



COMMONWEALTH of VIRGINIA

Office of the Attorney General

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The Honorable John Barrett Chappell, Jr.
Clerk of the Circuit Court of Dinwiddie County
Post Office Box 63
Dinwiddie, Virginia 23841

Dear Mr. Chappell:

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. Consequently, this response to your inquiry represents only the individual views of one of the counsel to the Attorney General.²

Issue Presented

You inquire whether a circuit court clerk has authority to post indices to land records, wills, judgments, and other indices online without having a Secure Remote Access Agreement in place that conforms with the secure remote security standards established by the Virginia Information Technologies Agency (“VITA”) or the Information Technology Resource Management Standard (“ITRMS”).³

Response

It is my view that a circuit court clerk may provide online access to indices of the court’s record books in the absence of a Secure Remote Access Agreement that conforms with VITA and ITRMS security standards, provided such indices do not contain confidential information.

Applicable Law and Discussion

The office of the clerk of court is a constitutional office whose duties and powers are “prescribed by general law or special act.”⁴ Although the authority of a constitutional officer is subject to the Dillon Rule⁵

¹ Barber v. Danville, 149 Va. 418, 424, 141 S.E. 126, 127 (1928); see also Va. Beach v. Va. Rest. Ass’n, 231 Va. 130, 135, 341 S.E.2d 198, 201 (1986); Bd. of Supvrs. v. Marshall, 215 Va. 756, 762, 214 S.E.2d 146, 150 (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 The ITRMS is a guidance document issued by VITA that establishes guidelines for providing restricted remote access to documents on court-controlled websites. See VA. INFO. TECHS. AGENCY, “Secure Remote Access to Online Court Documents Standard” (Doc. No. SEC503-02) (eff. Mar. 2005), available via link at <http://www.vita.virginia.gov/library/default.aspx?id=537>.

⁴ VA. CONST. art. VII, § 4.

and the scope of a clerk's powers and duties therefore is prescribed by statute, the clerk of court is free to discharge those duties and powers in the manner he deems appropriate, unless otherwise limited by law.⁶

The *Code of Virginia* directs that, upon presentation to the clerk, every writing authorized to be recorded shall be recorded by the clerk of court.⁷ The writings are to be recorded in the appropriate book required to be maintained by the clerk, based on the nature of the document.⁸ The books, then, are to be indexed as provided for by law.⁹ The purpose of the index is to "mak[e] convenient reference to every order, record or entry" contained in the books;¹⁰ and the information required to be in the index generally is limited to the names of the interested parties¹¹ and the volume and page number of the book where the recorded writing can be found.¹² No other identifying information is required to be provided. Among other formats, indices may be maintained on computer or word processor, and for grantor-grantee indices, on paper.¹³

Unless otherwise prohibited by law, "any records that are maintained by the clerk of the circuit court shall be open to inspection."¹⁴ Section 17.1-225 expressly provides that "[t]he clerk of the circuit court . . . 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[,] which include all court records he maintains regardless of where or how they are stored.¹⁵ To be a "nonconfidential court record," the record must not be a civil or criminal record statutorily designated by law as confidential or sealed pursuant to court order.¹⁶ No statute provides that indices are to be deemed confidential.

Nevertheless, some restrictions apply to what can be posted on the Internet: actual signatures, social security numbers, dates of birth, the maiden name of a person's parent, financial account numbers and the name and age of any minor child are prohibited from being from being posted on the Internet.¹⁷ There is an exception to permitting access to such restricted information when the public access is provided via secure remote access in accord with "the secure remote access standards developed by [VITA]."¹⁸ In addition, "[n]o

⁵ See, e.g., 2009 Op. Va. Att'y Gen. 56, 57 and opinions cited therein.

⁶ See 2002 Op. Va. Att'y Gen. 6, 7.

⁷ VA. CODE ANN. § 17.1-223(A) (Supp. 2014).

⁸ See, e.g., §§ 17.1-227 (Supp. 2014) and 17.1-229 (2010) (documents to be recorded in deed books); 17.1-231 (Supp. 2014) (documents to be recorded in will book); 17.1-123 (Supp. 2014) and 17.1-124 (Supp. 2014) (documents to be recorded in order book).

⁹ See §§ 17.1-248 (2010) ("The clerk of every circuit court shall have an index to each book he is required to keep . . ."); 17.1-249(A) (Supp. 2014) ("There shall be kept in each clerk's office . . . general indexes to all deed books, miscellaneous liens, will books, judgment dockets and court order books.") 17.1-223(D) ("[deed] books shall be indexed by the clerk as provided by § 17.1-249 and carefully preserved").

¹⁰ Section 17.1-248.

¹¹ See §§ 17.1-248 (executions and judgments for money are to be indexed in the names of both the person against whom and the person for whom judgment was rendered); 17.1-249(A) (instruments to be indexed in the names of all parties identified in the instrument as grantor or grantee).

¹² See § 17.1-249(G).

¹³ Section 17.1-249(I).

¹⁴ Section 17.1-208 (Supp. 2014).

¹⁵ See § 17.1-242 (Supp. 2014).

¹⁶ See § 17.1-295 (Supp. 2014) (defining "confidential court records").

¹⁷ See § 17.1-293(B) (Supp. 2014).

¹⁸ See § 17.1-293(E) (providing certain exemptions for secure remote access) and § 17.1-295 (defining "secure remote access" to records in terms of compliance with VITA standards).

circuit court clerk shall provide [such] secure[d] remote access to any land record that does not comply with . . . the secure remote standards developed by the Virginia Information Technologies Agency”¹⁹ For purposes of providing remote access, however, “land records” is defined as “any writing authorized by law to be recorded on paper or in electronic format that the clerk records *affecting title to real property*”²⁰

As noted above, indices serve as a way to locate the writings recorded by the clerk, including writings involving real estate transactions; they are not themselves writings that are recorded by the clerk, nor do they affect title to real property. Additionally, the term “court records,” as used in the statutory provisions related to secured remote access,²¹ does not encompass all records that could be deemed court records generally; rather, it is limited to those records “in a civil, traffic, or criminal proceeding.”²² Indices are not records of court proceedings. It therefore is my view that the conditions imposed on remote access to land records or records of court proceedings do not apply to the posting of indices, including those that refer to the land records, on the Internet. Nevertheless, to the extent an index contains the prohibited information specified above, such information may not be posted on the Internet; but the index may be posted with the prohibited information redacted.

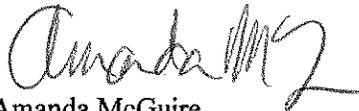
In sum, Virginia law requires compliance with VITA standards and, by extension, ITRMS standards, only with respect to land records, records of court proceeding, and confidential information. Thus, for indices and other writings or records that are not land records, part of a court proceedings, or otherwise confidential, VITA and ITRMS standards would not be applicable. Nevertheless, to the extent a clerk decides to post indices, he “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 [the] Code and to prevent the modification or destruction of any records by remote access users.”²³

Conclusion²⁴

Accordingly, it is my view that a circuit court clerk may provide online access to indices of the court’s record books in the absence of a Secure Remote Access Agreement that conforms with VITA and ITRMS security standards, provided such indices do not contain confidential information.

With kindest regards, I am

Very truly yours,



Amanda McGuire
Assistant Attorney General

¹⁹ Section 17.1-293(B).

²⁰ Section 17.1-292(B) (Supp. 2014).

²¹ Article 8 of Chapter 2 of Title 17.1, “Secure Remote Access,” §§ 17.1-292 through 17.1-295 (Supp. 2014). Prior to 2013, these provisions related only to land records, but in 2013, the laws were amended to include “court records,” as defined by § 17.1-292. 2013 Va. Acts ch. 77.

²² Section 17.1-292(B).

²³ Section 17.1-225. Unlike the provisions dealing with land records, this language does not prescribe the manner in which such security is to be insured, thus it remains within the clerk’s discretion. *See* note 5 *supra* and attending text.

²⁴ In your request, you reference former VA. CODE ANN. § 2.2-3808.2, which was repealed in 2007. 2007 Va. Acts chs. 548, 626. Please note that, although the statute was repealed, its provisions, with some amendments, were reenacted as §§ 17.1-292 through 17.1-294. *Id.*