

OP. NO. 04-087

ADMINISTRATION OF GOVERNMENT: VIRGINIA FREEDOM OF INFORMATION ACT.

Names and identities of individual donors making voluntary donations to sheriff's office may not be kept confidential and must be disclosed to citizens of Commonwealth and Commonwealth's attorney.

The Honorable H. Lee Hart
Sheriff for Culpeper County
January 11, 2005

Issues Presented

You ask whether the names and identities of individual donors making voluntary donations to the sheriff's office may be kept confidential and not disclosed to the citizens of the Commonwealth and the Commonwealth's attorney.

Response

It is my opinion that the names and identities of individual donors making voluntary donations to the sheriff's office may not be kept confidential and must be disclosed to the citizens of the Commonwealth and the Commonwealth's attorney.

Background

You advise that the sheriffs' offices in the Commonwealth accept donations from citizens and businesses that want to support law enforcement activities. You relate that acceptance of such donations is a common practice among the sheriffs. Further, you relate that the donations have been traditionally used to support special programs and community policing efforts that are not funded by government appropriation. Donations are only accepted when there is no promise or expectation of anything in return being provided to the donor.

You further advise that your office uses the donations to purchase specialized equipment and to support the Citizens Police Academy, the DARE program, and other similar programs that benefit the community. You relate that when you receive donations, the funds

are submitted to the finance office of Culpeper County for processing and incorporation in your budget. You further advise that some donors, wishing to remain anonymous, have requested that you keep their names confidential. Such donors have indicated that they do not want to receive solicitations from other organizations and they wish to protect their privacy. You state that you are committed to honoring their request, barring any legal or moral obligation for disclosure.

You advise that the Commonwealth's attorney for Culpeper County has raised a question regarding his responsibility to know the names of each individual that donates to the sheriff's office. You relate that his position is that this information may be exculpatory, and that he is required to know all information in possession of the sheriff's office. You believe that there is no blanket requirement for the Commonwealth's attorney to have this information when it is not expressly related to a specific criminal case.

Applicable Law and Discussion

The sheriff is a constitutional officer whose duties "shall be prescribed by general law or special act."¹ While the powers and duties of this constitutional officer are those prescribed by statute,² except as limited by law, the constitutional officer is free to discharge his prescribed powers and duties in the manner he deems appropriate.³

A 1985 opinion of the Attorney General observes that it is within the inherent authority of a constitutional officer, who has substantial discretion in managing his office, to seek and accept funds which enable him to discharge his prescribed duties in those areas within which he has discretion to act.⁴ The opinion concludes that a sheriff may raise funds and accept donations for law enforcement operations to be undertaken by his office.⁵

A 1980 opinion of the Attorney General considers whether the financial records pertaining to funds in a special account maintained by the sheriff's office are official records subject to required public disclosure under The Virginia Freedom of Information Act.⁶ The funds in the special account are derived from sources such as the sale of calendars and receipts from drink vending machines and are not provided by state or local government appropriations.⁷ All of the funds in the special account are used for expenses related to the functions of the sheriff's office.⁸ The opinion concludes that the special fund accounts are

official records of the sheriff's office subject to the public disclosure requirements of the Act.⁹

The Supreme Court of Virginia recognizes that construction of the Constitution of Virginia and statutes of the Commonwealth by the Attorney General under the provisions of § 2.2-505 "is of the most persuasive character and is entitled to due consideration."¹⁰ The Court also recognizes that "construction of a statute by the Attorney General is persuasive and entitled to considerable weight."¹¹ The General Assembly "is presumed to have knowledge of the Attorney General's interpretation of statutes, and the General Assembly's failure to make corrective amendments evinces legislative acquiescence in the Attorney General's interpretation."¹² The General Assembly has not taken any corrective action that alters the conclusions of the 1980 and 1985 opinions of the Attorney General. Therefore, the conclusions of these prior opinions govern my response to your inquiry.

Enacted in 1968,¹³ The Virginia Freedom of Information Act "ensures the people of the Commonwealth ready access to public records in the custody of a public body or its officers and employees, and free entry to meetings of public bodies wherein the business of the people is being conducted."¹⁴ Section 2.2-3700(B) of the Act sets forth the policy of the Commonwealth that "[t]he affairs of government are not intended to be conducted in an atmosphere of secrecy since at all times the public is to be the beneficiary of any action taken at any level of government." Moreover, the Act

shall be liberally construed to promote an increased awareness by all persons of governmental activities and afford every opportunity to citizens to witness the operations of government. Any exemption from public access to records ... shall be narrowly construed and no record shall be withheld ... unless specifically made exempt pursuant to [the Act] or other specific provision of law.^[15]

The General Assembly framed The Virginia Freedom of Information Act to be liberally construed, which promotes citizen awareness of the government's activities and allows citizens to witness governmental operations.¹⁶ The purpose of the Act is to promote the public policy of conducting the business of government in the public eye.

A 1976 opinion of the Attorney General observes that under The Freedom of Information Act, records which are kept by the sheriff's office in the transaction of public business would constitute official records, which are subject to disclosure unless specifically exempted by statute.¹⁷ Thus, all official records are subject to disclosure unless they are specifically exempted. The Act does not require that a request for official records be made in writing or mention the Act. I have reviewed the exemptions from production under the Act. I find no express exemption for the information you wish to be kept confidential or one that permits the names of donors to be kept confidential and exempt from public disclosure. The Act specifically requires that exemptions be strictly construed.¹⁸

The records to which you refer are maintained by you, the sheriff, or the finance office of Culpeper County, which is a public body subject to the disclosure requirements of the Act. The names of the donors are kept by the sheriff's office, which is also a public body subject to the disclosure requirements of the Act. Therefore, I am required to conclude that you must make such records and names available to the Commonwealth's attorney or any citizen who requests them.

Conclusion

Accordingly, it is my opinion that the names and identities of individual donors making voluntary donations to the sheriff's office may not be kept confidential and must be disclosed to the citizens of the Commonwealth and the Commonwealth's attorney.

¹Va. Const. art. VII, § 4.

²See *Hilton v. Amburgey*, 198 Va. 727, 729, 96 S.E.2d 151, 152 (1957); *Old v. Commonwealth*, 148 Va. 299, 138 S.E. 485 (1927).

³See 1984-1985 Op. Va. Att'y Gen. 284, 284.

⁴*Id.*

⁵*Id.* at 285.

⁶See 1980-1981 Op. Va. Att'y Gen. 392, 393 (interpreting §§ 2.1-341 and 2.1-342, predecessor statutes to §§ 2.2-3701 and 2.2-3704); see *also* 1968 Va. Acts ch. 479, at 690, 690-93 (enacting The Virginia Freedom of Information Act, codified as amended at

Va. Code Ann. tit. 2.2, ch. 37, §§ 2.2-3700 to 2.2-3714 (LexisNexis Repl. Vol. 2001 & Supp. 2004)).

⁷1980-1981 Op. Va. Att'y Gen., *supra* note 6.

⁸*Id.*

⁹*Id.* at 394.

¹⁰Barber v. City of Danville, 149 Va. 418, 424, 141 S.E. 126, 127 (1928); see also County Bd. v. Brown, 229 Va. 341, 347, 329 S.E.2d 468, 472 (1985); Bd. of Supvrs. v. Marshall, Clerk, 215 Va. 756, 214 S.E. 2d 146 (1975).

¹¹Andrews v. Shepherd, 201 Va. 412, 415, 111 S.E.2d 279, 282 (1959).

¹²City of Winchester v. Am, Woodmark Corp., 250 Va. 451, 458, 464 S.E.2d 148, 153 (1995).

¹³See 1968 Va. Acts, *supra* note 6.

¹⁴Section 2.2-3700(B) (LexisNexis Supp. 2004).

¹⁵*Id.*

¹⁶See *id.*

¹⁷See 1976-1977 Op. Va. Att'y Gen. 250, 252.

¹⁸See § 2.2-3700(B).

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