

**VIRGINIA:**

**IN THE CIRCUIT COURT FOR PRINCE WILLIAM COUNTY**

<b>VALERIA JUAREZ,</b>	)	
	)	
<b>Petitioner,</b>	)	
	)	
<b>v.</b>	)	
	)	<b>Case No.: CL23007698-00</b>
<b>COMMONWEALTH’S ATTORNEY</b>	)	
<b>FOR PRINCE WILLIAM COUNTY</b>	)	
	)	
<b>Defendant.</b>	)	

**ORDER**

**THIS MATTER** came before this Court upon the Juarez’s petition for a writ of mandamus alleging violations of the Virginia Freedom of Information Act (VFOIA), Virginia Code § 2.2-3713(A), filed August 24, 2023, and amended petition filed September 14, 2023. This Court held two hearings that included argument and evidence on August 31, 2023, and October 19, 2023.

**THIS COURT RULES AS FOLLOWS:**

1. Virginia Code § 2.2-3713(A) gives this Court jurisdiction. Venue is proper in this Court pursuant to Va. Code § 2.2-3713(A)(1).
2. The Petitioner, Valeria Juarez, is a citizen and domiciliary of the Commonwealth of Virginia.
3. Respondent Prince William County Commonwealth Attorney’s office (hereinafter “PWC-CA”), is a public body as defined by Va. Code § 2.2-3701. Respondent, its officers, and its employees are thus obligated to produce public records under VFOIA, Virginia Code section 2.2-3700 *et seq.*
4. There are at least 172 emails that were responsive to Juarez’s FOIA request to PWC-CA for

emails.

5. First FOIA violation: On January 18, 2022, Juarez emailed a FOIA request to PWC-CA and requested, *inter alia*, emails relating to the Lydon investigation and prosecution.
6. On January 19, 2022, PWC-CA invoked a 60-day extension.
7. PWC-CA requested and Juarez paid \$80.
8. PWC-CA violated FOIA because at least 172 emails existed responsive to Juarez's request and PWC-CA produced no emails within the 60-day time frame.
9. Second FOIA violation:<sup>1</sup> On May 19, 2022, Petitioner sent a FOIA request to PWC-CA for emails to or from Rebecca Thatcher or Lauren Pomerantz dated between August 11, 2016, and August 18, 2018.
10. PWC-CA responded by invoking a 60-day extension.
11. On June 22, 2022, PWC-CA responded and provided 7 pages of emails.
12. PWC-CA failed to produce at least 172 responsive emails.
13. PWC-CA additionally violated FOIA when they over-redacted the emails they provided.
14. PWC-CA additionally violated FOIA when they failed to "identify with reasonable particularity the subject matter of withheld portions, and cite, as to each category of withheld records, the specific Code section that authorizes the withholding of the records." Va. Code § 2.2-3704(B)(2).
15. Third FOIA violation: On September 16, 2022, Petitioner asked for all PWC-CA emails related to Kevin Lydon's criminal case.

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<sup>1</sup> While for simplicity the Court is characterizing each failed response to produce records as a FOIA violation, it was actually multiple FOIA violations because of the failure to produce records, the over-redaction of records that they produced, the failure to cite specific exemptions for their redactions and the failure to describe with reasonable particularity the documents withheld. Va. Code § 2.2-3704(B)(1 & 2).

16. PWC-CA responded the same day and violated FOIA again because they provided the same 7 pages of emails that they provided on June 22, 2022, when, as described above more than 172 emails existed.
17. Fourth FOIA violation:
18. On October 7, 2022, Petitioner asked for emails related to the Kevin Lydon prosecution of the attorneys who had left the office.
19. On the same day PWC-CA told Petitioner to ask their agent and custodian of records for the emails.
20. Petitioner followed PWC-CA's directions and on the same day asked their agent and custodian, [FOIAofficer@pwcgov.org](mailto:FOIAofficer@pwcgov.org), for "all emails related to the Kevin Lydon investigation and prosecution from August 11, 2016, to August 31, 2018. Please include all emails to or from attorneys Teresa Poliske or Rebecca Thatcher or Lauren Pomerantz."
21. The same day [FOIAofficer@pwcgov.org](mailto:FOIAofficer@pwcgov.org) forwarded the request back to PWC-CA.
22. PWC-CA approved the request.
23. Petitioner paid \$97.79 to the county to produce the records and \$960 to PWC-CA as requested.
24. PWC-CA provided multiple digital links to petitioner from November 17 and December 5 containing 172 emails.
25. These 172 emails should have been provided pursuant to Petitioner's previous requests.
26. PWC-CA violated FOIA in this response of 172 emails because the emails were over redacted and because PWC-CA failed to specify which exemption applied to each redaction. Va. Code § 2.2-3704(B)(2) (the government "shall identify with reasonable particularity the subject matter of withheld portions, and cite, as to each category of withheld records, the specific code section that authorizes the withholding of the records.").

27. On March 2, 2023, Petitioner asked PWC-CA to specify the exemptions that it was claiming for each redaction.
28. On March 7, 2023, PWC-CA provided exemptions, but again violated FOIA by not sufficiently specifying which exemption applied to each redaction but instead claiming that it could withhold responsive documents under virtually every VFOIA exemption.
29. Sixth FOIA violation:
30. On August 4, 2023, Petitioner provided a copy of their draft FOIA petition for mandamus to PWC-CA.
31. PWC-CA responded the next day by providing 7 more emails and 2 more documents that they should have provided previously.
32. On August 31, 2023, this Court reviewed the overly redacted records and found that at least 11 were improperly withheld/overly redacted (43, 55, 70, 71, 73, 74, 106, 108, 109, 115, 123 and 171).
33. Va. Code § 2.2-3713(D) provides that “A single instance of the denial of the rights and privileges conferred by this chapter shall be sufficient to invoke the remedies granted herein. If the court finds the denial to be in violation of the provisions of this chapter, the petitioner shall be entitled to recover reasonable costs, including . . . attorney fees . . . if the petitioner substantially prevails on the merits of the case . . . .”
34. There is no doubt that PWC-CA violated the FOIA statute numerous times and in numerous ways over more than a one-year period from its response to Petitioner’s initial request January 18, 2022, all the way up until this Court’s hearing on August 31, 2023, where this Court found that PWC-CA still had not fully complied after more than 18 months of requests.
35. When Petitioner first asked for prosecutor emails related to the Lydon case on January 18,

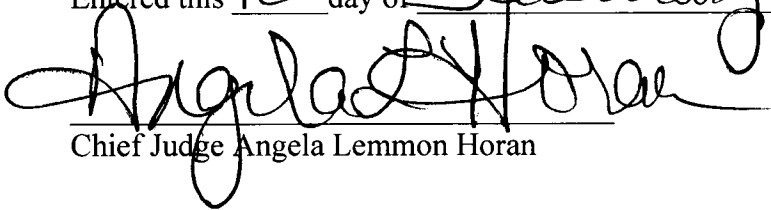
2022, PWC-CA ignored that request and provided none. When Petitioner named two of the three prosecutors and the date of the prosecution (i.e., virtually the same request as the initial request) PWC-CA provided less than 10% of the available responsive documents. When Petitioner asked again, PWC-CA told them to ask the custodian or records who of course provided nothing. Almost a year after Petitioner's initial request they received approximately 172 responsive emails, but many of the emails were over redacted and PWC-CA failed to identify what they were withholding and failed to cite specific exemptions. When Petitioner provided PWC-CA with a FOIA complaint (mandamus) they provided at least 8 more emails that had previously been redacted.

~~36. There is no good-faith exception or cure exception to FOIA violations and if there were this would certainly not be the case for it. The letter and the spirit of the FOIA statute has been clearly violated.~~

37. This Court has received a duly sworn affidavit of attorneys fees and a time-sheet totaling 44.5 hours at \$500/hour = \$22,250.00.

38. WHEREFORE, this Court orders:

the Respondent PWC-CA to pay Petitioner's reasonable costs and attorney's fees in the amount of \$22,250.00 pursuant to Virginia Code section 2.2-3713(D).

Entered this 10<sup>th</sup> day of February 2025  
  
Chief Judge Angela Lemmon Horan

I ask for this:



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Jonathan P. Sheldon, VSB #66726  
Sheldon & Flood, PLC  
10621 Jones Street, Suite 301A  
Fairfax, VA 22030  
Office (703) 691-8410  
Fax (703) 991-7413  
[JSheldon@SFHDefense.com](mailto:JSheldon@SFHDefense.com)

objected to:  
*Kara Graham*  
Office of the CW  
*Kara Graham*

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DATE OF ORDER: 2-10-25

PLAINTIFF(S):  MAIL  EMAIL

PLAINTIFF ATTORNEY(S):  MAIL  EMAIL jsheldon@sfhdefense.com

DEFENDANT(S):  MAIL  EMAIL

DEFENDANT ATTORNEY(S):  MAIL  EMAIL Bin

GARNISHEE

COMMONWEALTH ATTORNEY:  MAIL  EMAIL

DMV  MAIL  EMAIL

GAL:  MAIL  EMAIL

HOSPITAL / MENTAL HEALTH FACILITY:  MAIL  EMAIL  FAX

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VITAL RECORDS  VS-4  VS-21  NAME CHANGE

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NOTES: \_\_\_\_\_

HEARING DATE ENTERED IN CCMS: \_\_\_\_\_

CASE CLOSED

CLERK: Shan

DATE: ~~2-10-25~~

2/11/25 *ae*