

**IN THE  
COURT OF APPEALS OF VIRGINIA**

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**Alice Minium,**  
*Appellant,*

**v.**

**Chesterfield County,**  
*Appellee.*

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**BRIEF OF *AMICUS CURIAE*  
VIRGINIA COALITION FOR OPEN GOVERNMENT  
IN SUPPORT OF APPELLANT**

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## **IDENTITY AND INTEREST OF AMICUS CURIAE**

Amicus curiae the Virginia Coalition for Open Government (the Coalition) respectfully submits this brief supporting Appellant Alice Minium. The Coalition is a non-partisan, non-profit organization founded in 1996 and dedicated to promoting transparency and open government in Virginia. Membership in the Coalition is open to anyone, and the Coalition has more than 200 paying individual and institutional members and supporters, including Virginia lawmakers, lawyers, and media organizations. The Coalition's work includes advocacy before the FOIA Council and General Assembly, providing Virginia Freedom of Information Act (VFOIA) training and information for government officials and the public, engaging in public commentary, and serving as a resource to citizens involved in public records and meeting issues. The Coalition also joins or submits amicus briefs to assist courts by providing the Coalition's perspective on the law, practice, and policy involved in cases concerning the public's right to access government information and proceedings.<sup>1</sup>

## **NATURE OF THE CASE**

This case concerns the public's right to obtain the names of government employees, basic information to which the Virginia Freedom of Information Act

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<sup>1</sup> No party or its counsel, nor any person other than the Coalition and its counsel, contributed to the preparation or submission of this brief.

(VFOIA) expressly guarantees public access. Chesterfield County violated the provisions of VFOIA when it withheld the names of hundreds of police employees (*see* R. at 17-26) based on a claim of discretionary exemption under VFOIA. That statute expressly provides that names of public employees may not be withheld.

In 2017, the General Assembly unanimously enacted revisions to VFOIA that leave no discretion to withhold these names. Specifically, the legislature amended VFOIA to provide that “[n]o provision of this chapter … shall be construed as denying public access to … 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.” Va. Code § 2.2-3705.1(1) (emphasis added). It is hard to imagine a requirement more clearly stated. Over top of VFOIA’s existing undercover exemptions, discretionary allowances, and any other excuses, exemptions, parts, and subparts argued by the County, every single legislator in the Commonwealth voted to add, “*No provision of this chapter … shall be construed as denying public access to … records of the name… of any officer, official, or employee of a public body.*” Va. Code § 2.2-3705.1(1) (emphases added). The judgment of the court below cannot be squared with either the statutory text or this Court’s subsequent, controlling decision in *Minium v. Hines*, 83 Va. App. 643, 911 S.E.2d 822 (Va. App. 2025). As in *Hines*, this Court should reverse, maintaining the public’s right

to basic information about government employees by giving effect to the statute's unambiguous language.

## **ASSIGNMENT OF ERROR**

This brief concerns Appellant's Assignment of Error 1, which focuses on the trial court's error in interpreting VFOIA and permitting Appellees to withhold the names of hundreds of employees of the Chesterfield County Police Department.

## **SUMMARY OF FACTS AND PROCEEDINGS BELOW**

There are no material factual disputes.

Appellant Alice Minium filed a Virginia Freedom of Information Act (VFOIA) request seeking the full name and certain other demographic, organizational, and salary information for each law enforcement officer employed by the Chesterfield County Police. (R. at 110.)

Chesterfield responded by producing a roster that provided only a fraction of its officers' names, listing the vast majority as "NAME REDACTED." *Id.*

After Ms. Minium pressed, Chesterfield reiterated that it would not provide "the names of officers with a rank of lieutenant or below ... due to the structure and operational logistics of the Department and its undercover operations." *Id.* Chesterfield cited two discretionary exemptions in VFOIA as the basis for the name redactions: Virginia Code § 2.2-3706(B)(8) & (B)(10).

At an evidentiary hearing, a Chesterfield Police Major was the only witness. (R. at 112.) She explained that “due to the structure of the County’s operations, all officers, sergeants, and lieutenants can be called upon at any time to serve as an undercover officer.” (R. at 113.) She asserted that “an officer with the rank of Lieutenant or below does not have to be undercover every single day to be considered an undercover officer because of any officer’s potential to be moved into an undercover assignment at any time.” (R. at 113-14.) She could not say which officers were actually engaged in undercover operations as of the date of the FOIA request. (R. at 114.) Although she testified that “by providing the name of the officer, the Department would be prevented from ever staffing him in any undercover role after the disclosure was made,” *id.*, she also admitted that a name on a roster alone would not reveal whether that person was working undercover. (R. at 209; *accord* R. at 212.)

The circuit court issued a letter opinion on August 29, 2024. (R. at 109-18.) After stating that “[i]t is not disputed that the names of law enforcement officers can be made available to the public subject to a FOIA request” (R. at 115), the court below never cited Virginia Code § 2.2-3705.1 again, never quoted or analyzed that section’s controlling language, and focused entirely on whether the discretionary exemptions asserted by Chesterfield were satisfied. *See* R. at 115-18.

The relevant facts are undisputed. The parties dispute the interpretation and application of VFOIA.

## STANDARD OF REVIEW

Whether records are properly withheld under the Virginia Freedom of Information Act is a mixed question of fact and law. But where there are no material factual disputes, as in this case, what remains are “issues of statutory interpretation and a circuit court’s application of a statute to its factual findings,” which are reviewed *de novo*. *Hawkins v. Town of South Hill*, 301 Va. 416, 424, 878 S.E.2d 408, 411 (Va. 2022) (citing cases); *accord Brown v. Kirkpatrick*, 79 Va. App. 252, 256, 895 S.E.2d 788 (Va. App. 2023) (“Questions of statutory interpretation … are subject to de novo review on appeal, and we owe no deference to the circuit court’s interpretation of the statutory scheme.”) (citing *Esposito v. Va. State Police*, 74 Va. App. 130, 133, 867 S.E.2d 59 (Va. App. 2022)).

## ARGUMENT

### **I. The decision below cannot stand because it contradicts the plain text of VFOIA and this court’s subsequent decision in *Hines*.**

Six months after the decision below in this case, this Court ruled in a nearly identical case, holding that a circuit court erred by allowing a law enforcement agency to withhold the vast majority of its officers’ names, contrary to Virginia Code § 2.2-3705.1(1). *See Minium v. Hines*, 83 Va. App. 643, 647-48, 911 S.E.2d

822, 824 (Va. App. 2025). There, just as here, the law enforcement agency invoked the discretionary exemptions in § 2.2-3706(B)(8) & (10). On appeal, the law enforcement agency argued that releasing names “would endanger undercover operations by allowing the public to identify law enforcement officials in Hanover County who comprise the pool of officers available for undercover operations, and thus can be excluded from mandatory disclosure.” *Hines*, 83 Va. App. At 650.

This Court rightly rejected that argument based on

- (a) the plain meaning of § 2.2-3705.1(1), which does not allow the withholding of names,
- (b) § 2.2-3706(D), which subjects law enforcement personnel records to § 2.2-3705.1(1)(ii), which this Court recognized “offers clear guidance as to personnel records,” and
- (c) the fact that the statutory language requiring disclosure of names and overriding any other part of VFOIA was enacted in 2017, later than the undercover exemptions.

*Hines*, 83 Va. App. At 650-51. This Court further concluded that the argument that § 2.2-3706(B)(8) applied to “[h]ypothetical future undercover operations” was “at odds with the plain meaning” of the exemption. *Id.* at 652-53.

Chesterfield's position is indistinguishable from the one this Court rejected in *Hines*, and the judgment below must be reversed for that reason.<sup>2</sup>

**II. The plain and unambiguous statutory text mandates public access to government employee names and therefore requires reversal of the decision below.**

After a multi-year study, the General Assembly unanimously voted to clarify the Virginia Freedom of Information Act (VFOIA) by adding language that explicitly ensures public access to government employee names. This was not a new requirement, but the desire was to make it unambiguous and unavoidable. That unambiguous provision – which the opinion below did not quote or analyze – overrides Appellees' desire to withhold hundreds of employee names.

**A. VFOIA was amended in 2017, after extensive study, to clarify that government employee names cannot be withheld.**

In 2014, reiterating fundamental open government principles, the General Assembly charged the Freedom of Information Advisory Council (the FOIA Council) with conducting a comprehensive study of VFOIA, including the

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<sup>2</sup> Although the majority of this Court in *Hines* did not address § 2.2-3706(B)(10), Chesterfield's case here has the same failure of proof described in the concurrence. *See Hines*, 83 Va. App. at 655 (“The only evidence presented was that all deputies might hypothetically serve as undercover officers in the future.”). Moreover, as discussed in section II(D), *infra*, release of a complete employee roster – without listing any officer's job duties or assignments – would not reveal or identify any particular officer as working undercover.

appropriateness of exemptions. *See* 2014 House Joint Res. (HJR) 96, *available at* <https://lis.virginia.gov/cgi-bin/legp604.exe?141+ful+HJ96ER>.

Pursuant to the General Assembly’s direction, the FOIA Council established subcommittees, conducted years of study, heard from many stakeholders, and ultimately produced a report. *See* House Document No. 6 (2017), *available at* <https://rga.lis.virginia.gov/Published/2017/HD6> (hereinafter House Doc. 6).<sup>3</sup> “The Records Subcommittee met 18 times during the course of the study” and “systematically reviewed all of the records exemption sections of FOIA (§§ 2.2-3705.1 through 2.2-3706), as well as relevant FOIA definitions (§ 2.2-3701) and the procedures for making and responding to a public records request (§ 2.2-3704).” House Doc. 6, *supra*, at 5. Consensus and legislative recommendations were not achieved on all issues studied (*see id.*), but the FOIA Council did make a consensus recommendation to revise the personnel records exemption found in Virginia Code § 2.2-3705.1(1). *See id.* at M-12.

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<sup>3</sup> The FOIA Council’s report is published as a legislative document. *See* Procedures for Processing Legislative and Report Documents, Division of Legislative Automated Systems (revised Sept. 21, 2023), *available at* <https://rga.lis.virginia.gov/PublicationGuidelines.pdf> at 1. Virginia courts take judicial notice of such reports and other legislative information as official documents or publications of the Commonwealth or its agencies. *Fairfax Cty. Sch. Bd. v. S.C.*, 297 Va. 363, 368 n.2, 827 S.E.2d 592, 593 (Va. 2019); *accord* Va. Code § 8.01-388; Rule 2:203 of the Rules of the Supreme Ct. of Va.

Study records show a specific, considered decision to add employee names to the statutory list of information that government may not withhold. *See, e.g.*, House Doc. 6, *supra*, at 61 (“The draft also adds ‘name’ to the list of items that must be released.”). The FOIA Council noted that this addition would make explicit what existing law already required. *Id.* at 61 n.34 (“Names are required to be released under existing law, but that requirement is not explicitly stated.”). Indeed, over decades prior to the study, Attorney General and FOIA Council Advisory opinions had repeatedly interpreted the law as requiring release of government employee names.<sup>4</sup> The FOIA Council’s consensus recommendation codified those prior interpretations.

The General Assembly enacted the FOIA Council’s recommended records legislation unanimously, including the added paragraph that ensured public access to government employee names. *See* 2017 Va. Acts. ch. 778; HB1539 (2017) History, at <https://lis.virginia.gov/cgi-bin/legp604.exe?171+sum+HB1539>.

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<sup>4</sup> *See* 1987-88 Op. Atty. Gen. Va. 33; 1978-79 Op. Atty. Gen. Va. 310; Freedom of Info. Advisory Op. 01 (2009), *available at* [https://foiacouncil.dls.virginia.gov/ops/09/AO\\_01\\_09.htm](https://foiacouncil.dls.virginia.gov/ops/09/AO_01_09.htm); Freedom of Info. Advisory Op. 01 (2002), *available at* [https://foiacouncil.dls.virginia.gov/ops/02/AO\\_01.htm](https://foiacouncil.dls.virginia.gov/ops/02/AO_01.htm); Freedom of Info. Advisory Op. 28 (2001), *available at* [https://foiacouncil.dls.virginia.gov/ops/01/AO\\_28.htm](https://foiacouncil.dls.virginia.gov/ops/01/AO_28.htm). “These advisory opinions, while not binding on the Court, are instructive.” *Transparent GMU v. George Mason Univ.*, 298 Va. 222, 243, 835 S.E.2d 544, 554 (Va. 2019).

**B. Virginia Code § 2.2-3705.1(1) is unambiguous and decisive.**

Since 2017, the second paragraph of Virginia Code § 2.2-3705.1(1) has provided that no provision in VFOIA may be construed to deny public access to government employee names and certain other information:

No provision of this chapter or any provision of Chapter 38 (§ 2.2-3800 *et seq.*) shall be construed as denying public access to (i) contracts between a public body and its officers or employees, other than contracts settling public employee employment disputes held confidential as personnel records under § 2.2-3705.1; (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; or (iii) the compensation or benefits paid by any corporation organized by the Virginia Retirement System or its officers or employees. The provisions of this subdivision, however, shall not require public access to records of the official salaries or rates of pay of public employees whose annual rate of pay is \$10,000 or less.

The direction that “[n]o provision of this chapter” shall be construed as denying public access to “records of the name … of any officer, official, or employee of a public body” is clear and unambiguous. Names may not be withheld.

Yet the circuit court did exactly what the statute forbids: it construed and applied discretionary exemptions in Virginia Code § 2.2-3706(B)(8) & (10) as permitting Chesterfield to deny access to hundreds of names. (R. at 117.) The circuit court did not quote or analyze the text of Virginia Code § 2.2-3705.1(1) at all, much less explain why it permitted Chesterfield officials to flout that explicit statutory provision.

There is no good statutory explanation for the decision below. The exemptions relied upon by Appellee and the circuit court are provisions in “this chapter.” *See Harmon v. Ewing*, 285 Va. 335, 337, 745 S.E.2d 415, 417 (Va. 2013) (“The provisions of ‘this chapter’” means “all of VFOIA”). Therefore, the exemptions in Virginia Code § 2.2-3706(B)(8) & (B)(10) may not “be construed as denying public access to … the name” of “any officer, official, or employee of a public body.” Va. Code § 2.2-3705.1(1).

**C. Claiming that § 2.2-3706 prevails over § 2.2-3705.1(1) ignores the statutory text again.**

From its response to Minium’s VFOIA request (R. at 32) to post-trial briefing (R. at 75), Chesterfield has contended that, if there is a conflict between the undercover exemptions and the provision mandating disclosure of names, the exemptions win. There is no conflict. As this Court recognized in *Hines*, “§ 2.2-3706(D) explicitly subjects law enforcement agency personnel records to Code § 2.2-3705.1.” 83 Va. App. at 651. Here, the request sought personnel information, not records of investigations. Accordingly, § 2.2-3706(D) expressly provides that § 2.2-3705.1(1) governs. The sections of VFOIA are in accord and leave no discretion: § 2.2-3706(D) relies upon and does not conflict with § 2.2-3705.1(1). *See Hines*, 83 Va. App. at 651. And the unambiguous language of § 2.2-3705.1(1) requires release of government employee names in this case.

**D. The undercover exemptions are not meaningless; they apply where a request seeks records of particular undercover or protective work.**

It is a basic and unremarkable proposition that a piece of information may be confidential in one context and public in another. Factual context about the request and the records sought establishes whether any of the many VFOIA exemptions apply. Here the context shows that Ms. Minium sought certain personnel information for all employees. She did not seek “[t]he identity of any ... undercover officer” or information about “undercover operations or protective details.” And Chesterfield presented no evidence that any of the withheld officers were actually undercover at the time of the request. It claimed instead that disclosing “the names of the officers would hinder staffing of undercover operations by revealing the officers’ identities,” a contention this Court has rejected. *See Hines*, 83 Va. App. at 653. As this Court found in *Hines*, a law enforcement agency may not refuse to disclose “the names of law enforcement officers ... just because they *might* be designated for assignment in an undercover operation sometime in the future.” *Id.* The undercover exemptions have meaning: they permit secrecy about particular undercover operations or protective details, including which officers were involved. But VFOIA’s plain and unambiguous text bars invoking those exemptions to omit hundreds of names when a requester seeks a list of all of a law enforcement agency’s employees.

### **III. Courts’ role is to give effect to the unambiguous statutory language and leave policy arguments about potential outcomes to the legislature.**

The potential implications of disclosure of the names of employees of law enforcement agencies are discussed in the record. Chesterfield’s witness testified that the sky would fall with disclosure – that, by providing the name of the officer, “the Department would be prevented from ever staffing him in any undercover role after the disclosure was made.” (R. at 114.) The witness never explained how to reconcile that claim with her admission that a name alone does not reveal whether that person was actually working undercover:

Q: Pick a line where you see a name redacted. Now, if I had that name, would I thereby know whether that officer was staffing undercover operations on March 20th of 2023?

A: No.

(R. at 209; *accord* R. at 212.) Chesterfield raised the specter of “the internet and other data sources” being used to connect names with photos, such that those persons could no longer work undercover. (R. at 74.) Minium replied that the need for research and other sources showed that releasing names alone would not affect an officer’s ability to work undercover. *See* R. at 97-98.

The courts need not – and should not try to – resolve the dueling prognostications. Such arguments are for the legislature, not the courts. When interpreting statutes, a court “seeks ‘to ascertain and give effect to legislative intent,’ and it ‘determines [that] intent from the words employed in the statute.’”

*Rock v. Commonwealth*, 76 Va. App. 419, 430-431, 882 S.E.2d 490, 496 (Va. App. 2023) (citations omitted, alteration in original). In interpreting VFOIA, like any other statute, “when the language of a statute is plain and unambiguous, [courts] are bound by the plain meaning of that statutory language.” *Beck v. Shelton*, 267 Va. 482, 488, 593 S.E.2d 195, 198 (Va. 2004) (quoting *Lee County v. Town of St. Charles*, 264 Va. 344, 348, 568 S.E.2d 680, 682 (Va. 2002)). “Thus, when the General Assembly has used words that have a plain meaning, courts cannot give those words a construction that amounts to holding that the General Assembly meant something other than that which it actually expressed.” *Id.*

Here, the statutory rule that no provision of VFOIA shall be construed to deny public access to the names of government employees is clear and unambiguous, and the courts are bound to give effect to that language.

To be clear, VCOG’s position is that required disclosure of government employee names has merit as a policy matter. Such disclosure upholds the fundamental open government principles enacted in Virginia Code § 2.2-3700. Beyond that, compensation to government employees is taxpayer-funded, and the public’s right to know how government spends money on salaries was well-established for decades prior to the 2017 statutory clarification. *See n.4, supra.* Moreover, disclosing names avoids giving individuals an ability to be paid from taxpayer funds without accountability. Law enforcement agencies should not be

immune from such accountability (and arguably need more transparency and accountability than agencies whose employees do not have life or death power over their fellow citizens). To give just one example, names and salary records have revealed cases of a Sheriff's relatives being paid more in accrued leave payouts than anyone else in that department.<sup>5</sup> Transparency about government employee names and pay is useful and important.

Regardless, policy arguments must be made to the legislature, which can decide whether to amend the statute to add an exception to the names disclosure that Virginia Code § 2.2-3705.1(1) mandates. Unless and until the General Assembly changes the law and policy of the Commonwealth, the job of Virginia courts is clear: apply § 2.2-3705.1(1)'s plain language and rule again, as in *Hines*, that the names of government employees must be disclosed.

## CONCLUSION

The Coalition requests that this Court fulfill the judicial duty to give effect to the unambiguous language of Virginia Code § 2.2-3705.1(1) by reversing the

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<sup>5</sup> Allison Brophy Champion and Patrick Wilson, *Culpeper sheriff's brothers top list of leave payouts this year*, CULPEPER STAR-EXPONENT (Oct. 30, 2023), available at [https://starexponent.com/news/local/culpeper-sheriff-s-brothers-top-list-of-leave-payouts-this-year/article\\_20a459ea-74f6-11ee-a29e-471bd812f99f.html](https://starexponent.com/news/local/culpeper-sheriff-s-brothers-top-list-of-leave-payouts-this-year/article_20a459ea-74f6-11ee-a29e-471bd812f99f.html).

ruling below and remanding for production of the withheld names and other appropriate relief.

DATED: January [REDACTED], 2026      Respectfully submitted,

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## CERTIFICATE OF SERVICE AND COMPLIANCE

I hereby certify on this [REDACTED] day of January 2026, that, in accordance with Rules 5A:4(d) & 5A:19(a), this brief—excluding the cover page, tables of contents and authorities, and certificate—contains [REDACTED] words. I further certify that this brief was served by email on the parties through their counsel as listed below:

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