

Virginia Public Records Act Requirements

By Jeffrey S. Gore and Roger C. Wiley
Hefty Wiley & Gore PC

Local government officials generally are not enthusiastic about the Virginia Public Records Act (the “Act”). Many elected officials are only vaguely aware that the Act exists. Managers and agency heads are likely to view it as just another nuisance requirement imposed by the state or even as an example of that most despised species --an unfunded mandate. Other local officials may be puzzled about how to handle the masses of paper that clutter their offices or the electronic messages and documents that fill up their email inboxes and hard drives.

All of those reactions are predictable and sometimes they may seem valid. Certainly the state is not sending localities money to spend on records management. Most of the Act’s requirements, however, merely reflect what would be viewed as good business and management practice. No organization can really operate efficiently if it can’t determine what it did last month, last year, or 10 years ago.

Dependence on one’s own memory of past events can be very risky, and although most organizations have a few long-serving individuals who provide “institutional memory,” all of them move on eventually. Keeping records and maintaining them in an accessible manner is vital not only for those who come along later, but for our own daily performance.

Having an effective system for keeping the records that are important and getting rid of those that are no longer needed, to make room for new ones, is just common sense. Still, it is easy to neglect records management. Getting today’s work done can always claim priority over organizing and storing records of yesterday’s work. Some of us are instinctively good at file maintenance while others need to be prodded.

The more positive way to view the Public Records Act is that, by imposing some legal requirements, it forces us to think about records management and assign it as a specific task to someone in our organization. The Act’s legal mandate also gives officials a justification for budgeting and spending the resources necessary to make a records management system function properly.

We hope that this handbook will give local government officials a basic understanding of the Virginia Public Records Act and how to comply with it. In its

opening section you will find a discussion of the Act’s basic requirements, presented in question and answer format, followed by several appendices that contain additional detailed information, as shown in the Table of Contents.

What is the purpose of the Virginia Public Records Act?

Virginia Public Records Act (the “Act”) is found in Chapter 7 of Title 42.1 of the Code of Virginia, the Title dealing with “Libraries.” It is located in that part of the Code because the Library of Virginia is the state agency designated to administer the Act and issue regulations to implement it. The Act establishes the basic rules and authorizes the Library to issue more detailed regulations specifying how state and local public agencies, officials and employees handle “public records.” This includes determining exactly what constitutes a public record, how and long to maintain that public record, and when and how to eventually dispose of it – all of which the Act describes as the “lifecycle” of the public record.

What is a public record?

As defined in the Act, a public record is any recorded information possessed by a public agency, public official or public employee that documents a transaction or activity by or with any such agency, official or employee. The recorded information is a public record if it is produced, collected, received or retained in connection with the transaction of public business, regardless of its physical form. The medium (paper, film, magnetic or electronic file, etc.) on which the information is recorded has no bearing on whether it is a public record.

What local agencies officials are covered by the Act’s requirements? Does it also apply to elected constitutional officers?

The Act applies to all departments, divisions, boards, commissions and authorities of a locality or in which a locality participates to conduct public business.

Officers and employees of these various local agencies have a responsibility to comply the Act’s require-

ments for the records they create or receive.

Elected city and county constitutional officers and the staffs and records of their offices are specifically included in the definitions of covered officials and agencies.

What about members of a local governing body?

Members of a city or town council, or county board of supervisors, regardless of their terms or compensation, are officers of the locality and are thus subject to the Act's requirement. In the past, many of them have not treated their individual correspondence and other records about public business, kept at home or in their private places of employment, as public records.

Legally, however, the Act does apply to these records. In recent years, as requests for disclosure of members' individual records under the Virginia Freedom of Information Act have become more common, clerks of governing bodies and local government managers and attorneys have begun assisting their governing bodies in establishing better systems to maintain these records and comply with the Act.

What are the primary responsibilities of local governments under the Act?

- **Tell governing body members to read the Act.**

Every person elected, re-elected, appointed, or reappointed to the governing body of any locality or other local public body subject to the Act must be provided a copy of the Act within two weeks of election, re-election, appointment or reappointment. The Act assigns responsibility for doing this to the public body's chief administrator, agency head or legal counsel, but in practice the duty may be delegated to someone else, such as the clerk of the public body. The Act also requires members of the public body to read and become familiar with the Act after they receive it. Following this explanation is a copy of the Act with amendments through July 1, 2018, to be used for this purpose.

- **Designate a local public records officer.**

Every locality is required to designate at least one records officer to serve as a liaison to the

Library of Virginia, and to implement and oversee a records management program, and coordinate the disposition, including destruction, of obsolete records. Local records officers can be designated either by the governing body of the locality or agency or by its chief administrative officer. The locality must give the Library contact information for its designated

public records officers and update that information as it changes. Larger localities and organizations may decide to designate more than one records officer, with some having responsibility for the records of only a single department, but all public records in the locality must have someone designated to be responsible for them. The Library conducts training programs for local records officers to help them understand and comply with the requirements of the Act.

- **Establish a local records management and retention program**

The Act requires every locality and local agency to "ensure that its public records are preserved, maintained, and accessible throughout their lifecycle." The Library has published a very good technical manual for the establishment of a records management program, which along with much other useful information, is available on the public records section of the Library's website: <http://www.lva.virginia.gov/agencies/records/>.

What are some duties of a records retention officer?

The primary duties are to be certain that the departments or agencies for which the officer is responsible keep their records for the required length of time, maintain them in an accessible manner, and destroy them when it is time to do so.

What does "accessible throughout their lifecycle" mean?

How many of us have a box or drawer in our office full of five floppy disks or 3.5 inch diskettes, but no longer have a drive on our desktop computer with which to read them? One of the jobs of the records retention officer is to make sure that records aren't made inaccessible in that way. Records must be maintained in a form that can be viewed or read for as long as those records are required to be kept. For paper records that is generally not a problem, except for very old records that must be kept permanently. These may require photographing, copying or scanning to preserve their contents. For records stored in other media, the Act requires that they be converted or migrated to new media as technologies become obsolete, "as often as necessary so that information is not lost due to hardware, software, or media obsolescence or deterioration."

How long do records have to be kept?

The length of time varies depending on the type of record. As authorized by the Act, the Library of Virginia has established retention schedules for various

categories of state and local government records. Some types of records must be maintained permanently. For certain types of permanent records that are considered essential, copies must also be made and sent to the Library for storage, so they can be recovered in case the originals are destroyed by fire, flood or other catastrophe. Other types of records must be kept only a few years and then destroyed. All the schedules are also available online: www.lva.virginia.gov/agencies/records/sched_local/index.htm.

Are we really obligated to destroy some older records? Why?

Yes, the Act requires destruction of public records “in a timely manner” once their designated retention period has expired. The Library’s website has more guidance – www.lva.virginia.gov/agencies/records/timely.asp.

In part, this requirement is intended to make room for new records by getting rid of ones no longer needed. The Act also says that it is state policy for records management to be uniform throughout the Commonwealth. Requiring destruction on a regular schedule ensures that records of the same age and type will be available in all localities at any given time. This is helpful to someone researching information of the same type in more than one locality. Following the schedules for destruction of records will also be helpful in limiting the scope of future requests for disclosure of records under the Virginia Freedom of Information Act.

What conditions must be met before destroying records?

First, the designated retention schedule for the records must have expired. Second, the records must not be the subject of any current Freedom of Information Act disclosure request, litigation or audit, or any proposed change in the retention schedules. Third, the locality or agency’s designated public records officer must have certified on a form approved by the Library that the records are appropriate for destruction. After the records are destroyed that form must be sent to the Library.

Can we give the records away or sell them instead of destroying them?

The Act requires that any records created before 1912 be offered to the Library of Virginia before being destroyed. Selling public records or giving them to anyone else is specifically prohibited by the Act.

What are the consequences if we don’t comply with the retention and destruction requirements for our records? Are there fines or penalties?

Unlike the Freedom of Information Act (FOIA), the Public Records does not authorize private citizens to sue public agencies or officials to force them to comply with the Act. The Librarian of Virginia is given limited authority to sue someone who is illegally retaining public records that he is not entitled to keep, such as an officeholder whose term has expired. The Act also gives the Library the power to audit state or local agencies for compliance with the Act and to report non-compliance to the local governing body and the General Assembly. Such audits are not frequent, and the Library has no power to impose monetary or other penalties for non-compliance even when revealed by audit.

Why do we need to comply, then?

The best reason for compliance is that good records management can make your organization more efficient and benefit both current and future local officials. Legally, the lack of a specific penalty does not change your legal obligation to comply with the Act, and deliberately ignoring it could be cited as poor job performance, or even as malfeasance in an extreme case.

The Freedom of Information Act may provide another reason to comply with the Public Records Act in some cases. When a citizen requests access to a record under FOIA, the local agency or official has an obligation to produce that record, unless it is covered by a specific statutory exemption.

If the record has been discarded or destroyed before the end of the retention period established by the State Library, the failure to comply with the Public Records Act may be revealed, which is embarrassing at the very least. We are not aware that any court has ruled that failure to produce the record due to its premature destruction also constitutes a violation of FOIA, but we believe such an argument could be made. FOIA violations, of course, can result in civil penalties and payment of the requester’s attorney fees.

Title 42.1. Libraries. Chapter 7. Virginia Public Records Act.

As required under Virginia Code § 42.1-76.1, § 2.2-3702, “Any person elected, reelected, appointed, or reappointed to the governing body of any agency subject to this chapter shall... read and become familiar with the provisions of this chapter.”

The text of the Public Records Act follows to assist local officials in complying with this section of the Act.

§ 42.1-76. Legislative intent; title of chapter.

The General Assembly intends by this chapter to establish a single body of law applicable to all public officers and employees on the subject of public records management and preservation and to ensure that the procedures used to manage and preserve public records will be uniform throughout the Commonwealth.

This chapter may be cited as the Virginia Public Records Act.

§ 42.1-76.1. Notice of Chapter.

Any person elected, reelected, appointed, or reappointed to the governing body of any agency subject to this chapter shall (i) be furnished by the agency or public body’s administrator or legal counsel with a copy of this chapter within two weeks following election, reelection, appointment, or reappointment and (ii) read and become familiar with the provisions of this chapter.

§ 42.1-77. Definitions.

As used in this chapter:

“Agency” means all boards, commissions, departments, divisions, institutions, authorities, or parts thereof, of the Commonwealth or its political subdivisions and includes the offices of constitutional officers.

“Archival quality” means a quality of reproduction consistent with established standards specified by state and national agencies and organizations responsible for establishing such standards, such as the Association for Information and Image Management, the American National Standards Institute, and the National Institute of Standards and Technology.

“Archival record” means a public record of continuing and enduring value useful to the citizens of the Commonwealth and necessary to the administrative functions of public agencies in the conduct of services and activities mandated by law that is identified on a Library of Virginia approved records retention and disposition schedule as having sufficient informational

value to be permanently maintained by the Commonwealth.

“Archives” means the program administered by The Library of Virginia for the preservation of archival records.

“Board” means the State Library Board.

“Conversion” means the act of moving electronic records to a different format, especially data from an obsolete format to a current format.

“Custodian” means the public official in charge of an office having public records.

“Disaster plan” means the information maintained by an agency that outlines recovery techniques and methods to be followed in case of an emergency that impacts the agency’s records.

“Electronic record” means a public record whose creation, storage, and access require the use of an automated system or device. Ownership of the hardware, software, or media used to create, store, or access the electronic record has no bearing on a determination of whether such record is a public record.

“Essential public record” means records that are required for recovery and reconstruction of any agency to enable it to resume its core operations and functions and to protect the rights and interests of persons.

“Librarian of Virginia” means the State Librarian of Virginia or his designated representative.

“Lifecycle” means the creation, use, maintenance, and disposition of a public record.

“Metadata” means data describing the context, content, and structure of records and their management through time.

“Migration” means the act of moving electronic records from one information system or medium to another to ensure continued access to the records while maintaining the records’ authenticity, integrity, reliability, and usability.

“Original record” means the first generation of the information and is the preferred version of a record. Archival records should to the maximum extent possible be original records.

“Preservation” means the processes and operations involved in ensuring the technical and intellectual survival of authentic records through time.

“Private record” means a record that does not

relate to or affect the carrying out of the constitutional, statutory, or other official ceremonial duties of a public official, including the correspondence, diaries, journals, or notes that are not prepared for, utilized for, circulated, or communicated in the course of transacting public business.

“Public official” means all persons holding any office created by the Constitution of Virginia or by any act of the General Assembly, the Governor and all other officers of the executive branch of the state government, and all other officers, heads, presidents or chairmen of boards, commissions, departments, and agencies of the state government or its political subdivisions.

“Public record” or “record” means recorded information that documents a transaction or activity by or with any public officer, agency or employee of an agency. Regardless of physical form or characteristic, the recorded information is a public record if it is produced, collected, received or retained in pursuance of law or in connection with the transaction of public business. The medium upon which such information is recorded has no bearing on the determination of whether the recording is a public record.

For purposes of this chapter, “public record” shall not include nonrecord materials, meaning materials made or acquired and preserved solely for reference use or exhibition purposes, extra copies of documents preserved only for convenience or reference, and stocks of publications.

“Records retention and disposition schedule” means a Library of Virginia-approved timetable stating the required retention period and disposition action of a records series. The administrative, fiscal, historical, and legal value of a public record shall be considered in appraising its appropriate retention schedule. The terms “administrative,” “fiscal,” “historical,” and “legal” value shall be defined as:

1. “Administrative value”: Records shall be deemed of administrative value if they have continuing utility in the operation of an agency.
2. “Fiscal value”: Records shall be deemed of fiscal value if they are needed to document and verify financial authorizations, obligations, and transactions.
3. “Historical value”: Records shall be deemed of historical value if they contain unique information, regardless of age, that provides understanding of some aspect of the government and promotes the development of an informed and enlightened citizenry.

4. “Legal value”: Records shall be deemed of legal value if they document actions taken in the protection and proving of legal or civil rights and obligations of individuals and agencies.

§ 42.1-78. Confidentiality safeguarded.

Any records made confidential by law shall be so treated. Records which by law are required to be closed to the public shall not be deemed to be made open to the public under the provisions of this chapter. Records in the custody of The Library of Virginia which are required to be closed to the public shall be open for public access 75 years after the date of creation of the record. No provision of this chapter shall be construed to authorize or require the opening of any records ordered to be sealed by a court. All records deposited in the archives that are not made confidential by law shall be open to public access.

§ 42.1-79. Records management function vested in The Library of Virginia.

A. The archival and records management function shall be vested in The Library of Virginia. The Library of Virginia shall be the official custodian and trustee for the Commonwealth of all public records of whatever kind, and regardless of physical form or characteristics, that are transferred to it from any agency. As the Commonwealth’s official repository of public records, The Library of Virginia shall assume ownership and administrative control of such records on behalf of the Commonwealth. The Library of Virginia shall own and operate any equipment necessary to manage and retain control of electronic archival records in its custody, but may, at its discretion, contract with third-party entities to provide any or all services related to managing archival records on equipment owned by the contractor, by other third parties, or by The Library of Virginia.

B. The Librarian of Virginia shall name a State Archivist who shall perform such functions as the Librarian of Virginia assigns.

C. Whenever legislation affecting public records management and preservation is under consideration, The Library of Virginia shall review the proposal and advise the General Assembly on the effects of its proposed implementation.

§ 42.1-82. Duties and powers of Library Board.

A. The State Library Board shall:

1. Issue regulations concerning procedures for the disposal, physical destruction or other disposition of public records containing social security num-

bers. The procedures shall include all reasonable steps to destroy such documents by (i) shredding, (ii) erasing, or (iii) otherwise modifying the social security numbers in those records to make them unreadable or undecipherable by any means.

2. Issue regulations and guidelines designed to facilitate the creation, preservation, storage, filing, reformatting, management, and destruction of public records by agencies. Such regulations shall mandate procedures for records management and include recommendations for the creation, retention, disposal, or other disposition of public records.

B. The State Library Board may establish advisory committees composed of persons with expertise in the matters under consideration to assist the Library Board in developing regulations and guidelines.

§ 42.1-85. Records Management Program; agencies to cooperate; agencies to designate records officer.

A. The Library of Virginia shall administer a records management program for the application of efficient and economical methods for managing the life-cycle of public records consistent with regulations and guidelines promulgated by the State Library Board, including operation of a records center or centers. The Library of Virginia shall establish procedures and techniques for the effective management of public records, make continuing surveys of records and records keeping practices, and recommend improvements in current records management practices, including the use of space, equipment, software, and supplies employed in creating, maintaining, and servicing records.

B. Any agency with public records shall cooperate with The Library of Virginia in conducting surveys. Each agency shall establish and maintain an active, continuing program for the economical and efficient management of the records of such agency. The agency shall be responsible for ensuring that its public records are preserved, maintained, and accessible throughout their lifecycle, including converting and migrating electronic records as often as necessary so that information is not lost due to hardware, software, or media obsolescence or deterioration. Any public official who converts or migrates an electronic record shall ensure that it is an accurate copy of the original record. The converted or migrated record shall have the force of the original.

C. Each state agency and political subdivision of this Commonwealth shall designate as many as appropriate, but at least one, records officer to serve as a liaison to The Library of Virginia for the purposes of

implementing and overseeing a records management program, and coordinating legal disposition, including destruction, of obsolete records. Designation of state agency records officers shall be by the respective agency head. Designation of a records officer for political subdivisions shall be by the governing body or chief administrative official of the political subdivision. Each entity responsible for designating a records officer shall provide The Library of Virginia with the name and contact information of the designated records officer, and shall ensure that such information is updated in a timely manner in the event of any changes.

D. The Library of Virginia shall develop and make available training and education opportunities concerning the requirements of and compliance with this chapter for records officers in the Commonwealth.

§ 42.1-86. Essential public records; security recovery copies; disaster plans.

A. In cooperation with the head of each agency, The Library of Virginia shall establish and maintain a program for the selection and preservation of essential public records. The program shall provide for preserving, classifying, arranging, and indexing essential public records so that such records are made available to the public. The program shall provide for making recovery copies or designate as recovery copies existing copies of such essential public records.

B. Recovery copies shall meet quality standards established by The Library of Virginia and shall be made by a process that accurately reproduces the record and forms a durable medium. A recovery copy may also be made by creating a paper or electronic copy of an original electronic record. Recovery copies shall have the same force and effect for all purposes as the original record and shall be as admissible in evidence as the original record whether the original record is in existence or not. Recovery copies shall be preserved in the place and manner prescribed by the State Library Board and the Governor.

C. The Library of Virginia shall develop a plan to ensure preservation of public records in the event of disaster or emergency as defined in § 44-146.16. This plan shall be coordinated with the Department of Emergency Management and copies shall be distributed to all agency heads. The plan shall be reviewed and updated at least once every five years. The personnel of the Library shall be responsible for coordinating emergency recovery operations when public records are affected. Each agency shall ensure that a plan for the protection and recovery of public records is included in its comprehensive disaster plan.

§ 42.1-86.01. Records may be retained in electronic medium.

Notwithstanding any provision of law requiring a public record to be retained in a tangible medium, an agency may retain any public record in an electronic medium, provided that the record remains accessible for the duration of its retention schedule and meets all other requirements of this chapter. Nothing herein shall affect any law governing the retention of exhibits received into evidence in a criminal case in any court.

§ 42.1-86.1. Disposition of public records.

A. No agency shall sell or give away public records. No agency shall destroy or discard a public record unless (i) the record appears on a records retention and disposition schedule approved pursuant to § 42.1-82 and the record's retention period has expired; (ii) a certificate of records destruction, as designated by the Librarian of Virginia, has been properly completed and approved by the agency's designated records officer; and (iii) there is no litigation, audit, investigation, request for records pursuant to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.), or renegotiation of the relevant records retention and disposition schedule pending at the expiration of the retention period for the applicable records series. After a record is destroyed or discarded, the agency shall forward the original certificate of records destruction to The Library of Virginia.

B. No agency shall destroy any public record created before 1912 without first offering it to The Library of Virginia.

C. Each agency shall ensure that records created after July 1, 2006 and authorized to be destroyed or discarded in accordance with subsection A, are destroyed or discarded in a timely manner in accordance with the provisions of this chapter; provided, however, such records that contain identifying information as defined in clauses (iii) through (ix), or clause (xii) of subsection C of § 18.2-186.3, shall be destroyed within six months of the expiration of the records retention period.

§ 42.1-87. Archival public records.

A. Custodians of archival public records shall keep them in fire-resistant, environmentally controlled, physically secure rooms designed to ensure proper preservation and in such arrangement as to be easily accessible. Current public records should be kept in the buildings in which they are ordinarily used. It shall be the duty of each agency to consult with The Library of Virginia to determine the best manner in which to store long-term or archival electronic records. In entering into a contract with a third-party storage pro-

vider for the storage of public records, an agency shall require the third-party to cooperate with The Library of Virginia in complying with rules and regulations promulgated by the Board.

B. Public records deemed unnecessary for the transaction of the business of any state agency, yet deemed to be of archival value, may be transferred with the consent of the Librarian of Virginia to the custody of the Library of Virginia.

C. Public records deemed unnecessary for the transaction of the business of any county, city, or town, yet deemed to be of archival value, shall be stored either in The Library of Virginia or in the locality, at the decision of the local officials responsible for maintaining public records. Archival public records shall be returned to the locality upon the written request of the local officials responsible for maintaining local public records. Microfilm shall be stored in The Library of Virginia but the use thereof shall be subject to the control of the local officials responsible for maintaining local public records.

D. Record books deemed archival should be copied or repaired, renovated or rebound if worn, mutilated, damaged or difficult to read. Whenever the public records of any public official are in need of repair, restoration or rebinding, a judge of the court of record or the head of such agency or political subdivision of the Commonwealth may authorize that the records in need of repair be removed from the building or office in which such records are ordinarily kept, for the length of time necessary to repair, restore or rebind them, provided such restoration and rebinding preserves the records without loss or damage to them. Before any restoration or repair work is initiated, a treatment proposal from the contractor shall be submitted and reviewed in consultation with The Library of Virginia. Any public official who causes a record book to be copied shall attest it and shall certify an oath that it is an accurate copy of the original book. The copy shall then have the force of the original.

E. Nothing in this chapter shall be construed to divest agency heads of the authority to determine the nature and form of the records required in the administration of their several departments or to compel the removal of records deemed necessary by them in the performance of their statutory duty.

§ 42.1-88. Custodians to deliver all records at expiration of term; penalty for noncompliance.

Any custodian of any public records shall, at the expiration of his term of office, appointment or employ-

ment, deliver to his successor, or, if there be none, to The Library of Virginia, all books, writings, letters, documents, public records, or other information, recorded on any medium kept or received by him in the transaction of his official business; and any such person who shall refuse or neglect for a period of ten days after a request is made in writing by the successor or Librarian of Virginia to deliver the public records as herein required shall be guilty of a Class 3 misdemeanor.

§ 42.1-89. Petition and court order for return of public records not in authorized possession.

The Librarian of Virginia or his designated representative such as the State Archivist or any public official who is the custodian of public records in the possession of a person or agency not authorized by the custodian or by law to possess such public records shall petition the circuit court in the city or county in which the person holding such records resides or in which the materials in issue, or any part thereof, are located for the return of such records. The court shall order such public records be delivered to the petitioner upon finding that the materials in issue are public records and that such public records are in the possession of a person not authorized by the custodian of the public records or by law to possess such public records. If the order of delivery does not receive compliance, the plaintiff shall request that the court enforce such order through its contempt power and procedures.

§ 42.1-90. Seizure of public records not in authorized possession.

A. At any time after the filing of the petition set out in § 42.1-89 or contemporaneous with such filing, the person seeking the return of the public records may by ex parte petition request the judge or the court in which the action was filed to issue an order directed at the sheriff or other proper officer, as the case may be, commanding him to seize the materials which are the subject of the action and deliver the same to the court under the circumstances hereinafter set forth.

B. The judge aforesaid shall issue an order of seizure upon receipt of an affidavit from the petitioner which alleges that the material at issue may be sold, secreted, removed out of this Commonwealth or otherwise disposed of so as not to be forthcoming to answer the final judgment of the court respecting the same; or that such property may be destroyed or materially damaged or injured if permitted to remain out of the petitioner's possession.

C. The aforementioned order of seizure shall issue without notice to the respondent and without the posting of any bond or other security by the petitioner.

§ 42.1-90.1. Auditing.

The Librarian may, in his discretion, conduct an audit of the records management practices of any agency. Any agency subject to the audit shall cooperate and provide the Library with any records or assistance that it requests. The Librarian shall compile a written summary of the findings of the audit and any actions necessary to bring the agency into compliance with this chapter. The summary shall be a public record, and shall be made available to the agency subject to the audit, the Governor, and the chairmen of the House and Senate Committees on General Laws and the House Appropriations and Senate Finance Committees of the General Assembly.