



**COMMONWEALTH of VIRGINIA**  
*Office of the Attorney General*

**Jason S. Miyares**  
Attorney General

202 North 9th Street  
Richmond, Virginia 23219  
804-786-2071  
FAX 804-786-1991  
Virginia Relay Services  
800-828-1120

January 26, 2024

**VIA HAND DELIVERY**

Hon. Edward F. Jewett, Clerk  
Richmond City Circuit Court  
400 North Ninth Street  
John Marshall Courts Building  
Richmond, VA 23219

RE: **Thomas A. Blackstock, Jr. v. Virginia Department of Transportation**  
Case No. CL24-301

Dear Mr. Jewett,

Please note that the Office of the Attorney General represents the Respondent in the above-styled matter. On behalf of the Respondent, I have enclosed for filing in the above-styled matter (1) a Demurrer and Motion to Dismiss and (2) a Notice of Hearing. If you have any questions, please do not hesitate to contact me at [TSanford@oag.state.va.us](mailto:TSanford@oag.state.va.us) or (804) 692-0551. Thank you for your attention to this matter.


Sincerely,

A handwritten signature in blue ink, appearing to read "T. Sanford".

Thomas J. Sanford  
Assistant Attorney General

Enclosures

CC: Richard F. Hawkins, III (via U.S. Mail and email)

RECEIVED AND FILED CIRCUIT COURT 3:42 JAN 26 2024 EDWARD F. JEWETT, CLERK BY  D.C.
--

**VIRGINIA:**

**IN THE CIRCUIT COURT FOR THE CITY OF RICHMOND**

**THOMAS A. BLACKSTOCK, JR.,**

**Petitioner,**

**v.**

**VIRGINIA DEPARTMENT OF  
TRANSPORTATION**

**Respondent.**

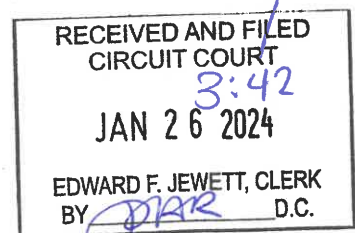
**Case No.: CL24-301 (WRM)**

**RESPONDENT’S DEMURRER AND MOTION TO DISMISS**

The Virginia Department of Transportation (“Respondent” or “VDOT”), by counsel and pursuant to Va. Code § 8.01-273 and Rule 3:8, submits this Demurrer and Motion to Dismiss in response to the Petition for Mandamus (“Petition”) filed by Thomas A. Blackstock, Jr. (“Petitioner”) under the Virginia Freedom of Information Act (“FOIA”). The Petition concerns VDOT’s redactions to a single record. As the redactions are justified by FOIA’s exemptions for personnel information and investigative materials, the Court should sustain this Demurrer, grant the Motion to Dismiss, and dismiss the Petition with prejudice.

**LEGAL STANDARD**

1. “A demurrer tests the legal sufficiency of a complaint, ensuring that the factual allegations set forth in the pleading are sufficient to state a cause of action.” *La Bella Dona Skin Care, Inc. v. Belle Femme Enters.*, 294 Va. 243, 255 (2017). A court “can review evidence submitted on a motion to dismiss. It is only when no evidence has been taken with regard to a motion to dismiss that a court reviews a complaint’s factual allegations as it does on demurrer.” *Clyde v. Bd. of Supervisors*, 108 Va. Cir. 416, 419 (Fairfax Cnty. Cir. Ct. 2021) (cleaned up) (citing



*Bragg v. Bd. of Supervisors*, 295 Va, 416, 423 (2018) & *NAACP v. Comm. Offenses Against Admin. of Justice*, 201 Va. 890, 901 (1960)).

## BACKGROUND

### A. Legal Background

2. While FOIA provides for access to public records as a general matter, see Code § 2.2-3700, it also statutorily exempts certain categories of records and information from disclosure. Two such exemptions are relevant here.

3. First, Code § 2.2-3705.1(1) exempts from “mandatory disclosure . . . [p]ersonnel information concerning identifiable individuals.” (hereinafter, “Personnel Exemption”). As the Supreme Court has explained, this “is a privacy-based exemption, designed to protect the subject of the record from the dissemination of personal information.” *Hawkins v. Town of S. Hill*, 301 Va. 416, 432 (2022). The exemption therefore shields from disclosure “data, facts, or statements within a public record relating to a specific government employee, which are in the possession of the entity solely because of the individual’s employment relationship with the entity, and are private, but for the individual’s employment with the entity.” *Ibid.*<sup>1</sup>

4. Second, Code § 2.2-3705.3(7) exempts from “mandatory disclosure . . . [i]nvestigative notes, correspondence and information furnished in confidence . . . provided to or produced by or for” multiple bodies, including “internal auditors appointed by the head of a state agency.” Code § 2.2-3705.3(7). That section of the Code further prohibits (1) revealing information from “completed investigations” in a form that would “reveal the identity of the complainants or persons supplying information to investigators,” and (2) “[i]f an investigation

---

<sup>1</sup> “[D]ata, facts, and statements are private if their disclosure would constitute an ‘unwarranted invasion of personal privacy’ to a reasonable person under the circumstances.” *Ibid.*

does not lead to corrective action, [releasing] the identity of the person who is the subject of the complaint” without their consent. (hereinafter, “Investigative Exemption”).

**B. Factual Background**

5. While the Petition spills much ink relitigating Petitioner’s underlying grievances with VDOT, see, e.g., Pet. ¶¶ 6–26, that dispute is irrelevant to the case at bar. This FOIA action solely concerns whether the light redactions to a single investigative record (the “ACO Audit Report”) are appropriate under FOIA. The sole record in dispute is attached to the Petition as **Exhibit F**.

6. Specifically, Petitioner seeks an unredacted copy of VDOT’s “August 10, 2020 audit report,” Pet. ¶ 1, which Petitioner acknowledges was the result of “a review and audit” “conducted . . . by VDOT’s Assurance and Compliance Office.” Pet. ¶ 14. Indeed, the very first line of the requested document explains as much. Pet. Ex. F at 1 (“Assurance and Compliance Office (‘ACO’) staff has completed a confidential review of allegations stemming from the recruitment of a ‘personal acquaintance . . . [a] detailed summary of our review is provided.”).

7. To obtain the ACO Audit Report, Petitioner submitted a FOIA request to VDOT for “the audit report produced by Internal Audit.” Pet. ¶ 28.

8. VDOT timely responded to the FOIA request by producing a redacted copy of the ACO Audit Report. In its response, VDOT explained that portions were “redacted” because they related to “personnel information and investigations” and were “exempt from disclosure pursuant to [Code] §§ 2.2-3705.1(1) and 2.2-3705.3(7).” Pet. ¶ 30.

9. Following the Supreme Court’s decision in *Hawkins*, which clarified the scope of the personnel exemption in Code § 2.2-3705.1(1), VDOT provided Petitioner with a copy of the ACO Audit Report with fewer redactions. Pet. ¶ 39 & Ex. F.

10. Dissatisfied with the remaining light redactions to the ACO Audit Report, Petitioner brought this action challenging those redactions on the grounds that the “personnel” exemption does not apply to the redacted information. Pet. ¶41; see also Pet. ¶¶ 32–44.

### ARGUMENT

11. The Petition fails and can be dismissed for three independently sufficient reasons.

**A. The Petition fails to challenge the Investigative Exemption**

12. First, from the outset, the Petition fails to state a claim because it only claims that the redactions in the ACO Audit Report are an inappropriate application of the “personnel” exemption in Code § 2.2-3705.1(1). See Pet. ¶¶ 32–44. As noted in the response to Petitioner’s FOIA request, VDOT’s redactions are also justified by the Investigative Exemption in Code § 2.2-3705.3(7). Pet. ¶ 30. Petitioner raises no challenge to the application of that section of the Code—indeed, except for quoting VDOT’s invocation of the statutory Investigative Exemption, the Petition does not even mention Code § 2.2-3705.3(7). *Ibid.* As that section of the Code provides an *independent* basis for the redactions in question, Petitioner would still not be entitled to an unredacted version of the ACO Audit Report even if the Court were to agree with Petitioner regarding Code § 2.2-3705.1(1). That is fatal to the Petition. See *Lawrence v. Jenkins*, 258 Va. 598, 603 (1999) (dismissing FOIA petition where petitioner had “received all the information that he was entitled to receive under FOIA.”); cf. *Manchester Oaks Homeowners Ass’n v. Batt*, 284 Va. 409, 422 (2012) (“Where, as here, an appellant’s assignments of error leave multiple bases for the challenged ruling uncontested, our review is satisfied by a determination that any one of them provides a sufficient legal foundation for the ruling.”).

**B. The Petition itself establishes that the redacted information is exempt**

13. Second, even if Petitioner had challenged the application of Code § 2.2-3705.3(7)

to the redactions in the ACO Audit Report, he would have pled himself out of Court. The Petition repeatedly acknowledges that the ACO Audit Report is an audit report from VDOT's internal auditors. Pet. ¶¶ 1, 14, 28; see also Factual Background, *supra*. Therefore, Code § 2.2-3705.3(7)(v), which covers "internal auditors" for an agency, applies. And it plainly exempts the redacted information. Indeed, it is clear on the face of the redacted version of the ACO Audit Report that the redactions are of personally identifiable information shielded from disclosure. See, e.g., Pet., Ex. F at 2 (noting "a personal relationship with [redacted]"), 7 (redacting "Name"), at 8 (same); Code § 2.2-3705.3(7). As a result, Petitioner's own pleading establishes that the Investigative Exemption applies.

14. In the same vein, the Petition itself establishes that the Personnel Exemption applies. Given the context around and unredacted contents of the ACO Audit Report, which concerned "a review and audit of [a] hiring decision," Pet. ¶ 14 & Ex. F, the redactions plainly address private information regarding specific government employees that is shielded from disclosure. Code § 2.2-3705.1(1); *Hawkins*, 301 Va. at 432

**C. In the alternative, *in camera* review will confirm the redactions are proper**

15. Third, if necessary, VDOT will submit, under seal, an unredacted copy of the record in question for the Court's *in camera* review. Because that record, on its face, confirms that the exemptions in Code § 2.2-3705.1(1) and Code § 2.2-3705.3(7) exempt the redacted information from disclosure, the Court can dismiss the Petition based upon that *in camera* review.

16. In sum, VDOT's response to Petitioner's FOIA request complied with FOIA because each redaction covers information exempt from disclosure pursuant to FOIA's Personnel


Exemption and Investigative Exemption.<sup>2</sup>

WHEREFORE, the Court should sustain the Demurrer, grant the Motion to Dismiss, dismiss the Petition with prejudice, and grant any other relief that the Court deems just and proper.

Pursuant to Rule 4:15, Respondent reserves the right to file a Brief in Support of this Demurrer and Motion to Dismiss.

Respectfully submitted,

**VIRGINIA DEPARTMENT OF  
TRANSPORTATION**

By:   
Counsel for Respondent

Jason S. Miyares  
*Attorney General of Virginia*

Steven G. Popps  
*Deputy Attorney General*

Jacqueline C. Hedblom  
*Senior Assistant Attorney General*

Thomas J. Sanford (VSB No. 95965)\*  
*Assistant Attorney General*

Office of the Attorney General  
202 North Ninth Street  
Richmond, Virginia 23219  
Telephone: (804) 692-0551  
Facsimile: (804) 371-2087  
Email: TSanford@oag.state.va.us  
*\*Counsel of Record for Respondent*

---

<sup>2</sup> Lastly, under the statutory requirements of FOIA, Petitioner is not entitled to fees and/or costs because he has not substantially prevailed on the merits in this case and, even if he did, special circumstances would make such an award unjust. Code § 2.2-3713(D). Additionally, Petitioner's request for "civil penalties," Pet., Request for Relief, ¶ (b), is categorically unavailable in this action against VDOT, see Code § 2.2-3714 (only providing for penalties against "a public body" itself with respect to certification of closed meetings).

**CERTIFICATE OF SERVICE**

I hereby certify that on January 26, 2024, a true and correct copy of the foregoing was sent by U.S. Mail and electronic mail to Counsel for the Petitioner at the following address:

Richard F. Hawkins, III  
The Hawkins Law Firm, PC  
2222 Monument Avenue  
Richmond, Virginia 23220  
rhawkins@thehawkinslawfirmoc.com



---

Thomas J. Sanford



**VIRGINIA:**

**IN THE CIRCUIT COURT FOR THE CITY OF RICHMOND**

**THOMAS A. BLACKSTOCK, JR.,**

**Petitioner,**

**v.**

**VIRGINIA DEPARTMENT OF  
TRANSPORTATION**

**Respondent.**

)  
)  
)  
)  
)  
)  
)  
)  
)  
)

**Case No.: CL24-301 (WRM)**

**NOTICE OF HEARING**

PLEASE TAKE NOTICE that on January 29, 2024, at 11:00 a.m., Respondent the Virginia Department of Transportation, by counsel, will appear before this Court and bring on for hearing its Demurrer and Motion to Dismiss filed in response to the Petition for Mandamus in the above-captioned matter.

Respectfully submitted,

**VIRGINIA DEPARTMENT OF  
TRANSPORTATION**

By: T. Sanford  
Counsel for Respondent

Jason S. Miyares  
*Attorney General of Virginia*

Thomas J. Sanford (VSB No. 95965)\*  
*Assistant Attorney General*

Steven G. Popps  
*Deputy Attorney General*

Office of the Attorney General  
202 North Ninth Street  
Richmond, Virginia 23219  
Telephone: (804) 692-0551  
Facsimile: (804) 371-2087

Jacqueline C. Hedblom  
*Senior Assistant Attorney General*


Email: TSanford@oag.state.va.us  
*\*Counsel of Record for Respondent*

RECEIVED AND FILED  
CIRCUIT COURT  
3:42  
JAN 26 2024  
EDWARD F. JEWETT, CLERK  
BY JAR D.C.

**CERTIFICATE OF SERVICE**

I hereby certify that on January 26, 2024, a true and correct copy of the foregoing was sent by U.S. Mail and electronic mail to Counsel for the Petitioner at the following address:

Richard F. Hawkins, III  
The Hawkins Law Firm, PC  
2222 Monument Avenue  
Richmond, Virginia 23220  
rhawkins@thehawkinslawfirmoc.com



---

Thomas J. Sanford