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 CIRCUIT COURT
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VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF RICHMOND

VIRGINIA INFORMATION TECHNOLOGIES)
AGENCY,)
Plaintiff,)
)
v.)
)
WILLIAM H. TURNER)
 SERVE: 27316 Lankford Highway)
 Onley, VA 23418)
 ACCOMACK COUNTY)
and)
)
OFFICE OF THE EXECUTIVE SECRETARY)
)
 SERVE: Karl R. Hade,)
 Executive Secretary)
 101 North 9th Street)
 Richmond, VA 23219)
)
Defendants.)

Case No. CL17-5280-1

COMPLAINT

The Virginia Information Technologies Agency (VITA), by counsel, brings this interpleader action and prays that the Court decide the disposition of public records in VITA's possession that are subject to conflicting claims of the Defendants.

SUMMARY

1. William H. Turner has sought, and continues to seek, production under the Virginia Freedom of Information Act (FOIA) of the monthly itemized long distance phone call billing records for the Office of the Executive Secretary of the Supreme Court of Virginia (OES). VITA centrally administers telecommunications billing for many state agencies, including OES, so VITA has possession of such billing records. Turner claims that VITA is a custodian of the

billing records for OES calls and must produce the records to him under FOIA. OES, on the other hand, claims that the records are confidential as a matter of law and that OES is the legal custodian of the records. VITA wishes merely to ascertain and comply with the law, so respectfully requests that this Court (i) require the Defendants to interplead their conflicting claims to the records, and then (ii) decide the disposition of the records.

PARTIES

2. VITA is a state agency in the executive branch responsible for a variety of information technology functions, as provided in Chapter 20.1 of Title 2.2 of the Code of Virginia. VITA's principal office is located at 11751 Meadowville Lane, Chester, VA 23836.

3. Turner is a citizen of Virginia residing in Accomack County.

4. OES was created by statute to be the court administrator for the Commonwealth, as provided in § 17.1-314 of the Code of Virginia. OES's principal office is located at 101 North 9th Street, Richmond, VA 23219.

JURISDICTION AND VENUE

5. Like other Virginia trial courts, this Court has jurisdiction to order parties with conflicting claims to the same property to interplead their claims, and then to decide the proper disposition of that property, pursuant to § 8.01-364 of the Code of Virginia. This Court also has jurisdiction to decide FOIA disputes, as provided in Va. Code §§ 2.2-3704 & 2.2-3713.

6. Venue is proper in this Court pursuant to Va. Code § 8.01-261(1)(b)(2), because OES regularly or systematically conducts affairs or business activity in the City of Richmond; Va. Code § 8.01-262(1), because OES's principal office is located in the City of Richmond; and Va. Code § 8.01-262(4), because OES's claims, a part of this cause of action, arose in the City of Richmond.

FACTS

7. Among many other functions, VITA centrally administers telecommunications billing for many state agencies, including OES. VITA receives bills from telecommunications vendors, and VITA's telecommunications billing system (now known as TEBS) aggregates them, turns them into a readable format, and generates monthly bills to the respective agencies for their long distance phone calls. In addition to operating TEBS, VITA staff also work with the telecommunications vendors to identify and resolve billing errors.

8. Beginning on August 22, 2017, Turner made requests to VITA for OES's long distance billing records, eventually covering the period January 2016 through August 2017. VITA initially responded by noting that VITA did not have printouts and by referring Turner to OES, citing provisions of FOIA (Va. Code § 2.2-3704(J), and the Public Records Act (Va. Code § 42.1-85(B)) concerning agencies' custodial responsibilities for records.

9. Upon information and belief, before and/or during the same period of time that Turner was seeking the records from VITA, Turner requested OES's long distance billing records from OES too, but OES declined to produce the records.

10. Turner sought to enforce FOIA and compel OES to produce the records by filing a petition for injunction or mandamus in Accomack General District Court (*Turner v. Office of the Executive Secretary*, case no. GV17001833) on September 28, 2017. Turner requested, and the Clerk issued, a subpoena for VITA employee Dan Wolf in that action.

11. After further consideration and communications with Turner, VITA ascertained what information was available and decided to produce that information. Accordingly, on October 3, 2017, VITA produced OES long distance phone billing records covering the period January 2016, the start point in Turner's requests to VITA, through June 2017, the latest

available. Turner requested hard copies, and VITA produced the same records to him on paper on October 12, 2017.

12. On October 13, 2017, the Accomack General District Court held a trial on Turner's petition and entered a final order denying the petition. At that trial, Turner orally asked of VITA's counsel that VITA provide copies of the OES long distance phone records for July, August, and September 2017. The substitute judge who presided over that trial, the Honorable Robert B. Carter, echoed Turner's request and instructed VITA's counsel that VITA should write to Turner to state whether VITA is willing to produce those records when they exist.

13. On October 16, OES, through Edward M. Macon, Assistant Executive Secretary and Counsel at OES, wrote to VITA asserting that OES did not authorize the release of telephone records for 2016-17, that OES is the legal custodian of OES's phone records, and that many, if not all, of the phone records are confidential as a matter of law and contain potentially very sensitive information. A copy of OES's email is attached as Exhibit A.

14. On October 22, Turner sent VITA a letter repeating his demands for the July 2017 and August 2017 records. Turner has sent many letters to VITA, including letters on September 15, 2017, September 17, 2017, and October 22, 2017, copies of which are attached as Exhibits B, C, and D, respectively. On more than one occasion, Turner has threatened VITA with filing a further FOIA petition and accused VITA of criminal activity (a purported conspiracy to withhold, alter, or destroy the records he seeks).

15. Prior to November 3, 2017, VITA has told Turner on multiple occasions that OES long distance phone records covering calls made in July 2017, August 2017, and September 2017 did not yet exist because telecommunications bills for those months had not yet been created and issued. Generation of billing records for those months had been delayed due to technical

problems with TEBS, which is a new telecommunications billing system that began operation with the bills covering calls made in June 2017. During this period, VITA staff was working to resolve the technical issues with an expectation that the records would come into existence in the near future as the billing would occur for those months. On November 3, VITA was able to resolve the technical impediment as to the phone records covering calls made in July 2017. As of the date of the filing of this action, the billing records for August 2017 and September 2017 still do not exist but should come into existence soon.

COUNT I - INTERPLEADER

16. Through the telecommunications billing system, VITA generates and maintains OES long distance phone billing records, which would include the records reflecting calls made in July 2017, August 2017, and September 2017.

17. VITA is exposed to conflicting claims to those records. On the one hand, Turner maintains that VITA must release them to him. On the other hand, OES maintains that VITA may not release them to Turner.

18. VITA is or may be exposed to multiple liability through the existence of these competing claims to the same property, the records at issue.

19. VITA wishes to avoid legal liability and comply with the law as to the disposition of the records at issue. VITA has no interest in the disposition of the records beyond ensuring that VITA remains legally compliant and does not incur liability arising from the competing claims to the records.

20. VITA wishes to voluntarily tender the records for July 2017 calls into this Court under seal, as well as the further billing records at issue as they are generated, pending this Court's ruling concerning the proper disposition of the records.

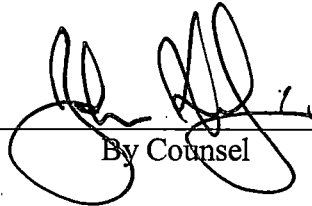
PRAYER FOR RELIEF

21. WHEREFORE, VITA asks that the Court award the following relief, in accordance with the remedies specifically provided for by Va. Code § 8.01-364:

- a. Require Turner and OES to interplead their claims;
- b. Restrain all claimants from instituting or prosecuting any proceeding in any court of the Commonwealth affecting the OES long distance phone records at issue;
- c. Permit VITA to tender the records into this Court under seal as they become available during the pendency of this action;
- d. Hear and determine the case, discharging VITA from further liability; and
- e. Make all appropriate orders to enforce its judgment as to the disposition of the records, and award VITA any other relief that the Court deems just and proper.

Respectfully submitted,

VIRGINIA INFORMATION TECHNOLOGIES AGENCY



By Counsel

Mark Herring
Attorney General of Virginia

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202 North 9th Street
Richmond, Virginia 23219
(804) 786-3847

*Counsel of Record

01192936

From: Eddie Macon [<mailto:EMacon@vacourts.gov>]
Sent: Monday, October 16, 2017 10:14 AM
To: Wolf, Dan (VITA) <Dan.Wolf@vita.virginia.gov>
Cc: Karl Hade <khade@vacourts.gov>; Kristi S Wright <kswright@vacourts.gov>;
hlockerman@oag.state.va.us; Link, Eric (VITA) <Eric.Link@vita.virginia.gov>
Subject: RE: OES Telephone Records
Importance: High

Dan,

OES did not authorize the release of the telephone records for 2016-2017. Although I believe our office is the legal custodian of the phone records you produced, we were not notified by either VITA or OAG that our phone records were being released. In fact, I had understood from Eric that the records would not be released. Both Eric and the AG's office were aware of our/OES' objections.

I am concerned because I believe many, if not all, of the phone records, are confidential as a matter of law. The records released contain potentially very sensitive information. If you felt you had to release them, I believe we should have been notified in advance, and if necessary, the records should have been proffered for in camera review only pending considerations of our objections (and not provided directly to the requester).

At this point I am not sure what, if anything, can be done to remedy the situation and retrieve the phone records you have already produced. That is something we will need to consider. In the meantime, can you assure me/OES that before any additional records pertaining to OES are released by VITA, that we/OES will be provided with reasonable notice and an opportunity to object?

Please let me know.

Thank you,

Eddie Macon

Edward M. Macon
Assistant Executive Secretary & Counsel
Office of the Executive Secretary
Supreme Court of Virginia
100 N. 9th Street
Richmond, Virginia 23219
804.786.5378

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EXHIBIT A

09/15/2017

William H. Turner
P.O. Box 128
Onley, VA 23418

Mr. Dan Wolf
VITA
11751 Meadowville Lane
Chester, VA 23836

Dear Mr. Wolf,

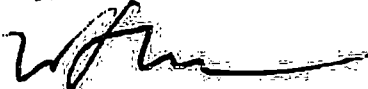
First I politely asked you for the itemized long distance telephone call records of the OES. Instead of providing me with these public records you refer me to the OES. This is not only a secretion of records it is a felony. Then I am informed that you alerted your buddies at the OES that I was attempting to get these records. This is a conspiracy. Now I am told that they want you to dissuade me from getting these records. You have not responded to my continued requests.

Initially I was going to give you the opportunity to simply tell me what was going on, than I was going to subpoena you as a witness. Now it appears that I must cite you for violations of the FOIA as well as the OES for attempting to have you violate my rights as a citizen.

I request again, copies of the itemized long distance phone call records as well as your involvement in the conspiracy to keep me from obtaining these records including dates, method of their contact and notes that you took concerning their attempt to involve you in this unlawful activity.

I will not trouble you for this information again and I will look forward to talking to you on the witness stand in Accomac District Court.

Sincerely,



William H. Turner/rat

09/17/2017

William H. Turner
P.O. Box 128
Onley, VA 23418

Mr. Dan Wolf
VITA
11751 Meadowville Lane
Chester, VA 23836

Dear Mr. Wolf,

Just because you refer me to the OES to obtain copies of telephone long distance records does not release you of the responsibility to provide them if you have them.

Send to me a copy of your job description and salary.

Send to me any document that you have that describes the functions of VITA.

Also I want to remind you that it is illegal for you to conspire with the OES to secrete or destroy documents.

For your information the Supreme Court and the Attorney General say that itemized long distance phone call bills are public records.

Sincerely,



William H. Turner/rat

10/20/2017

William H. Turner
P.O. Box 128
Onley, VA 23418

Mr. Dan Wolf
VITA
11751 Meadowville Lane
Chester, VA 23836

Dear Mr. Wolf,

You say you have sent 20 months, I paid for 20 months. I received 17 months (12+8=17). August is the 8th month, I will assume that you are honest and I have lost July and August of 2017. I will pay twice. Send July and August 2017. A petition will be filed Monday, if you don't understand this message you should contact an attorney.

It is a felony to withhold, alter or conspire about evidence.

OES will also be petitioned if they don't send phone bills. On September 22, 2017 you say you "received a copy of record from OES". This means that they also have a record.

Sincerely,



William H. Turner/rat

cc Dreyer
Kads