

COMMONWEALTH OF VIRGINIA
FOURTEENTH JUDICIAL CIRCUIT



L.A. HARRIS, JR., JUDGE
GARY A. HICKS, JUDGE
JAMES S. YOFFY, JUDGE
RICHARD S. WALLERSTEIN, JR., JUDGE
JOHN MARSHALL, JUDGE

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CIRCUIT COURT OF HENRICO COUNTY

June 14, 2017

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Counsel for Siobhan Dunnivant

In re: Brian C. Davison v. Siobhan S. Dunnivant (CL17-737)

Dear Mr. Davison, Mr. Tunner, and Mr. Matheson,

On April 7, 2017, the parties appeared before the Court on Respondent Siobhan S. Dunnivant's ("Senator Dunnivant") Demurrer to Petitioner Brian C. Davison's ("Mr. Davison") Petition for Writ of Mandamus. Pursuant to the Court's Order, Senator Dunnivant filed her brief on April 25, 2017, and Mr. Davison filed his responsive brief on June 1, 2017. The Court, having read the parties' briefs and having considered the parties' arguments, rules as follows:

A demurrer tests whether a complaint states a cause of action upon which the relief sought can be granted. *Shelor Motor Co. v. Miller*, 261 Va. 473, 478 (2001). Although the properly pleaded facts in a plaintiff's complaint are taken as true for purposes of the demurrer, a

demurrer does not admit the correctness of a plaintiff's conclusions of law. Arlington Yellow Cab Co. v. Transp., Inc., 207 Va. 313, 318-19 (1966).

“To survive a challenge by demurrer, a pleading must be made with ‘sufficient definiteness to enable the court to find the existence of a legal basis for its judgment.’” Friends of the Rappahannock v. Caroline Cnty. Bd. Of Sup’rs, 286 Va. 38, 44 (2013). “In other words, despite the liberality of presentation which the court will indulge, the [complaint] must state a cause of action.” Dunn, McCormack & MacPherson v. Connolly, 281 Va. 553, 558 (2011) (quoting Hubbard v. Dresser, Inc., 271 Va. 117, 122-23 (2006)).

The Virginia Freedom of Information Act (“FOIA”) serves to facilitate openness and transparency in the administration of government. See Va. Code § 2.2-3700. Virginia Code Section 2.2-3704(A) provides that “[e]xcept as otherwise specifically provided by law, all public records shall be open to inspection and copying by any citizens of the Commonwealth during the regular office hours of the custodian of such records.” Effectually, FOIA enables citizens to access public records, from any public body that is subject to FOIA, that are prepared or in the possession of a public body in the transaction of public business.

Virginia Code Section 2.2-3701 defines and encompasses the various bodies that are considered a “public body” within the meaning of FOIA. Pertinent to the matter before the Court, Virginia Code Section 2.2-3701 provides that “any legislative body... of the Commonwealth” is a “public body.”

The General Assembly, consisting of the Senate and the House of Delegates, derives its legislative power from Article IV of the Constitution of Virginia. Specifically, Section 2 provides that “[t]he Senate shall consist of not more than forty and not less than thirty-three members, who shall be elected quadrennially by the voters of the several senatorial districts on the Tuesday succeeding the first Monday in November.” Accordingly, the Court finds that the term “legislative body,” as referenced in FOIA, means either the Senate or the House of Delegates.

Furthermore, the Supreme Court of Virginia has noted the distinction in FOIA between “public officials” and “public bodies.” See Connell v. Kersey, 262 Va. 154, 161 (2001). In Connell, the Court discerned that a public body conducts meetings involving the business of the public, whereas a public official may or may not conduct such public meetings. Id.

Moreover, any ambiguity as to the definition of “public body” is clarified by its original meaning given the context in which it is used. See Am. Tradition Inst. v. Rector & Visitors of the Univ. of Va., 287 Va. 330, 341 (2014) (noting that when the legislature leaves a term undefined, the courts must give the term its ordinary meaning whilst taking into account the context in which it is used). To further depict the meaning of “public body,” the context in which the term is used in the definition of “meeting” in FOIA is significant. A “meeting” includes:

[W]ork sessions, when... as a body or entity, or as an informal assemblage of (i) as many as three members or (ii) a quorum, if less than three, of the constituent membership... of any public body. Neither the gathering of employees of a public body nor the gathering or attendance of two or more members of a public body

(i) at any place or function where no part of the purpose of such gathering or attendance is the discussion or transaction of any public business, and such gathering or attendance was not called or prearranged with any purpose of discussing or transacting any business of the public body, or (ii) at a public forum, candidate appearance, or debate, the purpose of which is to inform the electorate and not to transact public business or to hold discussions relating to the transaction of public business, even though the performance of the members individually or collectively in the conduct of public business may be a topic of discussion or debate at such public meeting, shall be deemed a "meeting" subject to the provisions of this chapter.

Va. Code § 2.2-3701. The Court finds that it was a purposeful linguistic choice of the legislature to use the words "employees of a public body" and "members of a public body" in the "meeting" definition. The use of such words indicates that the legislature sought to differentiate between the individuals whom, collectively, are a part of a public body and the public body as an entity. As such, the distinction confirms that the terms are not synonymous.

Accordingly, the Senate of Virginia is a public body within the meaning of FOIA as it is a legislative body. However, Senator Dunnivant is not a legislative body; rather, she is a member of the legislative body. While Senator Dunnivant is indeed a public official, she is not a public body within the meaning of FOIA. As such, the Court finds that Mr. Davison's request was not subject to the procedures and time limits prescribed by FOIA, which, by its express terms, relates only to FOIA requests made to public bodies. Therefore, the Court sustains Senator Dunnivant's Demurrer and hereby dismisses Mr. Davison's Petition.¹

Very truly yours,



James S. Yoffy
Judge

¹The Court's finding that Senator Dunnivant is not a public body within the meaning of FOIA is dispositive of the fact that Mr. Davison's claim is not subject to the procedures or time limits imposed by FOIA, and because the Court sustains Senator Dunnivant's Demurrer solely on that basis, the Court need not delve into any further analysis of the elements of Mr. Davison's claim.