

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF RICHMOND

VIRGINIA INFORMATION TECHNOLOGIES)	
AGENCY,)	
Plaintiff,)	
)	
v.)	Case No. CL17-5280
)	
WILLIAM H. TURNER)	
)	
and)	
)	
OFFICE OF THE EXECUTIVE)	
SECRETARY,)	
Defendants.)	

THE EXECUTIVE SECRETARY'S MOTION TO RESTRAIN CLAIMANTS FROM INSTITUTING OR PROSECUTING OTHER PROCEEDINGS

Pursuant to Virginia Code § 8.01-364 (*Interpleader*), the Executive Secretary of the Supreme Court of Virginia and his office (the "Executive Secretary"), by counsel, hereby moves that this Court enter an order restraining all claimants, including Claimant Dr. William H. Turner, from instituting or prosecuting any proceeding in any court of the Commonwealth affecting the property involved in this interpleader action. In support of this Motion, the Executive Secretary states as follows:

1. The interpleader in this case raises issues concerning the extent to which the Judiciary and the Executive Secretary are governed by the Virginia Freedom of Information Act ("VFOIA"). The Executive Secretary has, today, filed responsive pleadings in this interpleader asserting that (i) the Executive Secretary is not a public body within the meaning of the Virginia Freedom of Information Act; (ii) the Executive Secretary, as an arm of the Judiciary, is not subject to VFOIA as application of VFOIA to the Judiciary would run afoul of the separation of

powers enshrined in Virginia's Constitution; and (iii) Virginia has not waived sovereign immunity to consent to VFOIA's application to the Judiciary.

2. In addition to this present action, there is pending in the Accomack Circuit Court an appeal from an order of the Accomack General District Court denying in part and granting in part relief to Dr. Turner related to a VFOIA dispute with the Executive Secretary. See **Exhibit A** (Final Order, entered August 3, 2017, including letter opinion) (styled as *Turner v. Office of the Executive Secretary* and *Turner v. Office of the Attorney General, Kristi Wright & Nerissa Rouzer*, consolidated at Case No. CL17-279, Accomack County Circuit Court (the "Accomack Action")). No trial date has yet been set in the Accomack Circuit Court.

3. The issues set to be litigated in this proceeding are among those that will be litigated in Accomack Circuit Court. Indeed, if the Executive Secretary prevails in this matter on the grounds described in its responsive pleadings, that ruling will be persuasive precedent that the Accomack Circuit Court proceeding, at least as it relates to the Executive Secretary, should be dismissed.¹ Thus, the proceedings and rulings in the Accomack Circuit Court, if that action were not stayed, could "affect[] the property involved in the interpleader action . . ." Va. Code § 8.01-364(C).

4. Further, Dr. Turner, in ongoing correspondence to the Executive Secretary and the Office of the Attorney General, has threatened additional litigation in pursuit of the records that are the subject of the interpleader action. To date, upon information and belief, no other lawsuits have been filed by Dr. Turner, but without an order of restraint, the potential proliferation of duplicative and redundant lawsuits that are the subject of this interpleader action would remain unchecked.

¹ The Accomack Circuit Court proceeding includes an appeal from a ruling in the General District Court that decided certain issues pertaining to the Office of the Attorney General, in addition to issues pertaining to the Executive Secretary.

5. Rather than litigate these identical issues in multiple, separate forums, risking multiple and inconsistent rulings and unnecessarily incurring duplicative costs, the Accomack Circuit Court proceeding should be stayed while the issues in this interpleader are litigated.

6. On December 20, 2017, the interpleading party, the Virginia Information Technologies Agency ("VITA"), filed a motion seeking an order permitting it to tender into this court the documents at issue in this action and seeking to be discharged from further obligation related to the documents and this proceeding. The Executive Secretary does not object to such a motion. In the event the Court grants that motion, the Executive Secretary will ask that this Court realign the remaining parties, Dr. Turner and the Executive Secretary, to characterize them as plaintiff and defendant respectively and to characterize the proceeding then as Dr. Turner's petition for mandamus to produce the documents described in the interpleader. At that time, the Executive Secretary anticipates bringing on for hearing its Motion for Bill of Particulars and Pleas in Bar also filed today.

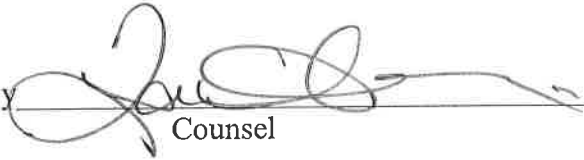
7. The Executive Secretary has, by counsel, today submitted for filing with the Accomack Circuit Court a copy of this Motion attached to a Motion to Stay requesting that the Accomack Action be stayed pending further order of this Court. A copy of the Motion for Stay submitted to the Accomack Circuit Court is attached to this Motion. *See Exhibit B (Motion for Stay, or Alternatively, Motion to Transfer Venue).*

WHEREFORE, in order to permit the important statutory and Constitutional questions posed in this interpleader action to be answered in a systematic and orderly fashion, and to avoid undue time and expense stemming from multifarious litigation in different courts, the Executive Secretary respectfully requests that this Court enter an order requiring that Dr. Turner and any other claimants to the records identified in the interpleader action be restrained from instituting

or prosecuting any proceeding in any court, including without limitation the Accomack Action, and award the Executive Secretary all other relief as the ends of justice may require.

Date: December 22, 2017

OFFICE OF THE EXECUTIVE SECRETARY

By  _____
Counsel

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CERTIFICATE OF SERVICE

I hereby certify that on December 22, 2017, I served a copy of the foregoing by email and first-class mail, postage prepaid on the following:

Mark Herring, Esq.
Cynthia E. Hudson, Esq.
John S. Westrick, Esq.
Joshua D. Heslinga, Esq.
Robert N. Drewry, Esq.
Office of the Attorney General
202 North Ninth Street
Richmond, VA 23219
Counsel for VITA

and by facsimile to:

William H. Turner
27316 Lankford Highway
Onley, VA 23418
Pro Se Defendant

A handwritten signature in black ink, appearing to read "D. H. Turner", with a long horizontal flourish extending to the right.