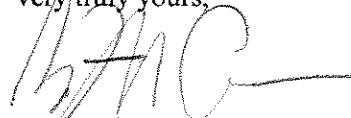
Financial disclosure forms filed pursuant to the Act are “public records” that are subject to FOIA.¹² Under FOIA, “[a]ll public records . . . shall be presumed open.”¹³ Moreover, “[a]ny exemption from public access to records . . . shall be narrowly construed and no record shall be withheld . . . unless specifically made exempt pursuant to this chapter or other specific provision of law.”¹⁴

Conclusion

Accordingly, it is my view that, pursuant to statutes duly enacted by the General Assembly, financial disclosure forms that the Virginia State and Local Government Conflict of Interests Act requires to be filed locally with city, town or school board clerks may not be redacted. It is further my opinion that nothing in the Freedom of Information Act changes this conclusion.

With kindest regards, I am

Very truly yours,



G. Timothy Oksman
Opinions Counsel

¹¹ See § 2.2-3700(B); § 2.2-3704(B) (2014). I express no opinion as to whether an otherwise available exemption under FOIA would apply to limit public access to information essential to a disclosure mandated by the Act.

¹² See § 2.2-3115(D) (“[Disclosure] [f]orms shall be filed and maintained as public records for five years in the office of the clerk of the respective governing body or school board.”), and § 2.2-3701 (2014 & Supp. 2015) (definition of “public records” and “public body”).

¹³ See § 2.2-3700(B) (2014).

¹⁴ *Id.*