



User Name: Chad Ayers

Date and Time: Tuesday, June 19, 2018 9:55:00 AM EDT

Job Number: 68622710

Document (1)

1. [Daily Press, LLC v. Office of the Exec. Sec'y, 293 Va. 551](#)

Client/Matter: a

Search Terms: Daily Press, LLC v. Office of the Exec. Sec'y, 293 Va. 551

Search Type: Natural Language

Narrowed by:

Content Type
Cases

Narrowed by
-None-



Neutral

As of: June 19, 2018 1:55 PM Z

Daily Press, LLC v. Office of the Exec. Sec'y

Supreme Court of Virginia

June 29, 2017, Decided

Record No. 160889

Reporter

293 Va. 551 *; 800 S.E.2d 822 **; 2017 Va. LEXIS 98 ***; 45 Media L. Rep. 1953; 2017 WL 2806367

THE DAILY PRESS, LLC, ET AL. v. OFFICE OF THE EXECUTIVE SECRETARY OF THE SUPREME COURT OF VIRGINIA, ET AL.

Outcome

Judgment affirmed.

Prior History: [***1] FROM THE CIRCUIT COURT OF THE CITY OF NEWPORT NEWS. David F. Pugh, Judge.

LexisNexis® Headnotes

[Daily Press, LLC v. Office of the Exec. Secy. to the Supreme Court, 2016 Va. LEXIS 140 \(Va., Sept. 19, 2016\)](#)

Governments > Courts > Court Records

Governments > Courts > Creation & Organization

Disposition: Affirmed.

[HN1](#) Courts, Court Records

Core Terms

court record, clerks, records, database, clerk of court, custodian, designated, public record, electronic, circuit court, Assembly, stored, custody, case management, public body, court clerk, offices, server, includes

The Executive Secretary of the Supreme Court of Virginia serves as the administrator of the circuit court system, which includes the operation and maintenance of a case management system. [Va. Code Ann. § 17.1-502\(A\)](#). In its capacity as court administrator, the Executive Secretary has created, operated and maintained multiple electronic systems. One of those systems is the Circuit Case Management System (CCMS), an electronic case management database. CCMS can be used to monitor the status of cases, prepare orders and forms, prepare civil and criminal reports, generate a master calendar for the courts, and assemble daily dockets. The clerks decide whether to use CCMS or a different system. Clerks enter case information data into the CCMS database. This data includes a range of information about the defendant and information relating to the case, and it also includes personal information such as birthdays and social security numbers. The CCMS database is stored on a computer server that is located in the Executive Secretary's office in Richmond. The Executive Secretary owns the server. The Executive Secretary does not enter data into CCMS. The clerks bear the responsibility of deleting data or records from CCMS.

Case Summary

Overview

HOLDINGS: [1]-The circuit court properly denied a petition for mandamus filed by a newspaper and a reporter to compel the Executive Secretary of the Supreme Court of Virginia for a searchable version of a database hosted on servers operated and housed at the Executive Secretary's offices because [Va. Code Ann. § 2.2-3704](#) of the Virginia Freedom of Information Act, [Va. Code Ann. § 2.2-3700 et seq.](#), directed persons who wished to obtain public records to direct the request at the custodian of the records and [Va. Code Ann. § 17.1-242](#) plainly established the circuit court clerks as the custodians of the court records and that they remained custodians even if the electronic records were stored off premises.

Governments > Courts > Court Records

[HN2](#) Courts, Court Records

The Online Case Information System, or OCIS, is a database that resides on servers at the offices of the Executive Secretary of the Supreme Court of Virginia. OCIS is designed to provide broader public access to case information through the internet. Like the Circuit Case Management System (CCMS), clerks must elect to participate in OCIS. Clerks who have chosen to participate have provided written authorization to the Executive Secretary to display the case data through this database. A clerk who chooses to participate in OCIS can limit the date range of cases that can be viewed and the types of cases that can be viewed. The Executive Secretary honors the clerks' directions with respect to what information it displays on OCIS. To create the OCIS database, the Executive Secretary licenses database software which replicates information contained in the CCMS database and creates a new, second database. OCIS is an exact copy of the CCMS database. The copying process automatically occurs every 15 minutes. Unlike CCMS, OCIS is a read-only database; that is, its content cannot be changed.

Governments > Courts > Court Records

[HN3](#) Courts, Court Records

Through the Online Case Information System (OCIS), members of the public can search for a particular case through a party's name, hearing date, or case number. OCIS provides information about specific cases in a particular jurisdiction. Statewide searches are not available and neither are bulk-data downloads of case information. Software limits the information that the public can see through the OCIS system. For example, the public cannot see birth dates and social security numbers.

Administrative Law > ... > Judicial
Review > Reviewability > Jurisdiction & Venue

Administrative Law > Separation of Powers

[HN4](#) Reviewability, Jurisdiction & Venue

Public policy questions concerning where to draw the line with respect to the Virginia Freedom of Information

Act, [Va. Code Ann. § 2.2-3700 et seq.](#), fall within the purview of the General Assembly. In a regime of separated powers that assigns to the legislature the responsibility for charting public policy, the function of the Supreme Court of Virginia is limited to adjudicating a question of law.

Civil Procedure > Appeals > Standards of
Review > De Novo Review

Governments > Legislation > Interpretation

[HN5](#) Standards of Review, De Novo Review

When the issue before an appellate court is a matter of statutory interpretation, it reviews the trial court's decision de novo.

Administrative Law > Governmental
Information > Public Information

Administrative Law > ... > Freedom of
Information > Methods of Disclosure > Record
Requests

[HN6](#) Governmental Information, Public Information

The Virginia Freedom of Information Act (VFOIA), [Va. Code Ann. § 2.2-3700 et seq.](#), requires "public records" to be open to inspection and copying by any citizens of the Commonwealth during the regular office hours of the custodian of such records. [Va. Code Ann. § 2.2-3704\(A\)](#). It is undisputed that the Executive Secretary of the Supreme Court of Virginia is a "public body" as that term is defined by VFOIA. A Virginia citizen making a VFOIA request must make that request to the custodian of the record. VFOIA, however, does not define the term "custodian."

Governments > Courts > Court Records

[HN7](#) Courts, Court Records

[Va. Code Ann. § 17.1-242](#) provides that the circuit court clerks shall have custody of and shall keep all court records, including books, evidence, records, maps, and papers, deposited in their offices or at such location otherwise designated by the clerk, as well as records

stored in electronic format whether the storage media for such electronic records are on premises or elsewhere.

Governments > Legislation > Interpretation

[HN8](#) Legislation, Interpretation

While in the construction of statutes the constant endeavor of the courts is to ascertain and give effect to the intention of the legislature, that intention must be gathered from the words used, unless a literal construction would involve a manifest absurdity. Where the legislature has used words of a plain and definite import the courts cannot put upon them a construction which amounts to holding the legislature did not mean what it has actually expressed.

Governments > Courts > Court Records

[HN9](#) Courts, Court Records

Relying on [Va. Code Ann. § 17.1-242](#), the Attorney General explained that the circuit court clerk is responsible for the integrity of all records maintained by the clerk's office. That responsibility is not shared with any other court official, but rests exclusively with the elected clerk of the circuit court. Accordingly, automated case management systems maintained by the clerk of a circuit court, whether the storage media is on or off premises, are records of the clerk's office under the custody of such clerk. Access to such a case management system lies within the sound discretion of the clerk. The General Assembly has taken no corrective action to dispel the Attorney General's conclusion that the clerk of court is the official who has custody of court records.

Administrative Law > Governmental Information > Public Information

Governments > Courts > Court Records

Administrative Law > ... > Freedom of Information > Methods of Disclosure > Record Requests

[HN10](#) Governmental Information, Public Information

The Virginia Freedom of Information Act, [Va. Code Ann. § 2.2-3700 et seq.](#), directs persons who wish to obtain public records to direct the request at the custodian of the records. [Va. Code Ann. § 17.1-242](#) designates the clerks of court as the custodians of court records. Both the Circuit Case Management System and the Online Case Information System are indisputably "court records." Accordingly, a request for court records must be made to the custodian of those records, the clerks of court.

Administrative Law > Governmental Information > Public Information

Governments > Courts > Court Records

Administrative Law > ... > Freedom of Information > Methods of Disclosure > Record Requests

[HN11](#) Governmental Information, Public Information

The Virginia Freedom of Information Act (VFOIA), [Va. Code Ann. § 2.2-3700 et seq.](#), states that public records must be open to copying and inspection from the custodian, except as otherwise specifically provided by law. [Va. Code Ann. § 2.2-3704](#). In the ordinary situation, a "custodian" for VFOIA purposes is the public body in possession of such a record. It is certainly possible that there might be more than one custodian of a public record. With respect to court records, however, the General Assembly has "otherwise specifically provided by law" by designating court clerks as the persons who have custody of court records. Therefore, a VFOIA request for court records must be made to them.

Administrative Law > ... > Freedom of Information > Methods of Disclosure > Record Requests

Governments > Courts > Court Records

[HN12](#) Methods of Disclosure, Record Requests

A wide range of statutes call for clerks of court to maintain court records for, among other things, public access. [Va. Code Ann. § 17.1-206 et seq.](#) The Executive Secretary of the Supreme Court of Virginia,

on the other hand, is tasked with a support role for the circuit court system, which includes the operation and maintenance of a case management system. [Va. Code Ann. § 17.1-502\(A\)](#). The General Assembly's designation of circuit court clerks as the custodians of court records in [Va. Code Ann. § 17.1-242](#) is part of an overall statutory scheme that delineates for circuit court clerks the role of maintaining court records and providing the public with access to court records. The General Assembly has allocated a support role for the Executive Secretary. The fact that the Executive Secretary supplies the software and server hardware for the Circuit Case Management System and the Online Case Information System does not render the Executive Secretary the custodian of the court records any more than if the Executive Secretary had supplied the clerks with the ink, paper, and file cabinets to generate and store these records.

Governments > Courts > Court Records

[HN13](#) **Courts, Court Records**

The plain language of [Va. Code Ann. § 17.1-242](#) designates clerks as the custodians of "all court records," which certainly includes those records that are "deposited in their offices," but the statute further designates the clerks as custodians of all "records stored in electronic format whether the storage media for such electronic records are on premises or elsewhere."

Administrative Law > Governmental Information > Public Information

Administrative Law > ... > Freedom of Information > Methods of Disclosure > Record Requests

[HN14](#) **Governmental Information, Public Information**

[Va. Code Ann. § 2.2-3704\(J\)](#) specifies that in the event a public body has transferred possession of public records to any entity, including but not limited to any other public body, for storage, maintenance, or archiving, the public body initiating the transfer of such records shall remain the custodian of such records for purposes of responding to requests for public records made pursuant to this chapter and shall be responsible

for retrieving and supplying such public records to the requester.

Governments > Courts > Court Records

[HN15](#) **Courts, Court Records**

[Va. Code Ann. § 2.2-3704\(J\)](#) establishes that when court clerks create or update a record and then send or transfer that record to the Executive Secretary of the Supreme Court of Virginia, that transfer does not turn the Executive Secretary into the custodian of the record.

Administrative Law > Governmental Information > Public Information

Administrative Law > ... > Freedom of Information > Methods of Disclosure > Record Requests

[HN16](#) **Governmental Information, Public Information**

The term "public records" is very broadly defined as all writings and recordings that consist of letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photography, magnetic impulse, optical or magneto-optical form, mechanical or electronic recording or other form of data compilation, however stored, and regardless of physical form or characteristics, prepared or owned by, or in the possession of a public body or its officers, employees or agents in the transaction of public business. [Va. Code Ann. § 2.2-3701](#). With computer database systems, to which data is constantly added, and which data are transmitted and stored electronically, the electronically stored data is the public record. The data constitute letters, words, and numbers, that are "prepared" by the clerks "in the transaction of public business." Any distinction between "records" and "data" in this context would be entirely artificial.

Administrative Law > ... > Freedom of Information > Methods of Disclosure > Record Requests

Governments > Courts > Court Records

[HN17](#) **Methods of Disclosure, Record Requests**

Like the Circuit Case Management System (CCMS), the Online Case Information System (OCIS) is a "court record" brought into being by the consent of a clerk of court, to serve the needs of court clerks, and of which the clerks statutorily have custody under [Va. Code Ann. § 17.1-242](#). [Va. Code Ann. § 2.2-3704\(G\)](#) provides that the excision of exempt fields of information from a database or the conversion of data from one available format to another shall not be deemed the creation, preparation, or compilation of a new public record. Therefore, when the Executive Secretary of the Supreme Court of Virginia uses database replication software to create OCIS, which is a read-only copy of CCMS, it does not create a new record for purposes of the Virginia Freedom of Information Act, [Va. Code Ann. § 2.2-3700 et seq.](#)

Constitutional Law > Separation of Powers

Governments > Legislation > Interpretation

[HN18](#) **Constitutional Law, Separation of Powers**

The liberal construction of a statute is one thing. Substituting a court's judgment for what the General Assembly has expressed would be another.

Counsel: For DAILY PRESS, LLC, RESS, DAVID, Appellant: SIMS, HUNTER W., JR., (ESQ.), CONROD, RICHARD JOHAN, JR., (ESQ.), ROGERS, LAUREN TALLENT, (ESQ.).

For OFFICE OF THE EXECUTIVE SECRETARY TO THE SUPREME COURT, COOPER, SAMUEL H., JR., (ACCOMACK CIRCUIT COURT), SHIPP, DEBORAH, (ALBEMARLE CIRCUIT COURT), HIX, JANET A., (APPOMATTOX CIRCUIT COURT), FERGUSON, PAUL F., (ARLINGTON CIRCUIT COURT), WINEBRINER, M. WAYNE, (BATH CIRCUIT COURT), HOGAN, CATHY C., (CITY OF BEDFORD CIRCUIT COURT), STANLEY, V. EARL, JR., (BRUNSWICK CIRCUIT COURT), TILLER, BEVERLY S., (BUCHANAN CIRCUIT COURT), BOOKER, MALCOM, JR., (BUCKINGHAM CIRCUIT COURT), BOSIGER, SHEILA, (CAMPBELL CIRCUIT COURT), CAMPBELL, RAY S., JR., (CAROLINE CIRCUIT COURT), JESSUP, JANICE D., (CARROLL CIRCUIT COURT), DUGGER, LLEZELLE A., (CITY OF CHARLOTTESVILLE CIRCUIT COURT), BUTTS, HELEN, (CLARKE CIRCUIT COURT), STAFFORD, STACEY L., (CITY OF COLONIAL HEIGHTS CIRCUIT COURT), OLIVER, SHARON P., (CRAIG CIRCUIT COURT), SPRY,

SARAH A., (CUMBERLAND CIRCUIT COURT), GIBSON, GERALD A., (CITY OF DANVILLE CIRCUIT COURT), EDWARDS, RICHARD W., (DICKENSON CIRCUIT COURT), ASHWORTH, [***2] GAYLE, (ESSEX CIRCUIT COURT), BARB, GAIL II, (FAUQUIER CIRCUIT COURT), PETERSON, BOUSON E., JR., (FLUVANNA CIRCUIT COURT), SMALL, JEFF, (CITY OF FREDERICKSBURG CIRCUIT COURT), FRALEY, CHARLES L., III, (GILES CIRCUIT COURT), COMPTON, BRENDA M., (GREENE CIRCUIT COURT), WRENN, ROBERT C., (GREENSVILLE CIRCUIT COURT), SMITH, LINDA BATCHELOR, (CITY OF HAMPTON CIRCUIT COURT), HARGROVE, FRANK D., JR., (HANOVER CIRCUIT COURT), SMITH, YVONNE G., (HENRICO CIRCUIT COURT), HELMSTUTLER, VICKIE STONE, (HENRY CIRCUIT COURT), JONES, SHARON N., (ISLE OF WIGHT CIRCUIT COURT), MASON, CHARLES V., (KING GEORGE CIRCUIT COURT), NORMAN, PATRICIA M., (KING WILLIAM CIRCUIT COURT), MUMFORD, DIANE H., (LANCASTER CIRCUIT COURT), LAMEY, RENE, (LEE CIRCUIT COURT), HOPKINS, SUSAN R., (LOUISA CIRCUIT COURT), WINGFIELD, EUGENE C., (CITY OF LYNCHBURG CIRCUIT COURT), LOUK, LEETA D., (MADISON CIRCUIT COURT), COLEMAN, EUGENE E., JR., (MECKLENBURG CIRCUIT COURT), BUTLER, KAREN A., (NEW KENT CIRCUIT COURT), JOHNSON, TRACI L., (NORTHAMPTON CIRCUIT COURT), BINHAM, DEBORAH, (NORTHUMBERLAND CIRCUIT COURT), BROWN, JANE L., (NOTTOWAY CIRCUIT COURT), GASPERINI, SUSAN C., (PATRICK COUNTY CIRCUIT COURT), BRAXTON, SHALVA J., (CITY [***3] OF PETERSBURG CIRCUIT COURT), HAYMORE, H. F., JR., (PITTSYLVANIA CIRCUIT COURT), DOBBINS, TERESA H., (POWHATAN CIRCUIT COURT), EPPES, MICHELLE J., (PRINCE EDWARD CIRCUIT COURT), CREWE, MAETTA H., (PULASKI CIRCUIT COURT), RALPH, MARGARET, (RAPPAHANNOCK CIRCUIT COURT), JEWETT, EDWARD F., (CITY RICHMOND CIRCUIT COURT), FORRESTER, ROSA S., (RICHMOND CIRCUIT COURT), HAMILTON, BRENDA S., (CITY OF ROANOKE CIRCUIT COURT), EVANS-HAYWOOD, CHAZ W., (ROCKINGHAM CIRCUIT COURT), MCREYNOLDS, ANN S., (RUSSELL CIRCUIT COURT), CRAWFORD, CHANCE, (CITY OF SALEM CIRCUIT COURT), FRANCIS, RICHARD L., (SOUTHAMPTON CIRCUIT COURT), JETT, CHRISTALYN M., (SPOTSYLVANIA CIRCUIT COURT), CARTER, W. R., JR., (CITY OF SUFFOLK CIRCUIT COURT), WILLIAMS, GARY M., (SUSSEX CIRCUIT COURT), ALLISON, TAMMY B., (TAZEWELL CIRCUIT COURT), SINNEN, TINA E., (CITY OF

VIRGINIA BEACH CIRCUIT COURT), SIMS, JENNIFER R., (WARREN CIRCUIT COURT), CHATHAM, GWYNN J., (WESTMORELAND CIRCUIT COURT), HOMEY, HAYDEN H., (WYTHE CIRCUIT COURT), NELSON, KRISTEN N., (YORK COUNTY/POQUOSON CIRCUIT COURT), Appellee: RAPHAEL, STUART ALAN, (ESQ.), COX, TREVOR STEPHEN, (ESQ.), TUNNER, WILLIAM WOODUL, (ESQ.), PRINCE, WILLIAM DANIEL, IV, (ESQ.), MCGUIRE, [***4] MATTHEW ROBERT, (ESQ.), O'HERRON, JOHN PAUL, (ESQ.).

Judges: PRESENT: Mims, McClanahan, Powell, Kelsey, and McCullough, JJ., and Russell and Millette, S.JJ. OPINION BY JUSTICE STEPHEN R. McCULLOUGH.

Opinion by: STEPHEN R. McCULLOUGH

Opinion

[*554] [**823] OPINION BY JUSTICE STEPHEN R. McCULLOUGH

The question before us on appeal is whether the [Virginia Freedom of Information Act, Code § 2.2-3700 et seq.](#) ("VFOIA") [*555] entitles The Daily Press to obtain a copy of a database from the Office of the Executive Secretary of the Supreme Court of Virginia ("Executive Secretary") or whether, instead, The Daily Press must ask each jurisdiction's clerk of court for certain court records. The answer turns on whether the Executive Secretary is the legal custodian of court records or whether the clerks of court fulfill that role. We conclude that the clerks of court are the statutorily designated custodians of court records and, therefore, The Daily Press must make its request to them, not to the Office of the Executive Secretary. Consequently, we affirm the judgment of the trial court.

BACKGROUND

The Daily Press publishes a daily newspaper that is circulated on the Virginia Peninsula and surrounding communities. It also publishes stories that are available on the internet. [***5] David Ress is a reporter for The Daily Press. Ress has written articles for The Daily Press about race and the criminal justice system. Ress made a request to the Executive Secretary under the Virginia Freedom of Information Act asking for a searchable version of a database hosted on servers operated and housed at the Executive Secretary's

offices in Richmond. The Executive Secretary took the position that the circuit court clerks are the custodians of the requested information and that the request should be addressed to them. The Executive Secretary reached out to the 118 individual clerks whose information it hosted to request permission to provide this information to The Daily Press. Fifty of the clerks consented to allow the Executive Secretary to provide the information; sixty-eight clerks objected.

The Daily Press and Ress filed a petition for a writ of mandamus to compel the Executive Secretary to honor the request. The Executive Secretary defended the petition by arguing, among other things, that it is not the custodian of the records. In addition, the 68 objecting clerks of court were joined as necessary parties.

The court heard evidence about the respective duties of clerks [***6] of court and the Executive Secretary. Among other duties, [HN1](#) [↑] the Executive Secretary serves as "the administrator of the circuit court system, which includes the operation and maintenance of a case management system." [Code § 17.1-502\(A\)](#). In its capacity as court [*556] administrator, the Executive Secretary has created, operated and maintained multiple electronic systems. One of those systems is the Circuit Case Management System ("CCMS"), an electronic case management database. CCMS can be used to monitor the status of cases, prepare orders and forms, prepare civil and criminal reports, generate a master calendar for the courts, and assemble daily dockets. CCMS was created in the 1980s. The clerks decide whether to use CCMS or a different system. The great majority of the clerks of the circuit courts - 118 out of 120 - have opted to use CCMS.

Clerks enter case information data into the CCMS database. This data includes a range of information about the defendant and information relating to the case, and it also includes personal information such as birthdays and social security numbers. The CCMS database is stored on a computer server that is located in the Executive Secretary's office in Richmond. The Executive [***7] Secretary owns the server. The Executive Secretary does not enter data into CCMS. The clerks bear the responsibility of deleting data or records from CCMS.

[HN2](#) [↑] The Online Case Information System, or OCIS, is another database that resides on servers at the Executive Secretary's offices. OCIS is designed to provide broader public access to case information through the internet. Like CCMS, clerks must elect to

participate in OCIS. Clerks who have chosen to participate have provided written authorization to the Executive Secretary to display the case data through this database. A clerk who chooses to participate in OCIS can limit the date range of cases that can be viewed and the types of cases that can be viewed. The Executive Secretary honors the clerks' directions [**824] with respect to what information it displays on OCIS. To create the OCIS database, the Executive Secretary licenses database software which replicates information contained in the CCMS database and creates a new, second database. OCIS is an exact copy of the CCMS database. The copying process automatically occurs every 15 minutes. Unlike CCMS, OCIS is a read-only database; that is, its content cannot be changed.

[HN3](#) Through OCIS, members [***8] of the public can search for a particular case through a party's name, hearing date, or case number. OCIS provides information about specific cases in a [*557] particular jurisdiction. Statewide searches are not available and neither are bulk-data downloads of case information. Software limits the information that the public can see through the OCIS system. For example, the public cannot see birthdates and social security numbers.

The trial court denied the petition for mandamus, reasoning that

the public records sought by the Daily Press and contained in the online case information system (OCIS) database are not in the "custody" of [the Executive Secretary], as that term is used in Virginia's Freedom of Information Act, and, instead, each circuit court clerk is the custodian of that clerk's respective case data contained in the OCIS database.

This appeal followed.

ANALYSIS

At the outset, it is worth emphasizing that this Court's role is limited. [HN4](#) Public policy questions concerning where to draw the line with respect to VFOIA fall within the purview of the General Assembly. In a regime of separated powers that assigns to the legislature the responsibility for charting public policy, our function [***9] is limited to adjudicating a question of law: does VFOIA compel the Executive Secretary to answer the request from The Daily Press or does the law instead require The Daily Press to make its VFOIA request to individual Clerks of Court?

[HN5](#) Because the issue before us is a matter of

statutory interpretation, we review the trial court's decision de novo. [Fitzgerald v. Loudoun Cnty. Sheriff's Office](#), 289 Va. 499, 504, 771 S.E.2d 858, 860 (2015).

I. CLERKS OF COURT ARE THE EXPRESSLY DESIGNATED CUSTODIANS OF COURT RECORDS.

[HN6](#) VFOIA requires "public records" to be "open to inspection and copying by any citizens of the Commonwealth during the regular office hours of the custodian of such records." [Code § 2.2-3704\(A\)](#). It is undisputed that the Executive Secretary is a "public body" as that term is defined by VFOIA. A Virginia citizen [*558] making a VFOIA request must make that request to the custodian of the record. *Id.* VFOIA, however, does not define the term "custodian."

The Executive Secretary and the court clerks point to [Code § 17.1-242](#) to argue that the clerks of court are the designated custodians of court records. [HN7](#) That statute provides as follows:

The circuit court clerks shall have custody of and shall keep all court records, including books, evidence, records, maps, and papers, deposited in their offices or at such location [***10] otherwise designated by the clerk, as well as records stored in electronic format whether the storage media for such electronic records are on premises or elsewhere.

The Executive Secretary and the clerks rely on this statute to argue that the clerks of court are the statutorily designated custodians of what are indisputably court records, and, therefore, The Daily Press must make its records request to the clerks of court.

[HN8](#) While in the construction of statutes the constant endeavor of the courts is to ascertain and give effect to the intention of the legislature, that intention must be gathered from the words used, unless a literal construction would involve a manifest absurdity. Where the legislature has used words of a plain and definite import the courts cannot put upon them a construction which amounts to holding the legislature did not mean what it has actually expressed.

[Barr v. Town & Country Props.](#), 240 Va. 292, 295, 396 S.E.2d 672, 674 (1990) (quoting [Watkins v. Hall](#), 161 Va. 924, 930, 172 S.E. 445, 447 (1934)). We conclude that [Code § 17.1-242](#) [**825] plainly establishes the clerks as the custodians of the court records. In addition, this statute plainly provides that the clerks'

custody extends to court records that are "stored in electronic format" and that they remain custodians even if the electronic records are stored off premises, [***11] in this instance at the Executive Secretary's offices. Because the clerks of court are the expressly designated custodians of court records, The Daily Press must address its VFOIA request to them.

[*559] This straightforward reading of [Code § 17.1-242](#) is bolstered by a 2002 official opinion of the Attorney General. Although the question addressed in the opinion was different, the reasoning is germane to the question before us. [HN9](#) [↑] Relying on [Code § 17.1-242](#), the Attorney General explained that

the circuit court clerk is responsible for the integrity of all records maintained by the clerk's office. That responsibility is not shared with any other court official, but rests exclusively with the elected clerk of the circuit court

Accordingly, I must conclude that automated case management systems maintained by the clerk of a circuit court, whether the storage media is on or off premises, are records of the clerk's office under the custody of such clerk. Access to such a case management system lies within the sound discretion of the clerk.

2002 Op. Atty. Gen. Va. No. 02-026 (April 04, 2002). The Attorney General reiterated this conclusion in 2013. 2013 Op. Atty. Gen. Va. No. 13-047 (August 20, 2013). The General Assembly has [***12] taken no corrective action to dispel the Attorney General's conclusion that the clerk of court is the official who has custody of court records.

This designation of court clerks as the custodians of court records accords with longstanding historical practice. Clerks of court have borne the responsibility of maintaining court records for public access since colonial times. See 1 William Waller Hening, Statutes at Large 303-04 (1823) (citing the Act X of November 1645 under King Charles I, designating "clerkes [sic] of the courts . . . [to] keep records of the proceedings of all actions and causes aforesaid"); see also Hugh F. Rankin, The General Court of Colonial Virginia, Colonial Williamsburg Foundation Library Research Report Series - 0088, Colonial Williamsburg Foundation Library (1958) ("The Clerk of the General Court was responsible for keeping the records of the court . . . the publication of court orders, issuing subpoenas, and the preparation of the court docket.").

[HN10](#) [↑] The VFOIA directs persons who wish to

obtain public records to direct the request at the custodian of the records. [Code § 17.1-242](#) [*560] designates the clerks of court as the custodians of court records. Both CCMS and OCIS are indisputably [***13] "court records." Accordingly, a request for court records must be made to the custodian of those records, the clerks of court.


The Daily Press makes several arguments to resist this conclusion. First, it argues that [Code § 17.1-242](#) is irrelevant and that we should instead look exclusively to VFOIA as the sole text to determine who is the custodian of a record. [Code § 17.1-242](#) is not part of VFOIA. The term "custodian" is not defined in VFOIA, so, The Daily Press argues, we should give that word its ordinary meaning, namely, someone who has possession of something. Since the Executive Secretary is a "public body" in possession of a "public record," it is the "custodian" of the record and, therefore, the database must be disclosed.


We conclude that this is the wrong approach. [HN11](#) [↑] VFOIA states that public records must be open to copying and inspection from the custodian, "[e]xcept as otherwise specifically provided by law." [Code § 2.2-3704](#). We agree that in the ordinary situation, a "custodian" for VFOIA purposes is the public body in possession of such a record. It is certainly possible that there might be more than one custodian of a public record. With respect to court records, however, the General Assembly has "otherwise specifically provided [***14] by law" by designating court clerks as the persons who have custody of court records. Therefore, a VFOIA request for court records must be made to them.¹

[**826] This conclusion draws further support from the functions the General Assembly has ascribed to court clerks and to the Executive Secretary. [HN12](#) [↑] A wide range of statutes call for clerks of court to maintain court records for, among other things, public access. See [Code § 17.1-206 et seq.](#) The Executive Secretary, on the other hand, is tasked with a support role for "the circuit court system, which includes the operation and maintenance of a case management system." [Code §](#)

¹ The clerks intimate that VFOIA may not apply at all to them, at least with certain kinds of public court records. We do not address this question, because it is not before us. What is before us is a VFOIA request addressed to the Executive Secretary and whether the Executive Secretary must answer such a request or whether that request should be directed elsewhere.


[17.1-502\(A\)](#). The General Assembly's designation of circuit court clerks as the custodians of court records in [Code § 17.1-242](#) is part of an overall statutory scheme that **[*561]** delineates for circuit court clerks the role of maintaining court records and providing the public with access to court records. The General Assembly has allocated a support role for the Executive Secretary. The fact that the Executive Secretary supplies the software and server hardware for CCMS and OCIS does not render the Executive Secretary the custodian of the court records any more than if the Executive Secretary had supplied the clerks with the ink, paper, **[***15]** and file cabinets to generate and store these records.


Amicus for The Daily Press argues that [Code § 17.1-242](#) is limited to records that are "deposited" in the clerks' offices. [HN13](#)  The plain language of [Code § 17.1-242](#), however, does not lend itself to this construction. It designates clerks as the custodians of "all court records," which certainly includes those records that are "deposited in their offices," but the statute further designates the clerks as custodians of all "records stored in electronic format whether the storage media for such electronic records are on premises or elsewhere." *Id.*

The Attorney General also points to [HN14](#)  [Code § 2.2-3704\(J\)](#), which specifies that

[i]n the event a public body has transferred possession of public records to any entity, including but not limited to any other public body, for storage, maintenance, or archiving, the public body initiating the transfer of such records shall remain the custodian of such records for purposes of responding to requests for public records made pursuant to this chapter and shall be responsible for retrieving and supplying such public records to the requester.

Disputing the applicability of this provision, The Daily Press argues that no records were ever "transferred" to the **[***16]** Executive Secretary. We disagree. The evidence establishes an agreement between the clerks of court and the Executive Secretary to transfer custody of computerized court records from the moment of their creation to the Executive Secretary. Here, the record is the data. The clerks of court enter case information and case management data into a computer system. In so doing the clerks are either creating or updating an electronic record. Once they have keyed in the information, the clerks then transfer the data via electronic **[*562]** impulse to the Executive Secretary servers, where the data is stored. To "transfer" simply


means "to carry or take from one person or place to another" or "to cause to pass from one person or thing to another: transport." Webster's Third New International Dictionary 2426-27 (1993). [HN15](#)  [Code § 2.2-3704\(J\)](#) establishes that when clerks create or update a record and then send or transfer that record to the Executive Secretary, that transfer does not turn the Executive Secretary into the custodian of the record.

Amicus for The Daily Press seeks to draw a distinction between a "stream of data" and a "record" for purposes of VFOIA. [HN16](#)  The term "public records" is very broadly defined as

all writings **[***17]** and recordings that consist of letters, words or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photography, magnetic impulse, optical or magneto-optical form, mechanical or electronic recording or other form of data compilation, however stored, and regardless of physical form or characteristics, prepared or owned by, or in the possession of a public body or its officers, employees or agents in the transaction of public business.

[Code § 2.2-3701](#). With computer database systems, to which data is constantly added, and which data are transmitted and stored **[**827]** electronically, the electronically stored data *is* the public record. The data constitute letters, words, and numbers, that are "prepared" by the clerks "in the transaction of public business." Any distinction between "records" and "data" in this context would be entirely artificial.

The Daily Press also raises the prospect that governmental actors could play a confusing shell game, shifting records from one governmental actor to another and thereby thwarting public access. We see little danger of such a practice here. The Code expressly designates the clerks as custodians of court records. Clerks have served **[***18]** as the custodians of court records for centuries. The public knows or can easily find out where to ask for court records.

The Daily Press also attempts to draw a distinction between CCMS and OCIS. It stresses the fact that OCIS is an entirely different database that is created by the Executive Secretary **[*563]** when it duplicates CCMS. First, [HN17](#)  like CCMS, OCIS is a "court record" brought into being by the consent of a clerk of court, to serve the needs of court clerks, and of which the clerks statutorily have custody under [Code § 17.1-242](#). Second, [Code § 2.2-3704\(G\)](#) provides that "[t]he

excision of exempt fields of information from a database or the conversion of data from one available format to another shall not be deemed the creation, preparation, or compilation of a new public record." Therefore, when the Executive Secretary uses database replication software to create OCIS, which is a read-only copy of CCMS, it does not create a new record for purposes of [FOIA](#).

Finally, The Daily Press cites the provisions of [Code § 2.2-3700](#), which call for the provisions of VFOIA to 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." [***19] [Code § 2.2-3700\(B\)](#). [HN18](#) [↑] The liberal construction of a statute is one thing. Substituting our judgment for what the General Assembly has expressed would be another. The General Assembly has expressly designated the clerks as the custodians of court records. The issue before us, moreover, is not whether records should be made public or shielded from public view. There is no question the public can gain access to a wide range of court records. The question is which governmental entity should respond to The Daily Press' request under VFOIA for public records. Here, court clerks are the expressly designated custodians of the public records sought by The Daily Press.²

CONCLUSION

For these reasons, the judgment below will be affirmed.³

Affirmed.

End of Document

²We have considered [United States Dep't of Justice v. Tax Analysts](#), 492 U.S. 136, 109 S. Ct. 2841, 106 L. Ed. 2d 112 (1989), cited by The Daily Press, but consider it inapposite due to the differences in statutory language between the VFOIA and its federal counterpart.

³In light of our holding, The Daily Press' request for attorney's fees is moot.