



COMMONWEALTH of VIRGINIA

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June 16, 2008

The Honorable Robert B. Wilson, V
Chief Judge, Eighth Judicial Circuit
Juvenile & Domestic Relations District Court
P.O. Box 69104
Hampton, Virginia 23669-9404

Dear Judge Wilson:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issue Presented

You ask whether persons entitled to inspect juvenile court records pursuant to § 16.1-305(A), (B), (B1) and (C) are also authorized to obtain copies of such records.

Response

It is my opinion that where § 16.1-305 designates records as “open for inspection” to certain individuals, such individuals are not authorized to copy the records.¹

Applicable Law and Discussion

Section 16.1-305(A) provides that “[s]ocial, medical and psychiatric or psychological records” of juveniles before the court “shall be open for inspection only to” the certain individuals and entities named in subsections (A)(1)-(5). Section 16.1-305(C) makes all other juvenile records filed with a case “open to inspection only by those persons and agencies designated in subsections A and B of this section.” Further, § 16.1-305(B) provides that “[a]ll or any part of the records enumerated in subsection A ..., which is presented to the judge in court ... shall also be made available to the parties to the proceeding and their attorneys.” Section 16.1-305(B1) provides that certain delinquency court records “shall be open to the public.”

¹ A prior opinion of the Attorney General (the “1980 Opinion”) considered whether a juvenile court judge could allow school authorities to examine a drug analysis record in the court’s file pursuant to § 16.1-305(A)(4). 1979-1980 Op. Va. Att’y Gen. 132. The 1980 Opinion concluded that school authorities met the requirement of having “a legitimate interest in the case, in the work of the law-enforcement agency, or in the work of the court” because school authorities have an interest in controlling possession and distribution of illegal drugs on school grounds. *Id.* at 133. “If a court order authorizes it, a copy of the drug analysis report can be furnished to appropriate school authorities by the clerk of the juvenile court, Commonwealth’s attorney’s office or the law enforcement agency.” *Id.* To the extent that the 1980 Opinion concluded that a copy of a record could be provided, it is superseded by this opinion.

I note that §16.1-305(D),² (D1),³ (E),⁴ and G⁵ provide authority to make or possess copies of certain court records in specific circumstances. However, § 16.1-305(A), (B), (B1), or (C) does not reference or provide authority to make or obtain copies of records.

It is a fundamental rule of statutory construction that a statute must be read as a whole, and all of its parts must be examined to make it harmonious, if possible.⁶ Furthermore, statutes relating to the same subject should not be read in isolation.⁷ Finally, the inclusion of one item in a statute implies the exclusion of others and when the items are contained in a list, that which is not listed is not included.⁸ Section 16.1-305(D), (D1), (E), and (G) specifically provides for copies. However, § 16.1-305(A), (B), (B1), and (C) does not; therefore, it is clear that the General Assembly did not intend for these subsections to authorize copies. Moreover, when the General Assembly intends that the copying of records be allowed, it expressly authorizes such copies.⁹

Conclusion

Accordingly, it is my opinion that where § 16.1-305 designates records as “open for inspection” to certain individuals, such individuals are not authorized to copy the records.¹⁰

²See VA. CODE ANN. § 16.1-305(D) (Supp. 2007) (providing that attested copies of records in connection with adjudication of guilt in certain motor vehicle offenses are furnished to Commonwealth’s attorney as needed for evidence in certain pending proceedings).

³See § 16.1-305(D1) (providing that attested copies of records in connection with adjudication of guilt for delinquent act that would be adult felony may be furnished to Commonwealth’s attorney as needed for pending criminal prosecution for possession of firearms).

⁴See § 16.1-305(E) (providing that when requested by Virginia Workers’ Compensation Commission, copy of dispositional order in delinquency case may be provided for purposes of awards to crime victims).

⁵See § 16.1-305(G) (providing that any record open for inspection to Department of Juvenile Justice staff may be transmitted in electronic format to that Department).

⁶See *Jones v. Conwell*, 227 Va. 176, 181, 314 S.E.2d 61, 64 (1984); *Gallagher v. Commonwealth*, 205 Va. 666, 669, 139 S.E.2d 37, 39 (1964); *Op. Va. Att’y Gen.*: 1994 at 93, 95; 1993 at 173, 174; 1992 at 48, 50; 1991 at 13, 17; 1986-1987 at 152, 153; 1983-1984 at 245, 246. “A statute is passed as a whole and not in parts or sections and is animated by one general purpose and intent. Consequently, each part or section should be construed in connection with every other part or section so as to produce a harmonious whole.” 2A NORMAN J. SINGER & J.D. SHAMBLE SINGER, *SUTHERLAND STATUTORY CONSTRUCTION* § 46:5, at 189-90 (Thompson/West 7th ed. 2007) [hereinafter “SINGER”].

⁷See *McDaniel v. Commonwealth*, 199 Va. 287, 292, 99 S.E.2d 623, 627 (1957) (noting that courts generally look to whole body of statute to determine intention of each part).

⁸See 2A SINGER § 47.23; 1997 *Op. Va. Att’y Gen.* 99, 99; *see also* 1981-1982 *Op. Va. Att’y Gen.* 287, 288 (discussing maxim “*expressio unius est exclusion alterius*”; mention of one thing implies exclusion of another).

⁹See, e.g., § 16.1-266(G) (Supp. 2007) (authorizing guardian ad litem “to inspect and copy” mental health and treatment records of child he is appointed to represent); § 16.1-343 (Supp. 2007) (providing that any agency, institution, or individual shall permit attorney appointed to represent minor in involuntary commitment proceeding “to inspect and copy” records relating to minor).

¹⁰See *supra* note 1.

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Thank you for letting me be of service to you.

Sincerely,

A handwritten signature in black ink, reading "Robert F. McDonnell". The signature is written in a cursive style with a large, stylized "R" and "M".

Robert F. McDonnell