
In the
Court of Appeals of Virginia
At Richmond

0157-24-2

ALICE MINIUM,

Appellant,

– v. –

DAVID R. HINES (IN HIS OFFICIAL CAPACITY AS SHERIFF
FOR HANOVER COUNTY) and HANOVER COUNTY,

Appellees.

BRIEF OF APPELLEES

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This appeal concerns the application of the public disclosure exclusions in Code §§ 2.2-3706(B)(8) and (B)(10) to a Virginia Freedom of Information Act (“VFOIA”) request submitted by Appellant Alice Minium to Hanover County and its Sheriff, David R. Hines.

SUMMARY OF ARGUMENT

VFOIA provides for openness and transparency in state and local government in Virginia and provides statutory bases, informed by public policy, for records custodians to withhold information from the public in response to a request for public records. VFOIA requires a public body—including Sheriff Hines and Hanover County here—to first determine what records, if any, are responsive to a request. The public body must then ensure that there are no statutory or regulatory provisions that prohibit the release of certain information and assess the applicability of discretionary releases. When public records contain a mix of information that either must or may be released and information that is to be withheld, VFOIA requires the public body to disclose the public portions, redact those that are withheld, and clearly cite the authority for withholding.

Last year, Minium submitted a request seeking a host of information about “all sworn law enforcement officers” on the payroll of the Hanover County Sheriff’s Office. Minium sent her request to Sheriff Hines and Hanover County (the “County”), which maintains certain payroll information on behalf of Sheriff Hines. Sheriff Hines and the County produced most of this requested information, including the job title, rank, race, date of hire, and compensation of every such deputy; the names of every deputy at the rank of Captain or higher; and the names of several public-facing deputies. But Sheriff Hines and the County withheld a select group of deputies’ names pursuant to VFOIA exclusions in Code §§ 2.2-3706(B)(8) and (B)(10). Those sections permit withholding public records “related to undercover operations or protective details” or the “identit[ies]” of “undercover officers.” After receiving evidence on the organization and operations of the Sheriff’s Office and the information withheld, the circuit court approved these withholdings.

This appeal thus requires a straightforward inquiry: whether the trial testimony presented sufficient evidence to satisfy the plain meaning of the VFOIA exclusions.

The first of the exclusions at issue applies to records “related to undercover operations or protective details” that “would reveal the staffing, logistics, or tactical plans” of such operations. Code § 2.2-3706(B)(8). Importantly, “related to” is a broad term—it means “[c]onnected in some way.” RELATED, Black’s Law Dictionary (11th ed. 2019). The second exclusion applies to “identit[ies] of . . . undercover officers.” Code § 2.2-3706(B)(10). “Undercover officers” also has a legal definition: a law enforcement officer that displays “nothing to indicate that he or she is a police officer.” POLICE OFFICER, Black’s Law Dictionary (11th ed. 2019).

The trial evidence satisfied both exclusions. Sheriff Hines does not have a dedicated undercover or protective detail unit. Instead, the deputies whose names were withheld are in a “pool” of deputies that commanding officers draw from to assign such work. Minium produced no evidence at trial to rebut this testimony.

Viewing this testimony in the light most favorable to Sheriff Hines and the County, and drawing all reasonable inferences therefrom in their favor, the names of these deputies are “connected in some way” to the “staffing” of “undercover operations and protective details.”

Alternatively, because these deputies are all assigned undercover work, the names would also reveal their “identit[ies].”

Minium’s arguments in her Opening Brief ignore the applicable standards of review and the uncontested evidence. She asks this Court, for example, to apply VFOIA’s canons of statutory construction in Code § 2.2-3700(B) to alter the plain meaning definitions above. She also asks this Court to review the legislative history of VFOIA. But Code § 2.2-3700(B) establishes “statutory canons of construction,” *see Hawkins v. Town of South Hill*, 301 Va. 416, 424 (2022), and this Court “may not consider rules of statutory construction” or “legislative history” if a statute is unambiguous. *Jackson v. Jackson*, 298 Va. 132, 139 (2019). There is nothing ambiguous about the statutory terms used and applied here.

In short, the uncontested trial testimony demonstrates that the withheld names are names of “undercover officers,” or in the least, “related to” undercover or protective detail operations because they are the names of officers designated for such work. Because the evidence was sufficient to satisfy these VFOIA exclusions, this Court must affirm.

STATEMENT OF FACTS

The facts were taken via trial testimony, and therefore they are viewed “in the light most favorable to the prevailing party”—Sheriff Hines and the County. *See Fitzgerald v. Loudoun Cnty. Sheriff’s Off.*, 289 Va. 499, 505 (2015).

Sheriff Hines is the only law enforcement organization in Hanover County, which does not have its own police department.¹ R. 61-62. Sheriff Hines accordingly provides multiple law enforcement services, including supplying bailiffs, executing civil process, and engaging in traffic patrol, and crime prevention. R. 62. These operations also include assigning deputies to undercover and protective detail work. R. 63.

According to trial testimony, undercover operations are “[a]ny law enforcement activity where it’s not known that we are law enforcement” such that a deputy “is not readily recognizable” as law enforcement. R. 63. Sheriff’s deputies work undercover, for example, in conjunction with state and federal law enforcement agencies, such as the Drug Enforcement Administration or the Federal Bureau of Investigations. R. 63–64.

¹ The Town of Ashland, which is located within Hanover County, has its own police department. Within the Town of Ashland, the Sheriff and the Town Police Department have concurrent jurisdiction. R. 61–62.

Undercover work is typically used for drug enforcement and human trafficking investigations. R. 64. This work involves using false identifications, pseudonyms, and cover stories, or coordinating confidential informants. R. 64, 74.

In addition to undercover operations, Sheriff's deputies also conduct protective details, which are "personal protective services for individuals under extreme duress." R. 64. These assignments include investigating domestic violence threats and threats against judicial officers, escorting high ranking officials traveling in Hanover County, and conducting surveillance. R. 64-65. When performing protective detail work, deputies are not "readily recognizable by the public." R. 65. The "whole purpose [of such work] would be to blend in with the community and not draw undue attention." R. 65.

There is no "specific group" of deputies who work undercover or protective detail. R. 65. Instead, Sheriff Hines chooses from a "pool" of deputies below the rank of Captain to staff these operations. R. 66. The pool, however, does not include deputies that are "public facing." These include deputies who regularly perform work that involves a "media presence," such as attending recruitment events or County fairs. R. 67-68.

When assigning undercover or protective detail work, the commanding officer reviews this pool of deputies and selects specific deputies for the assignment based, in part, on “whatever physical characteristics” that deputy has and what skills are needed for a specific assignment. R. 66. Public disclosure of the names of the deputies in this pool “would hamper the officer’s ability from the beginning of his or her career to engage in undercover field work.” R. 68.

STATEMENT OF THE CASE

In August 2023, Minium submitted a public records request to Sheriff Hines and the County for “a roster of all sworn law enforcement employees on payroll with [the Hanover County Sheriff’s Office].” R. 100–02, 136–37. Specifically, Minium asked for the full legal name, job title, rank, assigned unit or division, gender, race, date of first agency hire, date of current hire, fiscal year 2023 salary, fiscal year 2023 overtime and bonus pay, and fiscal year 2023 total compensation for each deputy. *Id.* Minium requested this information in a “XLSx” spreadsheet format. R. 100.

On behalf of Sheriff Hines, the County’s Director of Human Resources produced a spreadsheet of all Sheriff Hines’ law enforcement

employees, including their job title, rank, and other information requested.² R. 103, 137. Pursuant to Code §§ 2.2-3706(B)(8) and (B)(10), Sheriff Hines withheld the names of deputies below the rank of Captain who participate in the pool for undercover or protective detail work. R. 103–15; R. 120–21, 137–38. In a supplemental disclosure, Sheriff Hines produced the names of deputies below the rank of Captain “who have highly visible roles and have established a public presence” and are not part of the pool of deputies for undercover or protective detail work. R. 67–68, 125–35, 139.

Minium then filed a Petition for Writ of Mandamus under Code § 2.2-3713 seeking disclosure of the names of the deputies withheld by Sheriff Hines and the County. R. 1–19. The circuit court held a trial on the Petition, where it heard testimony and considered written evidence consistent with the facts stated above. R. 37–99.

Following trial, the circuit court entered an order and letter opinion dismissing the Petition. R. 22–31. The circuit court found that the County had properly responded to Minium’s request by providing the requested

² Hanover County, through its Human Resources department, assists Sheriff Hines, an independent constitutional officer, with processing of payroll and maintains these payroll records.

information in the form specifically requested by her. R. 25. The circuit court also found that Sheriff Hines and the County were entitled to withhold the select group of names pursuant to Code § 2.2-3706(B)(8). R. 22–27. It reasoned that disclosing these names would “interfere with the ability of the Sheriff to *staff* protective details or undercover operations, now or in the future.” R. 26.

ASSIGNMENTS OF ERROR

Minium assigns the following errors:

1. The Circuit Court erred in ruling that Code § 2.2-3706(B)(8) permits a Sheriff and a County to withhold law enforcement officers’ names when requested by a Virginia citizen if disclosure would “interfere with the ability of the Sheriff to *staff* protective details or undercover operations, now or in the future.” R. 26, 29. This construction is not supported by a plain reading of Code § 2.2-3706(B)(8) and contravenes, *inter alia*, Code §§ 2.2-3700(B), § 2.2-3705.1(1), and § 2.2-3706(D).
2. The Circuit Court erred in dismissing the petition for a writ of mandamus, as the Respondents failed to prove the applicability of Code § 2.2-3706(B)(8) for each and every name withheld, and this is reversible error, as the Respondent’s likewise did not prove the applicability of the alternative exemption claimed under Code § 2.2-3706(B)(10) as to each of the names withheld.

STANDARD OF REVIEW

On appeal of a trial, “the judgment of the trial court shall not be set aside unless it appears from the evidence that such judgment is plainly wrong or without evidence to support it.” Code § 8.01-680.

This Court reviews a circuit court’s interpretation of a VFOIA statutory term de novo. *Parrish v. Vance*, 80 Va. App. 426, 436 (2024). VFOIA provides express definitions of certain statutory terms. Code § 2.2-3701. Where a term in VFOIA is not included in this section, this Court defines the terms with “their plain and ordinary meaning.” *Suffolk City Sch. Bd. v. Wahlstrom*, 302 Va. 188, 206 (2023) (brackets omitted). This Court uses applicable dictionary definitions to supply such plain meaning. *Id.*; *Eberhardt v. Commonwealth*, 74 Va. App. 23, 32 (2021).

If a statute’s plain meaning is “clear and unambiguous,” this Court “may not consider rules of statutory construction, legislative history, or extrinsic evidence.” *Jackson*, 298 Va. at 139. On the other hand, if a statutory term in VFOIA is ambiguous, this Court turns to the “statutory canons of construction” provided by VFOIA. *See Hawkins*, 301 Va. at 424. Those statutory canons of construction state that any VFOIA provision

requiring public disclosure “shall be liberally construed” and that any exclusion thereto shall be “narrowly construed.” Code § 2.2-3700(B).

Statutory language is ambiguous if it is subject to more than one reasonable interpretation, “lacks clarity and precision,” or is “difficult to comprehend.” *Herndon v. St. Mary’s Hosp. Inc.*, 266 Va. 472, 475 (2003). “[J]ust because words in isolation may mean different things in different contexts, that does not render the statute, *in toto*, ambiguous.” *Hawkins*, 301 Va. at 425.

After defining the plain meaning of the statutory terms, courts apply such definitions to the evidence presented. In doing so, courts “give deference to the circuit court’s findings of fact and view the facts on appeal in the light most favorable to the prevailing party.” *Fitzgerald*, 289 Va. at 505; *see also Wahlstrom*, 302 Va. at 205. “This appellate deference extends not only to the circuit court’s resolution of contested evidence, but also to all reasonable inferences that may be drawn from that evidence.” *Fitzgerald*, 289 Va. at 505.

ARGUMENT

Although there are two assignments of error, this appeal presents four discrete issues: (1) whether the deputies’ names were properly

withheld pursuant to Code § 2.2-3706(B)(8); (2) whether the deputies' names were properly withheld pursuant to Code § 2.2-3706(B)(10); (3) whether Code § 2.2-3705.1 otherwise mandates disclosure of the names; and (4) whether Sheriff Hines and the County met their "burden of proof" at trial as required by Code 2.2-3713(E). This brief takes each issue in turn.

1. CODE § 2.2-3706(B)(8) APPLIES TO THE WITHHELD NAMES (AOES 1 & 2).

Code § 2.2-3706 generally applies to "[a]ll public bodies engaged in criminal law-enforcement activities." Subsection (B) states that certain records "are excluded from the mandatory provisions of this chapter."

One such category of excluded records includes:

Those portions of any records containing information *related to* undercover operations or protective details that would reveal the staffing, logistics, or tactical plans of such undercover operations or protective details.

Code § 2.2-3706(B)(8) (emphasis added).

1.1 The evidence was sufficient to satisfy the plain meaning of Code § 2.2-3706(B)(8).

The undisputed evidence, and Minium's own brief, establish that Sheriff Hines in fact provides "undercover" and "protective detail" work, and that such operations have "staffing, logistics, or tactical plans."

Whether Code § 2.2-3706(B)(8) applies to the withheld names therefore turns on just two statutory terms therein: “related” and “reveal.” The evidence presented at trial was sufficient to satisfy both.

First, the withheld names are “related to” undercover or protective detail operations. “Related” means “[c]onnected in some way.” RELATED, Black’s Law Dictionary (11th ed. 2019). Other courts have defined it as “an association or connection between two or more things.” *Ficarra v. SourceAmerica*, No. 1:19-CV-01025, 2020 WL 1606396, at *4 (E.D. Va. Apr. 1, 2020). An “undercover officer” means “[a] police officer whose appearance is that of an ordinary person,” displaying “nothing to indicate that he or she is a police officer.” POLICE OFFICER, Black’s Law Dictionary (11th ed. 2019).

The trial evidence demonstrated that the withheld deputy names are “[c]onnected in some way” to undercover or protective detail operations. Sheriff Hines assigns undercover and protective detail to officers from a “pool” of deputies. This “pool” does not include every deputy that works for Sheriff Hines; rather, it includes only deputies below the rank of Captain and who lack any “media” or public presence in their other work. R. 66-68. Because this select group of officers is “[c]onnected” to

undercover or protective detail work, they fit the plain meaning of the first element of the Code § 2.2-3706(B)(8) exemption.

Second, disclosing the deputy names “would reveal the staffing, logistics, or tactical plans” of such undercover or protective detail operations. “Reveal” means “to make (something secret or hidden) publicly or generally known,” or to “open up to review.” Op. Br. at 11 (quoting Webster’s International Dictionary).

The identity of deputies in the “pool” of undercover and protective detail work is not publicly known. The makeup of this “pool” is how Sheriff Hines executes the “staffing” and “logistics” of his undercover and protective detail work. At trial, Sheriff Hines’ employee testified that when staffing or assigning such work, commanding officers look in the pool of names and choose a deputy based on that deputy’s physical attributes and the skills demanded by the assignment. R. 66. If Sheriff Hines disclosed these names, then he would reveal the staffing and logistics of his operations.

Thus, the evidence was sufficient to show that the withheld names were “connected in some way” to the “staffing” of “undercover operations or protective details.”

1.2 Code § 2.2-3706(B)(8) is not ambiguous.

Minium asserts that Code § 2.2-3706(B)(8) should be “narrowly construed as required by Code § 2.2-3700(B).” Op. Br. 10. Minium also encourages this Court to review VFOIA’s legislative history to interpret it. Op. Br. 19–27. This Court should consider neither because the plain meaning of Code § 2.2-3706(B)(8) is unambiguous.

Code § 2.2-3700(B) states that “[a]ny exemption from public access to records or meetings shall be narrowly construed.” This statutory provision in VFOIA imposes a “statutory canon of construction.” *Hawkins*, 301 Va. at 424. But courts “may not consider rules of statutory construction” or “legislative history” if “a statute is clear and unambiguous.” *Jackson*, 298 Va. at 139.

In light of the trial evidence and the parties’ arguments, there is nothing ambiguous about the terms contained in Code § 2.2-3700(B). For instance, Black’s Law Dictionary defines an “undercover officer” as an officer where there is “nothing to indicate that he or she is a police officer.” POLICE OFFICER, Black’s Law Dictionary (11th ed. 2019). At trial, Sheriff Hines’ representatives provided a near identical definition:

Q. Please describe for the Court, what is an undercover operation?

A. Any law enforcement activity where it's not known that we are law enforcement.

R. 63. How Sheriff Hines understands undercover work is thus harmonious with how this Court uses dictionary definitions to define statutory terms. Both parties even agree on the same definition of "reveal." See Op. Br. 11.

Minium's arguments also ignore a crucial phrase in Code § 2.2-3706(B)(8): "related to." Minium argues, for instance, that disclosing the names in the pool that "*might be selected*" fails to satisfy the statute. Op. Br. 12. But just like a civil discovery request, the plain meaning of "related" is broad. It means "some" kind of connection. A deputy who is on the list of undercover and protective detail work has "some" connection to that work. If they lacked such connection, then they would not be in the pool of candidates.

This Court's first responsibility in statutory interpretation is to apply the plain meaning of the terms used. Had the General Assembly intended Code § 2.2-3706(B)(8) to be as narrow Minium wants, it would not have used a broad term like "related to."

1.3 The evidence shows that the withheld names would reveal “staffing” of undercover or protective detail operations.

Minium also argues that disclosure of the names would not reveal the “staffing” of undercover and protective detail operations. Op. Br. 13–14. This argument ignores the contested evidence at trial.

“Staff” means, in part, “a specific group of workers or employees.” Webster’s New World College Dictionary, at 1303 (3rd ed. 1996). As a verb, staff means “to provide as a staff, as of workers.” *Id.*

The trial evidence shows that the pool of deputy names fits this definition. The pool, by its very nature, is a “specific group” of Sheriff Hines’ employees. Disclosing this list of deputy names, therefore, shows how Sheriff Hines staffs undercover and protective detail services. If Code § 2.2-3706(B)(8) does not permit Sheriff Hines to withhold the names of these deputies, then the staffing of such operations will be revealed to Minium: she will possess the names of every deputy who is currently, or will be in the future, staffing undercover operations and protective details conducted by Sheriff Hines.

Suppose, for example, that Minium sends a request for public records to the Sheriff’s Office on the first of each month. Under Minium’s

statutory interpretation, Sheriff Hines may only redact names of deputies who are actively undercover, and not deputies who could potentially staff undercover operations. Minium’s request the next month, and each month thereafter, gradually establishes every deputy who serves undercover. Permitting Sheriff Hines to withhold the names of deputies who could potentially staff undercover operations does not contradict VFOIA; it aligns with the specific exclusion the General Assembly afforded him under Code § 2.2-3706(B)(8).

1.4 Minium ignores the plain meaning of “undercover.”

Minium further argues that the trial testimony regarding the definition of “undercover” was too broad to support invoking the (B)(8) exclusion. Op. Br. 34. Minium otherwise proposes a definition of “undercover” that means being “engaged in a secret investigation, and not other forms of discrete observation or positioning.” Op. Br. 34 (internal quotation marks omitted).

There are several flaws with this argument. At the outset, “undercover” is a statutory term; testimony does not establish its plain meaning. The law does. *See Wahlstrom*, 302 Va. at 206; *Eberhardt*, 74 Va. App. at 32. Minium then ignores how the law defines “undercover officer”: it is

“[a] police officer whose appearance is that of an ordinary person,” displaying “nothing to indicate that he or she is a police officer.” POLICE OFFICER, Black’s Law Dictionary (11th ed. 2019). This is the plain meaning of the term that applies here.

Furthermore, and as argued above, Minium wrongly assumes that this Court should define a statutory term and then chisel it down more “[n]arrowly.” Op. Br. 34. Although Code § 2.2-3700(B) states that “[a]ny exemption . . . shall be narrowly construed,” that narrow construction is a tool of statutory construction, reserved only where the statute is ambiguous. *Hawkins*, 301 Va. at 424; *Jackson*, 298 Va. at 139. There is nothing ambiguous about the plain meaning definition of “undercover officer” or its application to the testimony at trial.

Moreover, Minium’s proposed definition of “undercover” is far too narrow. Minium defines “undercover” as “engaged in a secret investigation,” such that it is “secret in its planning *and execution*.” Op. Br. 34. Minium even suggests that “undercover” must mean “engaged in spying.” Op. Br. 34.

Sheriff Hines is not the CIA. His deputies do not engage in espionage or “spying.” Nor are his undercover operations totally “secret” in all

facets of “planning and execution.” Under Minium’s construction, Sheriff Hines would have to disclose the identity of a deputy pretending to execute a drug deal, or the name of an officer with an online alias attempting to find individuals who possess child pornography. None of the officers are engaging in a “secret investigation” – they are acting out in the public pursuant to an investigation openly known by Sheriff officials. Minium’s interpretation renders the exclusion for undercover operations meaningless.

More importantly, Minium ignores the other term in (B)(8), which also applies to information related to “undercover operations *or protective details.*” Code § 2.2-3706(B)(8) (emphasis added). “Protective detail,” in its very nature, is not a “secret investigation.” Protective detail work involves investigating domestic violence threats and threats against judicial officers, engaging in surveillance, and escorting high ranking officials. R. 64-65. In other words, this work is not “secret” or “spying” – it involves some public interaction. Minium’s interpretation would mandate public disclosures of the identities of any of Sheriff Hines’ deputies assigned to protect any circuit court judge, government official, or foreign dignitary. But VFOIA specifically protects this information.

2. CODE § 2.2-3706(B)(10) APPLIES TO THE WITHHELD NAMES (AOE 2).

At trial, Sheriff Hines and the County argued, in part, that the deputy names were also excluded from disclosure based on another subpart of Code § 2.2-3706—subpart (B)(10). Because the circuit court found that (B)(8) applied, it did not interpret (B)(10). But an appellee “is free to defend its judgment on any ground supported by the record, whether or not that ground was relied upon, rejected, or even considered.” *Robert & Bertha Robinson Fam., LLC v. Allen*, 295 Va. 130, 141 (2018) (cleaned up).

Subsection (B)(10) permits withholding “[t]he identity of any . . . undercover officer, or investigative techniques or procedures. . . .” Code § 2.2-3706(B)(10). This section alternatively supports the circuit court’s decision for two reasons. First, officer names are, plainly, “identit[ies].” Stated another way, someone’s “identity” includes their name.

Second, Sheriff Hines withheld names of “undercover officers.” The trial evidence demonstrated—without any evidence in rebuttal—that the names withheld were associated with deputies who work undercover. And there is no evidence to suggest that the deputies whose names were withheld take no part in undercover operations. Thus, subpart (B)(10) also supports the circuit court’s interpretation.

Lastly, read together, §§ 2.2-3706(B)(8) and (B)(10) demonstrate a legislative intent to exclude the identities or names of law enforcement deputies involved in undercover operations. Courts interpret statutes in their “context,” *Wahlstrom*, 302 Va. at 206, by reading them “as a consistent and harmonious whole,” *Chaffins v. Atlantic Coast Pipeline*, 293 Va. 564, 568 (2017). “[S]tatutes must be read together to give reasonable effect to every word and to the clear legislative intent.” *Osman v. Commonwealth*, 76 Va. App. 613, 648 (2023). Doing so here requires affirmation.

3. CODE § 2.2-3705.1 DOES NOT INDEPENDENTLY REQUIRE DISCLOSURE (AOE 1).

Minium also argues that Code § 2.2-3705.1 provides a separate statutory basis to reverse the ruling of the trial court, urging this Court to apply it without regard for the “law enforcement activities” provisions of VFOIA in Code § 2.2-3706. Op. Br. 15–18. Specifically, Minium cites Code § 2.2-3706(D), which states that “[a]ccess to personnel records of persons employed by . . . a law enforcement agency shall be governed by the provisions of subdivision B 9 and subdivision 1 of § 2.2-3705.1, *as applicable*.” (Emphasis added.)

Code § 2.2-3705.1 then provides VFOIA exclusions of “general application.” That statute exempts from mandatory disclosure “[p]ersonnel information concerning identifiable individuals.” Code § 2.2-3705.1(1). It then states:

No provision of this chapter or any provision of Chapter 38 shall be construed as denying public access to . . . (ii) records of the name, position, job classification, official salary, or rate of pay of, and records of the allowances or reimbursements for expenses paid to, any officer, official, or employee of a public body.

Id. Minium argues that this provision explicitly required Sheriff Hines to disclose the names of the deputies in the undercover and protective detail pool. Several different statutory interpretation principles contradict this argument.

First, Minium’s interpretation would render the exclusion provisions in Code § 2.2-3706(B) meaningless. “[E]very part of a statute is presumed to have some effect and no part will be considered meaningless unless absolutely necessary.” *Hubbard v. Henrico Ltd. P’ship*, 255 Va. 335, 340 (1998).

Minium argues that Code § 2.2-3705.1 requires disclosure—as a categorical matter—of the names of all law enforcement officers. But Code § 2.2-3706(B)(10) specifically excludes the “identity of any . . .

undercover officer.” Under Minium’s interpretation, even if Sheriff Hines had a specific group of deputies serving undercover at the time of her request, Code § 2.2-3705.1 would still force Sheriff Hines to disclose their names. This would render (B)(10)’s protection of the names of undercover officers as superfluous.

Second, the more specific exclusions in Code § 2.2-3706(B) control over the provisions of “general applicability” in -3705.1. When “one statute speaks to a subject generally and another deals with an element of that subject specifically, the statutes will be harmonized, if possible, and if they conflict, *the more specific statute prevails.*” *Crawford v. Haddock*, 270 Va. 524, 528 (2005) (emphasis added). And as to these statutes specifically, the General Assembly was even more direct: “In the event of conflict between this section as it relates to requests made under this section and other provisions of law, *this section shall control.*” Code § 2.2-3706(F) (emphasis added). In other words, if § 2.2-3705.1’s provisions required disclosure of a record, but Code § 2.2-3706(B) permitted withholding that same record, the latter controls.

Finally, the context of Code § 2.2-3705.1 does not support Minium’s argument. *See Sheppard v. Junes*, 287 Va. 397, 403 (2014) (courts do not

read statutes “in isolation...by isolating particular words or phrases,” but in their “entirety”). Code § 2.2-3705.1(1) is not a mandatory disclosure provision; it is an exception to an exclusion. VFOIA begins by providing mandatory disclosures of public records as generally applicable. *See* Code § 2.2-3704. VFOIA then provides exclusions of general applicability in Code § 2.2-3705.1. The first subsection of that statute excludes “[p]ersonnel information,” before exempting from that exclusion: “No provision of this chapter . . . shall be construed as denying public access” to names of public employees.

This provision is not in the mandatory disclosures of Code § 2.2-3704, or even the law enforcement mandatory disclosures in Code § 2.2-3706(A). Instead, it is an exception to the exclusion in Code § 2.2-3705.1(1). The structure, context, and organization of this provision therefore does not justify reading Code § 2.2-3705.1(1) as an independent mandatory disclosure.

4. SHERIFF HINES AND THE COUNTY MET THEIR BURDEN OF PROOF (AOE 2).

In her second assignment of error, Minium argues that Sheriff Hines and the County failed to meet their burden of proof under Code § 2.2-3713(E) to show that a VFOIA exclusion applies.

4.1 Whether a party has met its burden of proof is a question of fact.

What the burden of proof is, and which party bears that burden, are questions of law. *Ballagh v. Fauber Enterprises, Inc.*, 290 Va. 120, 124 (2015). “Whether that burden is met,” however, “requires a review of the totality of the circumstances and is a question of fact.” *Reynolds v. Commonwealth*, 9 Va. App. 430, 439 (1990). This Court gives “deference to the circuit court’s findings of fact,” drawing all reasonable inferences in favor of the prevailing party. *Fitzgerald*, 289 Va. at 505. Accordingly, whether a party has met a burden of proof merely requires a “review [of] the sufficiency of the evidence.” *Osman v. Osman*, 285 Va. 384, 737 S.E.2d 876, 879 (2013).

Under VFOIA, “the public body shall bear the burden of proof to establish an exclusion by a preponderance of the evidence.” Code § 2.2-3713(E). The preponderance of the evidence standard means that a claimant must prove his case by the greater weight of the evidence. *Sawyer v. Comerci*, 264 Va. 68, 75 (2002).

4.2 The evidence was sufficient to prove a VFOIA exclusion.

As already argued, the evidence was sufficient to show that withholding the names at issue met the exclusions in either Code §§ 2.2-3706(B)(8) or (10). Sheriff Hines and the County produced testimonial evidence at trial demonstrating that Sheriff Hines (1) has undercover and protective detail operations, (2) staffs those operations from a pool of deputies below the rank of Captain who lack a “media presence,” and (3) withheld only those names in that pool of deputies. This evidence demonstrates that the withheld names “related to” undercover or protective detail operations under § 2.2-3706(B)(8) or contained the “ident[ies]” of undercover officers.

None of Minium’s evidence rebutted this testimony. Minium’s case-in-chief included only stipulations of fact and a “declaration in support of attorney’s fees.” R. 52. The stipulations merely described the correspondence between Minium and the County regarding the request. R. 136-41. After Sheriff Hines and the County presented the above testimony, the circuit court then asked Minium if she had any “rebuttal evidence.” R. 78. Counsel responded: “No.” R. 78. Absent any contrary evidence in the record, this Court must accept the truth of the testimony produced by

Sheriff Hines and the County, which establishes sufficient evidence to meet one of the VFOIA exclusions.

4.3 VFOIA did not require Sheriff Hines and the County to meet their burden as to each individual name.

Minium also argues that Sheriff Hines and the County failed to produce evidence showing how “*each*[] name withheld would reveal the staffing of undercover operations or protective details.” Op. Br. 32. But there is no requirement in VFOIA or elsewhere that requires a public body to meet its burden of proof as to each line item of a public record or information.

But even if such a requirement existed, Sheriff Hines and the County provided such line-item analysis. The County provided Minium a detailed spreadsheet containing information of over two-hundred and forty deputies. R. 125-135. The spreadsheet contained individual cells for each specific deputy, with most of the information Minium sought, such as job title and salary. *Id.* Minium has not clarified how Sheriff Hines or the County would be able to, in open court, prove that “Deputy Smith,” for example, is currently undercover without publicly revealing that very information. Minium proposes a burden that does not exist in VFOIA and

would effectively cause Sheriff Hines and the County to reveal the very information protected by the exclusions in VFOIA.

CONCLUSION

The task before this Court is simple: define the statutory terms using their plain legal definition, and then apply that definition to the un rebutted testimony at trial regarding Sheriff Hines' operations. Viewing this testimony in the light most favorable to Sheriff Hines and the County, the evidence was sufficient to prove both exclusions in Code § 2.2-3706(B)(8) and (B)(10). The circuit court therefore did not err in dismissing the Petition, and this Court should affirm.

Date: June 10, 2024

By Counsel

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Certificate of Service

I hereby certify that on this 10th day of June, 2024, pursuant to Rules 5A:1 and 5A:19, an electronic copy of the Brief of Appellees has been filed, via VACES, with the Clerk of the Court of Appeals of Virginia. On the same day, an electronic copy of the Brief of the Appellees was served, via e-mail, upon:

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This Brief contains 5,473 words, excluding those portions that by rule do not count toward the word limit.

Counsel for the Appellees do not waive oral argument.

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