

Plaintiff details nine incidents where she received a FOIA request from a member of the public, attempted to respond to the request, and Defendant Burks or another City employee intervened and inhibited her efforts to fully and timely comply with FOIA requirements. In many of these instances, Plaintiff notified Defendant Burks that she suspected a FOIA violation.

After she voiced her suspicions, Defendants retaliated. On January 11, 2024, Plaintiff interviewed with the City for the Civilian Review Board Manager position. Around this time, Plaintiff also requested approval for a \$125.00 expenditure for a Continuing Legal Education course; Defendant Burks refused, though she approved her own and others' attendance at the Congressional Black Caucus Legislative Conference in Washington, D.C.. On January 18, 2024, Plaintiff requested to meet with Defendant Burks to discuss pending FOIA requests. She prepared a memorandum of discussion items and provided a copy to Defendant Burks in advance of their meeting. At this meeting on January 19, 2024, Defendant Burks fired Plaintiff as "not a good fit." Eleven days after her termination, on January 30, 2024, Plaintiff received an email from the City's HR department informing her that she was not hired as the Civilian Review Board Manager.

Arguments

Defendants demur to Plaintiff's Complaint, asserting that she has not sufficiently stated a claim under The Virginia Fraud and Abuse Whistle Blower Protection Act ("Act") because her allegations merely demonstrate she disagreed with Defendant Burks and other City employees on how to apply FOIA exclusions and exemptions and do not constitute "wrongdoing" or "abuse." Specifically, Defendants assert that Plaintiff's failure to allege "substantial misuse, destruction, waste, or loss of funds or resources belonging to or derived from federal, state, or local government resources" precludes her from stating a claim. Defendants conclude by arguing that Plaintiff's

Complaint fails to causally connect her reports of suspected violations to retaliatory or discriminatory treatment by them.

On the other hand, Plaintiff responds that the allegations in her Complaint clearly entitle her to the Act's protection. She argues her Complaint sufficiently alleges that she disclosed suspected "wrongdoing," violations of FOIA, on a good faith basis. Plaintiff also asserts that she pled enough facts to establish she experienced retaliation—being terminated—and discrimination—suffering disparate treatment regarding expenditure approval—by the Defendants.

Analysis

"The purpose of a demurrer is to determine whether a motion for judgment states a cause of action upon which the requested relief may be granted." *Dunn, McCormack & MacPherson v. Connolly*, 281 Va. 553, 557 (2011). At the demurrer stage, the Court is limited to "consider[ing] as true all the material facts alleged in the . . . complaint, all facts impliedly alleged, and all reasonable inferences that may be drawn from such facts." *Concerned Taxpayers v. County of Brunswick*, 249 Va. 320, 323 (1995). "A demurrer . . . does not allow the court to evaluate and decide the merits of a claim; it only tests the sufficiency of factual allegations to determine whether the motion for judgment states a cause of action." *Fun v. Virginia Military Inst.*, 245 Va. 249, 252 (1993).

The Act shields government employees from retaliation or termination if they report wrongdoing or abuse committed by a government agency. The Act defines "wrongdoing" as "a violation, which is not of a merely technical or minimal nature, of a federal or state law or regulation, local ordinance, or a formally adopted code of conduct or ethics of a professional organization designed to protect the interests of the public or employee." Va. Code § 2.2-3010. "Abuse" is defined as "an employer's or employee's conduct or omissions that result in substantial misuse, destruction, waste, or loss of funds or resources belonging to or derived from federal, state,

or local government sources.” *Id.* Employees only receive the Act’s protection if they “[disclose] information about suspected wrongdoing or abuse . . . in good faith and upon a reasonable belief that the information is accurate.” Va. Code § 2.2-3011(C).

Defendants’ arguments, in part, ask the Court to step into the role of a fact finder to determine the accuracy of Plaintiff’s allegations of FOIA violations. On demurrer, trial courts are not permitted to serve in this capacity. Indeed, as the Supreme Court of Virginia has clearly instructed, at the demurrer stage, trial courts must take as true all allegations in a complaint and further, they must make all reasonable inferences in favor of the plaintiff. To the extent Defendants ask the Court to go beyond its mandate to evaluate the validity of Plaintiff’s disclosures of suspected wrongdoing, they request this Court exceed its instant purview.

Defendants additionally overlook the basic allegations necessary to state a claim under the Act. To be covered by the Act, a plaintiff must allege: (1) a disclosure; (2) of suspected wrongdoing or abuse; (3) that is made in good faith and upon a reasonable belief that the information is accurate. Notwithstanding their written argument, Defendants agreed during oral argument that the Act only requires a plaintiff to allege a disclosure of suspected wrongdoing or abuse. While Plaintiff does not allege she disclosed suspected “abuse,” which requires allegations of “substantial misuse, destruction, waste, or loss of funds or resources belonging to or derived from federal, state, or local government sources,” her Complaint establishes that she repeatedly disclosed suspicions of “wrongdoing,” comprising “a violation, which is not of a merely technical or minimal nature, of a federal or state law . . . ,” when she expressed her suspicions of FOIA violations to Defendant Burks. Va. Code § 2.2-3010. *See also*, Compl. ¶¶ 19, 29, 43, 52, 59. Plaintiff’s Complaint also sufficiently alleges that her disclosure of suspected wrongdoing was made in good faith and on a

reasonable belief that the information was accurate, for she details Defendants' disorderly approach to inventorying, invoicing, and responding to FOIA requests.

Although Plaintiff's Complaint does not explicitly connect her good faith disclosures of suspected wrongdoing to Defendants' retaliation and discrimination toward her, the Court may reasonably infer this alleged conduct flowed from her disclosures of suspected FOIA violations. Plaintiff served as FOIA Officer for approximately six months. In that time, Plaintiff raised suspicions of potential violations to Defendant Burks and other City employees at least nine times. In January 2024, Defendants retaliated and discriminated against her by refusing to approve her \$125.00 expenditure request while approving others' requests to attend a conference in Washington, D.C., selecting someone else to be the City's Civilian Review Board Manager, and ultimately, terminating her. As Plaintiff experienced this treatment shortly after her repeated reports of suspected violations, it may reasonably be inferred that Defendants' retaliatory and discriminatory conduct is of the kind the Act strives to deter.

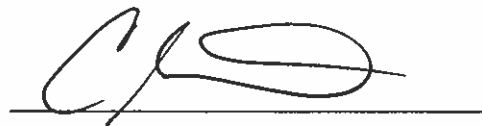
Accordingly, Defendants' Demurrer is **OVERRULED**. Plaintiff's request for attorney's fees is **DENIED**.

Pursuant to Rule 1:13 of the Supreme Court of Virginia, the Court dispenses with the parties' endorsement of this Order.

The Clerk is directed to forward a certified copy of this Order to all the parties.

It is so **ORDERED**.

ENTER: 2/5/2025

A handwritten signature in black ink, appearing to read 'C. Cardwell', written over a horizontal line.

Claire G. Cardwell, Judge